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| 18 December 2014 |

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| Reply form for the  Technical Advice under the CSDR |
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| Date: 18 December 2014 |

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the ESMA Consultation Paper - D Technical Advice under the CSDR, published on the ESMA website.

***Instructions***

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, please follow the instructions described below:

1. use this form and send your responses in Word format;
2. do not remove the tags of type <ESMA\_QUESTION\_TA\_CSDR\_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
3. if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses are most helpful:

1. if they respond to the question stated;
2. contain a clear rationale, including on any related costs and benefits; and
3. describe any alternatives that ESMA should consider

**Naming protocol:**

In order to facilitate the handling of stakeholders responses please save your document using the following format:

ESMA\_ TA\_CSDR \_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

E.g. if the respondent were ESMA, the name of the reply form would be ESMA\_ TA\_CSDR \_ESMA\_REPLYFORM or ESMA\_CE\_AIFMD\_ESMA\_ANNEX1

To help you navigate this document more easily, bookmarks are available in “Navigation Pane” for Word 2010 and in “Document Map” for Word 2007.

Responses must reach us by **19 February 2015**.

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input/Consultations’.

***Publication of responses***

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that a confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

***Data protection***

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Disclaimer’.

# General information about respondent

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| --- | --- |
| Are you representing an association? | No |
| Activity: | Choose an item. |
| Country/Region | Europe |

Q1: What are your views on the proposed basis for the cash penalty calculation?

<ESMA\_QUESTION\_TA\_CSDR\_1>

LSEG understands the logic of using the reference price of the financial instrument in question and not the price of the specific transaction which is failing. This should provide a standardised approach whereby the CSD can calculate the cash penalty in reference to the wider marketplace, which should reflect the cost of the failing participant to borrow the financial instrument in question.

In terms of timing of the imposition of the penalties, they should be calibrated so as to not incentivise a receiving participant to reject a partial settlement before the end of the Extension Period in order to receive a cash penalty. Therefore, LSEG agrees with the proposal in paragraph 28 of the Technical Advice that where a receiving participant elects not to accept partial settlement, the applicable cash penalty should only be in respect of the amount of securities outstanding that are not available for partial settlement. To do otherwise would incentivise rejections of partial settlements; which would be contrary to the overall objective of the CSDR to better facilitate settlement discipline. Equally, if cash compensation is deferred, this is also at the choice of the receiving participant and daily penalties should no longer be charged.

<ESMA\_QUESTION\_TA\_CSDR\_1>

Q2: What are your views on the proposed approach regarding the categories of financial instruments and the penalty rates? In particular, do you consider that these penalty rates could dis-incentivise trading in small caps? Please provide evidence to support your views.

<ESMA\_QUESTION\_TA\_CSDR\_2>

In general, we recommend that ESMA and the Commission consider high rates for penalties at the level of the settlement system could have the unintended consequence of moving transactions from settlement system to internalised settlement environments. For example according to a simulation exercise undertaken with reference securities settled in Monte Titoli, the proposed rates are likely to increase the level of penalties for each category of security – in particular for government bonds – compared penalties charge under the current system.

The advice to the Commission for calibration of the cash penalty regime should distinguish between liquid and less liquid securities in setting a basic penalty rate, this is necessary to take into account not just the ability for a failing participant to borrow the securities in question, but also not to provide a disincentive for market makers or obligated liquidity providers to trade in smaller capitalised companies which often face more difficult and expensive bank financing as opposed to capital markets financing.

The provision of 2-way prices provides stable price conditions for investors (which encourages investment in SMEs), but a market maker’s obligation to provide liquidity means that they will often be required to take short positions to perform that role (as has been recognised by Article 17 of the EU Short Selling Regulation). The illiquid nature of SME securities means that it can be difficult to source a particular SME security in the stock borrow market and this should be taken into account in the Technical Advice.

Regardless of the specific figures for a basis point penalty calculation, less liquid securities should not have to exceed the amount of aggregate penalty imposed for the duration of the buy-in period for liquid securities just by virtue of the fact that they are afforded a longer extension and execution period.

<ESMA\_QUESTION\_TA\_CSDR\_2>

Q3: What are your views on the proposed approach regarding the increase and reduction of the basic penalty amount?

<ESMA\_QUESTION\_TA\_CSDR\_3>

Specific reference to market makers supporting illiquid equities should be provided for in the part of the Commission’s delegate act related to reducing the amount of penalties in specific circumstances by CSDs or national competent authorities. We suggest that such considerations should consider a reduced penalty rate in certain conditions as an ex-ante measure for the proper functioning of the market (as opposed to dealing with ex-post market failures), in particular to preserve the desire to come to market, availability and consistent pricing of securities. This is necessary on many SME growth markets and main regulated markets where market makers actively support transparent pricing and liquidity. This can be done in a similar manner to how certain exemptions from transparency requirements under MiFID are calibrated based on projected liquidity for a period of time and where national competent authorities believe that certain liquidity bands should qualify for reduced penalties for certain periods this could be set out in advance.

<ESMA\_QUESTION\_TA\_CSDR\_3>

Q4: What are your views on the proposed approach regarding the cash penalties in the context of chains of interdependent transactions?

<ESMA\_QUESTION\_TA\_CSDR\_4>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TA\_CSDR\_4>

Q5: Do you agree with the proposed frequency of one year for the assessment of the substantial importance of a CSD in another Member State?

<ESMA\_QUESTION\_TA\_CSDR\_5>

We note that ESMA’s approach goes beyond the provision of services in another Member State by establishing a branch of the CSD as provided in CSDR. Although we understand the rationale behind this wider approach, where confirmed, we recommend ESMA and the Commission that the resulting cooperation arrangements and agreed supervisory practices do not result in further administrative and compliance burdens for CSDs. This might discourage CSDs from providing their services in other countries to foreign issuers and participants, thus contradicting the policy objectives pursued by CSDR.

<ESMA\_QUESTION\_TA\_CSDR\_5>

Q6: What are your views on the proposed indicators?

<ESMA\_QUESTION\_TA\_CSDR\_6>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TA\_CSDR\_6>

Q7: What are your views on the proposed thresholds?

<ESMA\_QUESTION\_TA\_CSDR\_7>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TA\_CSDR\_7>

Q8: Do you believe that the proposed indicators and thresholds are relevant in the case of government bonds? If not, please provide details and arguments.

<ESMA\_QUESTION\_TA\_CSDR\_8>

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<ESMA\_QUESTION\_TA\_CSDR\_8>