

**INTERBOLSA's comments on the ESMA discussion paper  
on CSDR technical standards**

**Introduction**

Interbolsa – Sociedade Gestora de Sistemas de Liquidação e de Sistemas Centralizados de Valores Mobiliários, S.A. (“Interbolsa”), the Portuguese CSD, which is part of the EURONEXT Group, welcomes the European Securities and Market Authority’s initiative regarding the public consultation launched on 20 March 2014, as regards the draft technical standards for the regulation on improving securities settlement in the European Union and on central securities depositories (CSD).

As a member of the European Central Securities Depositories Association (“ECSDA”), Interbolsa has participated in the discussion and elaboration of ECSDA’s responses to this public consultation and we fully support all the comments included in the two papers prepared and submitted by ECSDA, related with settlement discipline (Part 1) and CSD authorisation (Part 2).

Nevertheless, Interbolsa considers important to also comment individually the ESMA Discussion Paper on CSDR technical standards, even if we adopt identical terms and positions, or even the same answers as the ones of ECSDA. This paper serves to reinforce the principal aspects of ECSDA comments fully supported by Interbolsa.

Therefore, Interbolsa presents in this document its response to the public consultation concerning the draft technical standards for the regulation on improving securities settlement in the European Union and on central securities depositories (CSD).

## INFORMATION ABOUT THE RESPONDENT

- **Name and address of the respondent**

**Name:**

INTERBOLSA – Sociedade Gestora de Sistemas de Liquidação e de Sistemas Centralizados de Valores Mobiliários, S.A.

**Address:**

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- **Field of activity of the respondent**

INTERBOLSA is the Portuguese CSD, managing centralized securities systems and securities settlement systems.

The CSD activity is undertaken in the context of national regulations as a CSD (operating SSS) authorised and supervised by a public authority (Comissão do Mercado de Valores Mobiliários, the Portuguese Securities Market Commission (“CMVM”).

## CONTACTS

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## Settlement Discipline

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### a) Trade confirmation

**Q1: 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?**

This is not a CSD issue but, instead, concerns the relationship between investment firms and its clients.

We stress that early confirmation and allocation should be seen as functionalities to increase efficiency on the processing of settlement instructions and to prevent settlement fails, at CSD level.

### b) Measures facilitating settlement on ISD – art.6(2)

**Q2: In your opinion, are there any exceptions that should be allowed to the rule that no manual intervention occurs in the processing of settlement instructions? If so please highlight them together with an indication of the cost involved if these exceptions are not considered.**

We agree that (i) automation and straight-through processing is necessary to increase efficiency on the processing of settlement instructions and to reduce operational risk, (ii) manual intervention should be used on very limited situations and (iii) CSDs should try not to offer services that require manual intervention.

Nevertheless, we consider that occasionally, manual interventions can be necessary, namely, (i) for CSDs to perform corrective procedures; (ii) for participants to amend OTC instructions after matching, (possible for some identified fields, such as partial settlement, linked instructions and priority).

We believe that establishing exceptions regarding the possibility of “manual intervention” in Level 2 legislation (expression that is not defined) is not the best solution and could have an effect opposite to the intended, namely in terms of reduction of the settlement efficiency.

We also consider that technical standards should not eliminate CSDs flexibility. CSDs, as self regulated institutions, should have full discretion as to decide when manual intervention is necessary, namely in order to increase settlement efficiency.

**Q3: ESMA welcomes concrete proposals on how the relevant communication procedures and standards could be further defined to ensure STP.**

The Level 2 legislation should seek to support and promote the use by the CSDs of technical solutions, namely the use of international open communication procedures and standards for messaging, which accommodate the use of STP – Straight through Processing.

Nevertheless and despite we believe that it will be very useful (namely considering T2S platform and environment) to set up a plan to encourage the community to move from ISO 15022 to ISO 20022 until 2020, we also believe that the reference to the use of specific communication standards could cause some problems once the standards change into new or different ones.

We suggest that ESMA should introduce a general reference to ISO standards, avoiding the identification of individual standards such as ISO 15022 or ISO 20022, and also avoiding the imposition of ISO standards because, in some cases, they do not cover all functionalities and services offered by CSDs.

Additionally, ESMA should consider to have the same approach in the technical standards of the CSDR, comparing with the technical standards for other infrastructures (such as trading venues and CCPs), that do not reach this level of detail. We cannot see any valid reason to adopt in this case a different approach on communication standards.

**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?**

#### *Compulsory matching*

We agree with ESMA that, as a general rule, matching prior to settlement should be compulsory. Nevertheless, some exceptions should be allowed, such as the ones referred in the discussion paper, related with settlement instructions received by the CSD already matched or for instructions involving the accounts of the same CSD participant. But some other situations do not require a matching process, such as the instructions in the context of corporate actions processing, or some instruction related with insolvency proceedings as a result of a Court or administrative order.

We believe the list of exceptions should not be closed. The standard should give enough flexibility to the CSDs to decide, considering the circumstances and condition of each situation and attending to the efficiency of the settlement, which other situations will not require matching.

We would like to point out that, presently, FoP instructions do not always require matching and this would constitute a change in market practice for Interbolsa's participants.

#### *Continuous matching*

We agree that the technical standards should comprise a general requisite for CSDs to offer matching real-time and continuously throughout each business day.

We already offer real-time matching throughout business day in line with ESSF-ECSDA Standard 3.

#### *Standardised matching fields*

Standard 1 of the ESSF-ECSDA matching standards (2006) already contains a list of harmonised matching fields that Interbolsa complies with and we will also comply with the mandatory fields requested by T2S.

In our opinion, there is no need to create additional binding requirements. We consider important that CSDs retain flexibility to use, when appropriate, other matching fields, including optional fields, in order to adapt to local market reality. Client codes should remain an optional matching field.

No reference to T2S should be done since CSDR also applies to non-T2S CSDs.

#### *Use of matching tolerance amounts*

We have introduced the use of matching tolerance amounts, according to ESSF-ECSDA Standard 17 (threshold of 25€ or approximate counter value in the relevant currency). Nevertheless, and as the CSDs in Europe do not follow the same tolerance amount (that vary from 0€ to 25€), ESMA's technical standards should only provide a general recommendation regarding the use of matching tolerance amount to facilitate timely settlement, allowing CSDs to determine the appropriate optional tolerance amount in consultation with their participants, from 0€ to 25€.

**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?**

The proposals presented by ESMA as incentives for early input of settlement instructions are basically three: (i) Financial disincentives for the late input of settlement instructions; (ii) Hold/release mechanism; (iii) Bilateral cancellation facilities; (iv) Information to participants about unmatched instructions.

We do not agree with the inclusion in the technical standards of an obligation to all CSDs apply financial disincentives for the late input of settlement instructions. This incentive should be considered as one tool, among others, that can be adopted by the CSDs giving the circumstances of the local market.

In what concerns the other proposals:

(i) In line with ESSF-ECSDA Standard 9, Interbolsa already offers hold/release functionality to its participants and, as a T2S participating CSD, it will continue to offer this mechanism in a T2S environment.

We recognise that the CSDs should be encouraged to offer a hold/release mechanism as a best practice if there is a demand from their participants or the market (some CSDs nowadays only provide for part of the service often due to a lack of demand by market participants).

(ii) We offer to our participants' bilateral cancellation facilities, and we believe that CSDs should be encouraged to offer this facility as a best practice. Our doubt is the following: is there a reasonable reason to include this as an obligation in the technical standards.

(iii) We agree that CSDs should provide their participants with up-to-date information on the status of their pending instructions. But, in our opinion, the technical standard(s) should not specify detailed practical modalities on how this information needs to be accessed (namely in what concerns timing and format). We think that depends on the technical design of each CSD's system and on participants' preference based on the costs involved.

Moreover, ESMA should recognise that CSDs are not always in position to identify the reasons why an instruction has not been matched. Requiring CSDs to identify and provide information on the causes for unmatched instructions will imply investigation on the causes of such a situation which would potentially involve manual intervention and expose the CSD to avoidable legal risks. We believe that CSD participants are best placed to identify the causes and the business context in which a transaction has failed to match.

In T2S platform, for example, CSDs will be able to check whether a settlement instruction is matched, but they will not receive information on the underlying cause why an instruction is not matched.

***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.***

We meet the ECSDA Standard 9 to remove barriers to settlement and agree, in general terms, with ESMA opinion regarding the obligation of the CSDs to offer (i) several possibilities to settle; or (ii) ongoing DVP settlement throughout each business day. Nowadays, we operate a RTGS system.

Nevertheless, we consider that ESMA's technical standards should not impose that *"all CSDs should be obliged to offer at least three daily settlements (batches)"* or any specific number of batches per day, because that depends on the market size and on the market demand.

***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.***

We believe that the technical standards should ensure that each CSD have the option to choose the most appropriate tools to enhance settlement efficiency in their markets, based on its business model and considering the services offered and the risks involved.

Actually, and taken into account that:

- The level of settlement efficiency in Europe is already close to 100%
- The majority of EU CSDs have joined T2S
- T2S will provide functionalities such as optimisation algorithms, technical netting, partial settlement, and recycling of settlement instructions

we believe that is unnecessary, burdensome and costly to require CSDs to develop these functionalities, namely because there is no evidence that such measures would be a good practice for all CSDs and markets and would substantially benefit settlement efficiency at European level.

***Q8: Do you agree with this view? If not please elaborate on how such arrangements could be designed and include the relevant data to estimate the costs and benefits associated with such arrangements. Comments are also welcome on whether ESMA should provide for a framework on lending facilities where offered by CSDs.***

We agree that CSDs should not be obliged to offer arrangements for the lending and borrowing of securities.

On the other hand, under Section B of the Annex of the CSD Regulation (Level 1) CSDs already have the possibility, but not the obligation, to offer these L&B services (“*organising a securities lending mechanism, as agent among participants of a securities settlement system*”), so, we understand that there is no need for technical standards to cover lending and borrowing services of CSDs. L&B services are just another tool that CSDs can use when considered appropriate.

***Q9: 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.***

We are in favour of a harmonised template to be used by all CSDs for reporting fails to their regulators on a monthly basis, allowing for comparability across markets, and for a significant aggregation of settlement fails at EU level. We believe that the CSDR technical standards should be seen as an opportunity to harmonise the reporting standards across all EU markets.

We support that the methodology to be followed should be based on the existing ECSDA methodology of February 2010, being the methodology used by ESMA for collecting information from national regulators also a good basis for the work concerning the harmonised fails reporting requirements.

On the distinction between asset classes, we thus recommend, in line with ECSDA proposal, that ESMA should broadly define categories of instruments for the purpose of settlement fails reporting (for example based on the CFI classification), allowing each CSD to collect fails data per asset type.

In case the proposed categories identified by ECSDA, and supported by Interbolsa, would be adopted by ESMA, we note that we have to make adaptations to our current systems as such distinction is not currently used for the purpose of settlement fails reporting.

On the distinction between domestic and cross-border transactions, ESMA should require CSDs to report fails data related with “internal settlements” (i.e. settlement between two participants of one CSD) and “external settlements” (i.e. settlement between a participant of one CSD and the participant of a linked CSD - deliveries made via a link) separately.

Regarding the identity of the failing participants, we support ECSDA views and believe that:

- Regulators should receive fails data at the aggregate level (all participants) by default;
- Regulators should have the possibility to request details about the level of fails of an individual participant on an *ad hoc* basis, e.g. in case of specific concerns with certain actors in the market;
- Systematically providing details on the identity of the failing participant for each failed instruction would result in lengthy, complex and unnecessarily onerous reports to regulators;
- Even in cases where the regulator receives information on the settlement performance of an individual participant, the regulator will often not know who is behind the fail (e.g. among the many underlying clients of a given CSD participant) and will need to obtain further information from the market participant in question. CSDs themselves often cannot identify the original failing party, e.g. when omnibus accounts are used.

**Q10: What are your views on the information that participants should receive to monitor fails?**

Participants should receive information regarding their pending settlement instructions (i.e. whether these are matched or unmatched), aiming at preventing / managing fails.

Participants should also receive, from its CSD, information related with settlement fails, allowing participants to monitor the evolution in their level of settlement efficiency, to analyse their own level of settlement fails. Some flexibility should be left to CSDs as how participants can access this kind of information and on the specification of the details of such reports which will depend on user requirements.

**Q11: Do you believe the public information should be left to each CSD or local authority to define or disclosed in a standard European format provided by ESMA? How could that format look like?**

We agree that certain information should be made public in order to market participants and other interested parties to gain an overall understanding of the settlement landscape. The definition of a “minimum European template” to be used by CSDs to publicly disclose settlement fails data can be seen as useful for the market and will give the CSDs flexibility to include additional information, adapted to local market characteristics.

This public information should be left to each CSD which should be made available to the public on the CSD’s website.

***Q12: What would the cost implication for CSDs to report fails to their competent authorities on a daily basis be?***

We already provide to our competent authority, on a daily basis, access to a report with information relating to the fails occurred in each settlement cycle. In addition, Interbolsa prepares to the regulator, on a fortnightly basis, information on fails. As a result no additional cost will seem to apply.

Nevertheless, we understand that for some CSDs and national regulators having to process the data on a daily basis, operational and administrative costs will increase.

***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?***

Determination of liquidity for the purposes of the extension period should pay special attention to the situation of ETFs, for which settlement performance can be affected by two important features:

- The existing fragmentation between several listing places and consequential split of custody (which may also include fragmentation in currencies of trading), that is likely to persist at least until the full implementation of T2S;
- Any lag between the various settlement cycles whenever ETFs track indices composed of securities traded in different zones.

Whilst secondary trading of ETFs does fall in the scope of CSDR settlement discipline, it is necessary to acknowledge that the mechanics of ETF secondary trading remain intricately linked to the way primary market works on such products of open-ended nature. Consistency of prices between secondary and primary market is ensured, to the benefit of end-investors, by market-makers which may from time to time incur settlement fails due to the key features of the market rather than intentional or negligent behavior: to be able to provide efficient prices across all listing places, such market-makers need comfort that late settlement penalties will remain commensurate and not impair the viability of their services.

Whatever the final standard adopted, there should be a level playing field applying to all factors potentially influencing settlement discipline, from penalties for temporary late deliveries to final buy-in timeframes and auction prices: it is critical that forum shopping across market infrastructures (notably listing places and through them CCPs) does not offer opportunities to gain any preferable treatment. ESMA should see to it that related practices already converge even before CSDR standards become effective, especially in the context of anticipated move from many marketplaces to T+2 settlement.

**Q14: 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?**

**Q15: 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?**

**Q16: In which circumstances would you deem a buy-in to be ineffective?**

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

Currently, CSDs are (usually) not involved in the execution of buy-ins, which is mainly CCPs' responsibility.

We consider that, given CSDs low risk profile, CSDs should continue not involved on the execution of buy-ins. Consequently, we think that further discussions are needed among ESMA, market infrastructures and their users, to discuss buy-in process and the regime that should be establish in the technical standards to enforce the CSDR buy-in rules in 'non-CCP' scenarios.

#### **c) Suspending of failing participants – art.7(6)**

**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?**

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

We agree that the suspension of a participant should be considered as an ultimate solution, an extreme measure that can only be used after due consideration of the circumstances and after the consultation with the regulators, authorities and the other infrastructures involved.

ESMA should be aware that in many cases the fail of the CSD participant is a fail of its client and the CSD, normally, does not know the identification of the CSD participant's client and has no authority to suspend it. On the other hand, we consider that it should be clearly defined what means a "consistently and systematically" fail from a CSD participant. In this context, we consider that it can be useful if a threshold or thresholds will be considered by ESMA, namely in terms of volume and/or value.

However, in all cases, the suspension of a participant should never be triggered automatically, even if a threshold exists and is reached.

**d) Settlement information necessary for executing buy-ins – art.7(7)**

**Q20: 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.**

CSDs should provide to CCPs and trading venues for the execution of buy-ins, the necessary information included in the unsettled instruction. CSDs will pass to CCPs and trading venues the information on the current status of instructions received from these infrastructures.

Additionally, we note that:

(i) We do not agree with the statement that CSDs "need to be able to associate the activity of each clearing member, CCP and participant to a trading venue, to a given securities account". We consider that it is the entity responsible for executing the buy-in, rather than the CSD, which needs to be able to link a failed settlement instruction to a given counterparty (trading or clearing member)

(ii) CSDR technical standards should not impose segregation requirements on trading and clearing members. Specially in what concerns CCPs, we consider that the processes implemented enable CCPs to access the information needed for the buy-ins, being the segregation at CSD level needless, namely to solve any question related with the execution of the buy-in.

**Internalised settlement - Article 9(2), (3)**

**Q21: Would you agree that the above mentioned requirements are appropriate?**

This is not a CSD issue and as such we do not comment on the requirements established.

The only note is that we agree that is important for competent authorities and ESMA to monitor the settlement internalisers' activity, in order to determine the scale of this activity and, more important, to be able to identify any related systemic risk to the market.

*Information provided to the authorities for authorisation - Article 17(8), (9)*

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***Q22: Would you agree that the elements above and included in Annex I are appropriate? If not, please indicate the reasons or provide ESMA with further elements which you find could be included in the draft RTS, and any further details to justify their inclusion.***

In general, we agree that the elements mentioned in the Discussion Paper and included in Annex I are appropriate to demonstrate compliance with all CSDR and relevant technical standards.

Nevertheless, we consider that these requirements cannot be seen as “minimum requirements” but as a single and harmonised list of elements to be included in CSD’s application process. Actually, these requirements are already very detailed and extensive and referring all the necessary and relevant information for the authorisation process.

On the other hand, we consider that the technical standards should recognise that some items listed in Annex I may not be relevant for all the CSDs, considering the different business models adopted for each CSD and the core and ancillary services authorised to be effectively provided (some CSDs will not be authorised for all core and ancillary services previewed in the CSDR), and they should preview that on these situations, and others similar, no information to the competent authority should be provided by the CSD (because, effectively, no information exists).

Points to be clarified by ESMA on Annex I of the Discussion Paper:

(i) Items listed under points E2 and E3 (intended settlement dates, preventing fails and measures to address settlement fails) – at least in the first three years after the Level 2 standards on settlement discipline have been adopted, CSDs should not be required to obtain such authorisation.

(ii) Items listed under points C7 (recordkeeping) and F3 (2) (CSD secondary processing sites) – an appropriate transition period should be consider by ESMA to allow CSDs to develop the required functionalities.

(iii) Points 8 and 9 under C2. (8) (internal control mechanisms) seem to be duplicated with the information required under A2.2 (policies and procedures). ESMA should consider their removal.

(iv) Where appropriate to demonstrate compliance with the CSDR, technical standards should allow CSDs to refer to their yearly disclosure or self-assessment reports under CPSS-IOSCO principles for financial market infrastructures (for example, item F – prudential requirements) or, in alternative, should allow the competent authorities not to request for some information already in its possession because of the outcome of recent supervisory assessments. The same should apply, in the case of CSD links, regarding the existing link assessments.

The use of links to the public information contained on the CSD website should be also allowed.

**Q23: Do you agree that the above mentioned approach is appropriate? If not, please indicate the reasons or provide ESMA with further elements which could be included in the draft ITS.**

We agree with the template proposed in Annex II.

#### **Conditions for CSD participations in other entities - Article 18**

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**Q24: Do you see other risks and corresponding mitigating measures? Do CSDs presently have participations in legal persons other than CCPs, TRs and trading venues that should be considered? Would banning CSDs from directly participating in CCPs be advisable, in your view?**

We agree that the participation of a CSD in another legal entity with activities other than those specified in annexes A and B should not be approved by the competent authorities if it increases significantly the risk profile of the CSD, putting the CSD activity at risk. Nevertheless, the analysis of the restrictions or conditions, under which the competent authorities may approve such participations, should be cautious in order to do not prevent CSDs from diversifying their business activities and to develop innovative solutions to problems faced by market participants. Sometimes the better solution to implement an initiative or project is to have participations in complementary businesses. Nevertheless, all initiatives should ensure that CSDs maintain a low risk profile.

Regarding ESMA proposals we agree to (i) prohibit any CSD guarantees that lead or may possibly lead to an unlimited liability in virtue of a participation and (ii) allow for limited liabilities, on the condition they are fully capitalised by means of liquid capital items.

Nevertheless, and considering the other proposals, we consider that they do not seem justified or appropriate. Actually:

(i) The proposal to limit control

*“Prohibiting CSDs to have participations for which they have ensured control (or run the risk of being*

*regarded as being in control by the relevant authorities or in a litigation case) unless covered by liquid capital items” do not seem a justified and adequate proposal. Actually, assuming control of an entity in which a CSD holds a participation can be seen, much of the times, as a way to better control the risks resulting from the same. These risks, resulting from the participation of the CSD in other entities, should be included by the CSDs in their recovery plans.*

(ii) The proposal to limit percentage of income from participations

*“To limit the revenues from the participation to 20% of the total income of the CSD, based on the average of the preceding three years” do not seem a justified and adequate proposal.*

The percentage seems arbitrary and does not consider the nature of the risks involved in the participations; and seems difficult to implement in practice, because the revenues can be different from the initial forecast, and exceed 20% forcing the CSD to dispose of its participation (which can be considered as a loss when it could be used to the maintenance of the financial strength and resilience of the CSD).

We consider that technical standards should not establish a fixed cup on revenues from CSD participations.

If the main objective behind this proposal is to ensure that CSDR-authorized services remain the dominant activity of the CSD and the source of the CSD revenues, then we consider that the technical standards should clearly state that.

(iii) Proposal to limit participations to securities chain

*“Participations of CSDs should therefore be limited to CCPs, TRs and Trading Venues”, do not seem justified and appropriate.*

As referred above CSDs can have a real interest to have participations in complementary businesses, even to allow the CSD business to grow and diversify or to develop innovative solutions to problems faced by market participants.

Much of the times the better solution to implement an initiative or project is to have participations in complementary businesses.

As such, we suggest that the technical standards should establish, as a restriction, that the activities of the entities in which a CSD holds participations are complementary to the activities of the CSD (and they do not increase significantly the risk profile of the CSD).

#### ***Review and evaluation - Article 22(10), (11)***

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***Q25: Do you consider the approach outlined above adequate, in particular as regards the scope and frequency of information provision and the prompt communication of material changes? If not, please indicate the reasons, an appropriate alternative and the associated costs.***

We fully support ESMA's approach outlined in the discussion paper when referring that *“authorities should, in a post-crisis context, increase their capabilities of ongoing supervision rather than over-relying on ad-hoc supervision”*. The same applies under CSDR article 16(3) that states the obligation of the CSDs to *“inform competent authorities without undue delay of any material changes affecting the conditions for authorisation”*.

Additional ad-hoc reviews should focus on material changes affecting the CSD's risk profile, avoiding the duplication of the information provided in the context of the ongoing supervisory assessments. This would facilitate the work for competent authorities and therefore contribute to the efficiency of the supervision process.

As for the annual review of CSD's compliance with the regulation, competent authorities should attend to the information already provided by the CSD and only request CSDs to provide information not yet available (it should be avoided to request extensive additional reports summarising information that was already sent to the competent authorities).

This annual review carried on under article 22 of CSDR should, in our view, replace the previous reviews carried out using the ESCB-CESR framework.

We consider that the former, non-binding, ESCB-CESR standards should be discontinued once they have been replaced by binding technical standards assessing CSD's compliance with the CSDR requirements.

This annual review should also rely on, as much as possible, on CSDs' assessments against CPSS-IOSCO PFMI, which cover most of the information required for the review.

#### **Recognition of third country CSDs - Article 25**

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**Q26: Do you agree with this approach? Please elaborate on any alternative approach illustrating the cost and benefits of it.**

We agree with ESMA that *“the definition of the items that a non-EU CSD could provide for EU recognition purposes could be similar to the elements required for the registration of an EU CSD”*.

As is the case in EMIR technical standards, we believe that the CSDR technical standards should include a list of all requirements for third country CSDs to apply for recognition, and to the supervision process.

#### **Monitoring tools for the risks of CSDs, responsibilities of key personnel, potential conflicts of interest and audit methods - Article 26**

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**Q27: Do the responsibilities and reporting lines of the different key personnel and the audit methods described above appropriately reflect sound and prudent management of the CSD? Do you think there should be further potential conflicts of interest specified? In which circumstances, if any, taking into account potential conflicts of interest between the members of the user**

*committee and the CSD, it would be appropriate not to share the audit report or its findings with the user committee?*

- Monitoring tools

We do not support the proposal made by ESMA which would require CSDs to monitor not only their own risks, but also to the risks they pose to *participants and, to the extent practicable, clients, as well as the risks it may be exposed to and pose to other entities*". The CSDs would not be able to identify, and monitor risks in relation to participants' clients, this should be the responsibility of the respective participant.

We consider that this goes beyond Article 26(1) in the Level 1 text of the CSD Regulation, which requires CSDs to *"identify, manage, monitor and report the risks to which it is or might be exposed"*. Therefore we recommend that technical standards on monitoring tools should be limited to the risks faced by CSDs.

- Responsibilities of key personnel

We agree with the lists of responsibilities of key personnel suggested by ESMA.

However, some clarification to the notion of "dedicated functions" (of chief risk officer, compliance officer, chief technology officer and independent internal audit) referred in the Discussion Paper, is needed.

We consider that this "dedicated functions" should be interpreted in a flexible way:

(i) This functions will not always justify a full-time job in smaller organisations (like for example Interbolsa).

(ii) In corporate groups, is frequent that one employee performs one of the referred "dedicated functions" for the entire group, or for different entities within the group.

In our view, this should continue to be allowed in the future. It allows for a more efficient allocation of tasks and, in the case of corporate groups for instance, provides some benefits (e.g. group-wide perspective on risks).

As a result, technical standards should make it clear that the "dedicated functions" should be clearly attributed to an individual, but that this individual should be allowed to perform other functions, as long as any potential conflicts of interests are disclosed and managed, according to the relevant provisions of the CSDR.

- Potential conflicts of interest:

We agree in general with ESMA's approach on conflicts of interest.

- Audit methods:

We agree with ESMA on the importance of an independent internal audit function.

We reiterate what we said above regarding the "dedicated functions" and we stress that it should be allowed, namely for smaller CSDs, to combine the internal audit function with other functions, as long as a

sufficient degree of independence is guaranteed.

In what concerns the sharing of audit findings with the user committee, we consider that these reports can contain non-public information on detailed risk management processes and procedures which are not meant to be disclosed outside the CSD and its regulator(s), regarding potential conflicts of interest and confidentiality requirements.

It should be clarified by the EU legislator if the Level 1 text intends to require an external audit of a CSD's internal risk management processes or only of the CSD's financial statements.

#### ***Recordkeeping - Article 29(3), (4)***

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***Q28: Do you agree with this minimum requirements approach? In case of disagreement, what kind of categories or what precise records listed in Annex III would you delete/add?***

- “Minimum requirements” approach

We do not agree with the “minimum requirements” approach proposed by ESMA for CSD recordkeeping. This approach (as minimum requirements) can introduce some distortions among CSDs because national regulators can add several other additional requirements to the ESMA list.

So, we consider that a “maximum requirements” approach should be followed by ESMA, providing a harmonised list of records. Nevertheless, competent authorities should retain the possibility to request CSDs, whenever needed, to keep and provide information that is not part of regular recordkeeping.

- Contents of the recordkeeping requirements

For CSDs, recordkeeping is essentially about data retention and archiving in order to be able to reply to inquiries by competent authorities. Therefore, we consider that the list of items in Annex III of the Discussion Paper is very extensive and goes beyond what is required by regulators today.

We also believe that the quantity of data to be stored over (a minimum of) 10 years and related functionalities would result in potentially high IT costs. Some of the proposed technical requirements, such as an online inquiry possibility, the possibility to re-establish operational processing, a query function through numerous search keys, and direct data feeds, are much more demanding than current CSD recordkeeping practices.

We believe that the purpose of recordkeeping requirements, as specified in CSDR Article 29, is to allow supervisory authorities to ensure *“compliance [of the CSD] with the requirements under this Regulation.”*

We consider that ESMA should create a shorten list of records, that should only contain the items relevant for the purpose of ensuring compliance with CSDR. At a minimum, the following items should be removed

from the list (CSDs typically do not have access to such information and it is unclear how such records would contribute to evidence CSD's compliance with CSDR requirements):

- SR3 (persons exercising control on issuers)
- SR4 (country of establishment of persons exercising control on issuers)
- SR 13 (persons exercising control on participants)
- SR14 (country of establishment of persons exercising control on participants)
- SR20 (Participants cash accounts – end of day balances)
- FR3 (client of the delivering participant, where applicable)
- FR9 (client of the receiving participant, where applicable)

CSDR technical standards should consider the fact that some of the listed records are related to the provision of specific services which not all CSDs might offer. Thus, recordkeeping requirements will have to be adapted depending on the individual services provided by a given CSD based on the list of services contained in sections A, B and C of the Annex of the CSD Regulation.

- Format of the records

We do not see any need to maintain records online (immediately available). We consider that should be sufficient to CSDs to store the data in a way that allows it can be retrieved within a few days.

ESMA should allow CSDs to maintain records in a proprietary format wherever this format can be converted without undue delay into an open format that is accessible to regulators.

- Timing of implementation

ESMA should determine an appropriate transition period to allow CSDs to develop the required functionalities.

**Q29: What are your views on modality for maintaining and making available such records? How does it impact the current costs of record keeping, in particular with reference to the use of the LEI?**

- Direct data feeds for regulators

Currently, the Portuguese regulator has a direct access to Interbolsa's systems. However, experience suggests that the tendency is to continue to rely on on ad hoc requests for information.

In general terms, we consider that technical standards should not impose CSDs to build and maintain direct data feeds for their competent authorities

- Use of LEI

We refer that the codification LEI – Legal Entity Identifiers is not used currently by CSDs and we do not see any benefit of using it as mandatory for the purpose of recordkeeping.

The imposition of the use of LEIs for the purpose of recordkeeping would imply changes to current CSDs systems and also to the systems of their participants and, consequently, would imply an increase of costs. We think that a gradual implementation of LEIs, rather than imposition by binding regulation, should be conducted and may have a better effect.

On the other hand, in our point of view, the usage of LEI codes should be well planned in order to replace BIC codes, but globally extended to all market, avoiding that CSDs should be obliged to support the cost of translation of BIC codes, received from the participants, into LEI codes, namely in what concerns the report to the regulator, if it will be the case.

#### ***Refusal of access to participants - Article 33(5), (6)***

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***Q30: Do you agree that the CSD risk analysis performed in order to justify a refusal should include at least the assessment of legal, financial and operational risks? Do you see any other areas of risk that should be required? If so, please provide examples.***

We agree that the CSD risk analysis performed in order to justify a refusal should include the assessment of legal, financial and operational risks.

In addition, we want to point out that the “risk analysis” referred in Article 33(3) of CSDR has a specific scope: the refusal of access to participants; and cannot be seen or interpreted as a criteria for obtaining the status of CSD participant. It should be clear that the technical standards are limited to exceptional cases where the CSD has doubts on the eligibility of an applicant.

***Q31: Do you agree that the fixed time frames as outlined above are sufficient and justified? If not, which time frames would you prefer? Please provide reasons to support your answer.***

We agree with the proposed time frames.

#### ***Integrity of the issue - Article 37***

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***Q32: In your opinion, do the benefits of an extra reconciliation measure consisting in comparing the previous end of day balance with all settlements made during the day and the current end-of-day balance, outweigh the costs? Have you measured such costs? If so, please describe.***

We believe that further discussions are necessary on this issue, with ESMA but also with the ECB, in order to avoid inconsistencies between the CSDR, T2S and the Eurosystem assessment framework.

**Q33: Do you identify other reconciliation measures that a CSD should take to ensure the integrity of an issue (including as regards corporate actions) and that should be considered? If so, please specify which and add cost/benefit considerations.**

No, we do not see the need for special reconciliation measures in case of corporate actions.

**Q34: Do you agree with the approach outlined in these two sections? In your opinion, does the use of the double-entry accounting principle give a sufficiently robust basis for avoiding securities overdrafts, debit balances and securities creation, or should the standard also specify other measures?**

We agree that double-entry accounting gives CSDs a sufficiently robust basis to avoid securities overdrafts, debit balances and securities creation.

We do not think that CSDR technical standards should specify other measures.

**Operational risks - Article 45**

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**Q35: Is the above definition sufficient or should the standard contain a further specification of operational risk?**

We agree with the use of the definition of operational risk included in the CPSS-IOSCO Principle for financial market infrastructures. This will guarantee consistency with global standards.

**Q36: The above proposed risk management framework for operational risk considers the existing CSDs tools and the latest regulatory views. What additional requirements or details do you propose a risk management system for operational risk to include and why? As always do include cost considerations.**

We support ESMA approach, which is based in the CPSS-IOSCO principles for financial market infrastructures and their assessment methodology, and, consequently, no additional requirements seem necessary.

Although we consider that some clarifications are needed on the issues identified in the following chart (prepared by ECSDA and included in its paper):

Paragraph in the ESMA Discussion Paper	Clarifications required

<p>§154: CSDs should have a “robust operational risk-management framework with appropriate <u>IT systems</u>, policies, procedures and controls”.</p>	<p>This principle should not be understood as a requirement for CSDs to use special IT tools for operational risk management. There exist some third party IT solutions for managing operational risk but they are not commonly used by CSDs and are not necessarily more appropriate than, or superior to, the established tools and systems for managing operational risk management within CSDs. This is especially true for CSDs not exposed to credit risk.</p>
<p>§157: “The CSD should have a central function for managing operational risk”.</p>	<p>General agreement with ESMA’s statement but seems necessary to stress that a ‘central function’ should be understood as a requirement that responsibilities for the management of operational risks are clearly attributed, not as a requirement for the function to be performed by a CSD employee on an exclusive basis, especially in smaller CSDs (see our answer to question 27 on the responsibilities of key personnel).</p>
<p>§160: The CSD “should also have comprehensive and well-documented procedures in place to [...] resolve all operational incidents”</p>	<p>The suggestion is to rephrase the end of the sentence as follows: “<b>all material operational incidents</b>” in order to ensure a reasonable and proportional interpretation. The mentioned procedures should not be required for insignificant incidents that do not affect in any way the efficient functioning of a CSD system.</p>
<p>§161: “The operational risk management processes [...] should be subject to regular reviews performed by internal or external auditors”.</p>	<p>The review of operational risk management processes will typically be undertaken by the internal auditor, rather than an external auditor.</p>

**Q37: In your opinion, does the above proposal give a sufficiently robust basis for risk identification and risk mitigation, or should the standard also specify other measures? Which and with what associated costs?**

We believe that ESMA proposal is sufficient.

**Q38: What are your views on the possible requirements for IT systems described above and the potential costs involved for implementing such requirements?**

In general terms, currently, we already follow the requirements for IT systems described in the Discussion Paper.

**Q39: What elements should be taken into account when considering the adequacy of resources, capabilities, functionalities and staffing arrangements of the secondary processing site and a geographic risk profile distinct from that of the primary site?**

In general terms, we agree with ESMA's considerations regarding the Business Continuity Policy that should be implemented by the CSDs.

In what concerns the secondary processing site, we consider that technical standards should give some flexibility for local regulators to apply the requirements appropriately.

For example: (i) in what relates to the "geographic risk profile" of the secondary processing site that should be distinct from that of the primary site – this should be analysed having in consideration the local conditions and should not be defined in a prescriptive way, for instance specifying an exact minimum distance. Interbolsa nowadays is located in Porto and has its secondary processing site near Lisbon (around 300 Km). And we believe this is adequate for the specific situation of Interbolsa and for the Portuguese market. Nevertheless, we recognize that this may not be appropriate for all CSDs.

Finally, we would like to note that T2S currently foresees a maximum recovery time of 4 hours for critical CSD functions, and not 2 hours as suggested by ESMA in the third bullet point.

**Q40: In your opinion, will these requirements for CSDs be a good basis for identifying, monitoring and managing the risks that key participants, utility providers and other FMIs pose to the operations of the CSDs? Would you consider other requirements? Which and why?**

We agree that the requirements proposed by ESMA form a good basis for identifying, monitoring and managing the risks that key participants, utility providers and other FMIs pose to the operations of the CSDs.

#### **Investment policy - Article 46**

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**Q41: Do you agree with the approach outlined above? In particular, do you agree with the approach of not distinguishing between CSDs that do not provide banking services and CSDs that do so?**

**42. Should ESMA consider other elements to define highly liquid financial instruments, 'prompt access' and concentration limits? If so, which, and why?**

We support the approach outlined in ESMA's discussion paper and we do not consider necessary to add other elements to define highly liquid financial instruments, "prompt access" and concentration limits.

Nevertheless we want to stress that ESMA's intention "to include similar (...) conditions applicable to highly liquid financial instruments, as listed in Annex II of Commission Delegated Regulation 153/2013 of 19 December 2012, regarding RTS for CCPs", should be carefully analysed and assessed, because many EMIR requirements are not appropriate for CSDs, for example in terms of use of capital as guarantee (CCPs use their capital to guarantee clearing) or development of own methodology for credit ratings (unlike CCPs, typically CSDs are not involved in managing credit risks).

We think that the CSDR restrictions on investment policy should not be (considering the different risk profile of CSDs and CCPs) as strict as the EMIR requirements.

#### **CSD links - Article 48(10)**

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**Q43: Do you agree that links should be conditioned on the elements mentioned above? Would there be any additional risks that you find should be considered, or a different consideration of the different link types and risks? Please elaborate and present cost and benefit elements supporting your position.**

We agree with ESMA's view that customised and standard links should be treated equally from a risk perspective and, in general terms, with the conditions for the establishment of customised and standard links proposed in the Discussion Paper.

Nevertheless, we would like to suggest:

(i) The deletion of the term "extensive" referred on the 3<sup>rd</sup> condition for the establishment of customised and standard links [*"the requesting CSD has conducted an extensive analysis of the receiving CSD's financial soundness, (...)"*], namely when related to CSDs authorised or recognised under the CSDR, given the extensive authorisation process applied.

(ii) On the other hand, we consider that technical standards should take into account existing CSD link assessments, as performed under the Eurosystem framework, to avoid unnecessary duplication.

**Q44: Do you find the procedures mentioned above adequate to monitor and manage the additional risk arising from the use of intermediaries?**

We consider the procedures proposed by ESMA for 'indirect links' adequate to monitor and manage the additional risk arising from the use of intermediaries.

Nevertheless, we consider that the CSDs that currently operate several indirect links may do not have sufficient time to complete the reassessment of all those links by the time they present their application

for authorisation, given that indirect links are not currently subject to the proposed monitoring and managing procedures. Thus, ESMA should provide for an additional delay of around 6 months for these requirements to enter into force.

***Q45: Do you agree with the elements of the reconciliation method mentioned above? What would the costs be in the particular case of interoperable CSDs?***

We agree with ESMA's description of reconciliation methods.

***Q46: Do you agree that DvP settlement through CSD links is practical and feasible in each of the cases mentioned above? If not explain why and what cases you would envisage.***

We agree that DvP settlement through CSD links can be considered practical and feasible in each of the cases mentioned in the Discussion Paper.

#### ***Refusal of access to issuers - Article 49(5), (6)***

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***Q47: Do you agree that the risk analysis performed by the CSD in order to justify a refusal to offer its services to an issuer should at least include legal, financial and operational risks? Do you see any other areas of risk that should be considered? If so, please give examples.***

We agree that the risk analysis performed by the CSD in order to justify a refusal to offer its services to an issuer should include legal, financial and operational risks. We note that the examples provided by ESMA for each category should not be considered as an exhaustive list.

Additionally, we consider that should also be relevant the case where the CSD's refusal does not concern the issuer but a particular issuance from one particular issuer, even if the CSD already provides to it notary services.

***Q48: Do you agree that the time frames as outlined in the procedure above are sufficient and justifiable? If not, which time frames would you prefer? Please provide reasons to support your answer.***

We agree with the time frames proposed by ESMA.

#### ***Refusal of access for CSD links - Article 52(3), (4)***

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**Q49: Do you agree that the time frames as outlined in the procedure above are sufficient and justifiable? If not, which time frames would you prefer? Please provide reasons to support your answer.**

We agree with the time frames proposed by ESMA.

**Q50: Do you believe that the procedure outlined above will work in respect of the many links that will have to be established with respect to TARGET2-Securities?**

Yes.

**Refusal of access to other market infrastructures - Article 53(4), (5)**

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**Q51: Do you agree that the risk analysis performed by the receiving party in order to justify a refusal should include at least legal, financial and operational risks? Do you see any other areas of risk that should be considered? If so, please give examples?**

We agree that the risk analysis performed by the CSD, as the receiving party, in order to justify a refusal to access to other market infrastructures should include legal, financial and operational risks. We note that the examples provided by ESMA should not be considered as an exhaustive list.

**Q52: Do you agree that the time frames as outlined in the procedure above are sufficient and justifiable? If not, which time frames would you prefer? Please provide reasons to support your answer.**

We agree with the time frames proposed by ESMA.

**Procedure to provide banking type of ancillary services - Article 55(7), (8)**

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**Q53: Do you agree with these views? If not, please explain and provide an alternative.**

Yes, we agree.

**Q54: What particular types of evidence are most adequate for the purpose of demonstrating that there are no adverse interconnections and risks stemming from combining together the two**

*activities of securities settlement and cash leg settlement in one entity, or from the designation of a banking entity to conduct cash leg settlement?*

We do not believe that “*the investment policy of the credit institution*” should be considered as relevant information for the purpose of demonstrating that there are no adverse interconnections and risks stemming from the designation of a banking entity to conduct cash leg settlement, as the credit institution will be subject to CSDR articles 54 and 59 and to the limitations included in Section C of the CSDR Annex.

Furthermore, we note that a “*service level agreement*” is only part of the elements to consider in case of outsourcing. The entities should demonstrate compliance with the general outsourcing requirements included in CSDR and the banking legislation.

Finally, we identify as additional elements to be considered (i) the necessary alignment of recovery and resolution arrangements of the two or more legal entities and (ii) the need to address possible conflicts of interest in the governance arrangements of the respective entities.

INTERBOLSA thanks ESMA for the opportunity to comment on the Discussion Paper on CSDR technical standards.