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Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores, S.A., Sociedad Unipersonal

Response from IBERCLEAR-BME to questions raised by ESMA concerning the Discussion Paper on draft technical standards for the Regulation on improving securities settlement in the European Union and on Central Securities Depositories

IBERCLEAR thanks ESMA for inviting them to comment on all matters covered in the *Discussion Paper*.

The answers to the questions raised by ESMA are based on a number of underlying arguments which, in the best interest of their comprehension and to avoid unnecessary repetition, are set out below.

1. The Regulation on improving securities settlement in the European Union and on Central Securities Depositories (hereinafter, Regulation) is intended to establish a standardized legal framework for settlement activities in Europe. By eliminating disparities among the several national standards governing settlement discipline and matters concerning authorization, rules of conduct and the supervision of Central Securities Depositories (CSDs), it is anticipated that CSDs may provide services in a competitive environment within the European Union, thereby facilitating the provision of cross-border services. However, the Discussion Paper refers on a number of occasions to the minimum requirements that CSDs must satisfy, which may give rise to the understanding that such harmonization of minimum requirements could lead national regulators and supervisors to demand more onerous conditions for the operation of CSDs in their territory. This possibility should be avoided through the manufacture of standards based on the effective harmonization of conditions for the provision of CSD services and not of minimum standards.

2. The draft technical standards, specifically those related to CSD authorization, should be developed taking into account the principle of continuing operation of the CSDs currently providing services throughout the European Union. This assumes CSDs compliance with the legal framework in force in their own country and, additionally, their periodic submission to assessments by the various relevant European and International Institutions (e.g. the European Central Bank's Assessment of Securities Settlement Systems and Links and the CPSS-IOSCO Principles for Financial Market Infrastructures). It is proposed that these facts be taken into consideration to avoid

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further submission of information already provided to the relevant competent authorities, which will facilitate the procedure to attain authorization in accordance with the Regulation.

3. The approval of a standardized legal framework should not be a hurdle for its proportionate application to the various dissimilar corporate structures of CSDs, their possible integration in larger company groups or their different sizes and activity volumes. In particular, in the case of CSDs which belong to a holding that is also subject to standardized regulation, the potential benefits of economies of scale must be weighed against the objective of solvency and appropriate risk management.

4. In relation to the settlement discipline environment, it should be noted that the main objective of the technical standards in this subject must be to provide the CSDs with appropriate tools to carry out settlement activities efficiently. Penalising non-compliant entities is not the aim, but rather a way of achieving it. It should be noted that failure to deliver securities is not always directly linked to short selling and that, according to a study carried out by the European Central Securities Depositories Association (ECSDA) in March 2012 covering 19 European markets, the percentage of transactions settled on their intended settlement date is 98.9% in value terms and 97.4 % in volume terms.

5. Explicit reference to infrastructures or platforms, such as TARGET2-Securities, or indeed to specific standards, such as ISO 20022, should be avoided as long as these might be subject to evolution.

6. The standards relating to recordkeeping go beyond the provisions of the first level of the Regulation. CSDs should not be mistaken with trade repositories. The standards relating to recordkeeping must be based on allowing the regulators to assess the level of compliance with Regulation provisions. The list of mandatory record fields should be reduced. Unnecessary costs should be avoided for CSDs and their participants, for example, use of the LEI (Legal Entity Identifier) code should not be enforced, nor should they be denied the possibility of using proprietary messages.

7. Last but not least, we want to stress the difficulties to arise in incorporating the changes required by the Regulation and those established through technical standards, within the deadlines specified at the outset. The modifications clearly affect the CSDs, but they impact significantly on the systems and business models of their participants and their clients. Changes are also required to the central counterparty clearing houses (CCPs) and to trading platforms. Consequently, it is considered essential to establish a transition period of at least three years (2015-2017), which must not, in any case, end before the fourth wave of migration to TARGET2-Securities is completed, which is when the Spanish CSD will migrate to TARGET2-Securities. It is thus possible to avoid a

situation where financial market infrastructures and participants develop functionalities already provided by TARGET2-Securities, such as, for example, partial settlement.

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Respond to the questions stated on Annex 4 of the draft document

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?

CSDs are not directly in the scope of article 6 (1) on trade confirmation. IBERCLEAR does not comment on question 1 of the Discussion Paper.

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.

Straight-through processing (STP) is core to the CSD business. However, it should be taken into account that manual intervention is necessary in exceptional cases (normally where corrective actions are required). Due to the nature of these cases, it is not possible to list when manual intervention should occur.

The standards should encourage automation whenever this increases the efficiency and safety of the system. But mandating automation and limiting the type of exceptions (="manual intervention") in Level 2 legislation could be counterproductive and actually reduce settlement efficiency, removing all flexibility for CSDs and their participants. CSDs must have full discretion as to when manual intervention is necessary.

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

ESMA should encourage CSDs to promote STP and to use international standards whenever is possible but Level 2 legislation should not mandate the use of specific communication standards (e.g. to ISO15022 or ISO 20022).

ISO standards do not cover all functionalities and services offered by CSDs that are helpful to the participants and support efficient settlement process. In the case of the Spanish market they do not cover, among others functionalities, multilateral system transactions without intervention of a CCP or communication of end investor's ownership details.

Moreover, the reference to a specific communication standard could cause problems once the standard evolves to a new one and an amendment of Level 2 legislation will be needed.

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?

Matching should be encourage whenever is possible, but matching fields should not be standardized at Level 2 legislation, because CSDs need flexibility to use matching fields (including optional fields) for their internal transactions to allow the provision of additional services to their participants, for example to prevent cross-matching. This flexibility it's very important for those CSDs that will maintain its matching functionality after its connection to T2S, as IBERCLEAR.

There is no need for technical standards to mandate the use of certain matching fields (e.g. in line with T2S matching fields) and, in any case, technical standards should not contain a direct reference to T2S or any other technical facility.

Moreover, excessively detail regarding "matching fields" could cause problems if the standards evolve into new ones and amendment of Level 2 legislation it is necessary, and it will not bring substantial benefits in terms of reducing the level of settlement fails.

Exceptions of matching that would be necessary to consider are the following:

a) When instructions have already been matched by a trading venue or a CCP and are received by the CSD via a trade feed (i.e. in the context of multilateral systems without CCP intervention).

b) In case of corporate actions processing.

c) For other exceptional cases.

Further clarification is needed to evaluate the effects of the exception mentioned by ESMA, "FoP instructions which consist in transfer of securities between different accounts opened in the name of the same participant". Anyway, matching should be compulsory in any transaction between accounts managed by different participants with the exceptions mentioned above.

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?

To define what is considered late-matching would be necessary to take into account the trade date and the settlement cycle (for example, defining "late matching" as "matching completed after trade date" rather than on SD-2). Otherwise, there would be an incentive to use longer settlement cycles in order to benefit from early matching discounts.

Technical standards should provide CSDs measures that can be used, where appropriate, to encourage timely settlement. Measures like hold and release and bilateral cancelation facilities could be available for CSDs participants if there is a demand for such a functionality, but not mandatory.

We don't agree with ESMA suggestion to impose disincentives for late matching by the CSDs, as the details of a CSD's tariff structure should not be imposed by law. Furthermore, we consider the measure unnecessary given the high matching rates in the Spanish Market without any financial incentive in place for early matching.

We agree that CSDs should provide their participants with up-to-date information on their status on their pending instructions. However we do not think that the detailed modalities on how this information needs to be accessed and when, should be specified in Level 2 legislation. Generally it depends on the participants' preference based on the cost involved.

IBERCLEAR recognizes that bilateral cancellation facilities is a best practice and that CSDs should be encouraged to offer such functionality based on market demand. However there is no reason to mandate this in technical standards.

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.

If there is market demand and CSDs do not operate on RTGS basis, they should have at least 3 daily settlement batches per day. Introducing more details regarding, for instance, the timing in the Level 2 legislation, will suppose too detailed regulation and will rest flexibility to the market, increasing costs when, probably, the market doesn't need these measures.

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 measures exposed should not be mandated. Technical standards should ensure that CSDs are allowed to use the most appropriate measures to facilitate and incentive timely settlement in their market, but should not seek to mandate specific tools when there is no evidence that such measures and tools would substantially benefit settlement efficiency.

Such functionalities are not always required in a given market and for example the shaping of trades is not a functionality offered in T2S.

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.

From our point of view, securities lending and borrowing services at the end of the day should be mandated in technical standards for CSDs as we consider it a very effective mechanism to prevent settlement fails. In the Spanish equity market lending and borrowing facilities are currently mandatory.

In the case that this facility will be mandatory, it is important to guarantee that the time table established to give the service will be common to all CSDs to preserve the same level playing field across Europe.

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.
Technical standards should be seen as an opportunity to harmonize the methodology used by all EU CSDs for reporting on settlement fails to their regulators. A harmonized methodology is indispensable to allow for comparability across markets, and for a meaningful aggregation of settlement fails data at EU level.

IBERCLEAR is in favour of a harmonized template to be used by all CSDs for reporting fails to their regulators on a monthly basis. Whereas regulators will always have the possibility to request additional details on an *ad-hoc* basis.

On the distinction between asset classes, there is no universal and readily available classification of existing financial instruments that could be used as such for the purpose of settlement fails reporting.

We recommend that ESMA should broadly define up to 5 categories of instruments for the purpose of settlement fails reporting, allowing each CSD to collect fails data per asset type without that this require technical changes or major investments in CSD's own reporting systems.

For example, the following categories of asset classes could be used, based on the CFI classification:

- Equities ("E" category in CFI, except category EU on investment fund units)
- Investment fund units ("EU" category)
- Debt instruments ("D" category except category DY on money market instruments)
- Money market instruments ("DY" category)
- All other securities

The five categories above will largely suffice, and in any case the total number of categories to be reported for settlement fails purpose, to be manageable, should not exceed 5.

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

We believe that CSDR technical standards should require CSDs to provide participants access to the status of their pending instructions. This information aims at preventing/managing fails. However, some flexibility should be maintained as to how participants can access information on their own level of settlement performance. The information required by the participants can be obtained by the CSDs graphical user interface (GUI) or by a report, but there is no need to establish a specific detailed report. A participant should be able to obtain historical fails data for its accounts at the CSD upon request.

In all cases, it should be possible for the CSD to charge a reasonable fee to cover the cost of producing and sending fails reporting to participants.

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 believe that there would be value to define in technical standards a minimum harmonized European template to be used by CSDs for disclosing settlement fails data to the general public.

The format should include the total value and the total volume of instructions settled by the CSD.

One possibility is to make available this information on the CSDs public website.

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

Currently, the Spanish CSD reports fails to the competent authorities on a daily basis. ESMA should seek to harmonize the frequency of CSDs' reports to their regulator in order to facilitate the aggregation of EU-wide data on a regular basis. Whatever change will imply a cost.

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?

The extension period should be the same for all types of assets because it has an impact in the risk and in the implicit cost and, thus, the market spread. Moreover, that period should be the same in all those regulated markets, MTF, etc. where an asset is being quoted.

Surely institutional investors would be aware of these extension periods for each asset/market, but the individuals would have much more difficulties to know and understand them.

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?

CSD Regulation recognizes that the buy-in process is primarily the responsibility of CCPSs. Nevertheless, in the case of “pure” OTC transactions not cleared by a CCP Article 7 (10) (c) foresees that “the CSDs shall include in their internal rules an obligation for its participants to be subject to buy-ins”.

From IBERCLEAR perspective, CSDs, given their low risk profile, should not be involved in the execution of buy–ins. Given that it is not possible for CSDs to monitor the execution of buy-ins, we believe that it is important to bring clarity on “who is responsible for what”.

We believe that a period of 4 business days is acceptable for all kind of 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?

Technical Standards should not regulate the way of performing the "multiple buy-ins on the same financial instruments". Each CSD, trading venue or CCP should establish in its internal rules the necessary procedures, not affecting the price of the securities.

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

We agree that the buy-in mechanism will be ineffective in the case of certain type of operations, for example in the case of a repo transaction when the second leg is going to settle in a short period, in a transfer of a portfolio from the same investor, in a securities lending transaction, etc.

In the Spanish Market the different type of operations are easily recognize in the case of internal transactions. For cross-border transactions will be impossible to distinguish and validate them taking into account that the “type of operation” is not a mandatory field in the context of T2S. For these reason, we propose ESMA to exempt only that type of operations that are properly identify by CSDs.

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

We agree with ESMA approach. There should be just cash compensation in case the prices have increased. With respect to the reference price, there should be alternatives because in some cases there is no last quoted price makes in many sessions.

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?

The suspension of a CSD participant should be considered only as the ultimate measure in extreme cases and will always be implemented after careful consideration of the circumstances of each case and in coordination with the competent authority.

It must be considered that suspending a participant that has repeatedly failed to settle on time would imply that the CSD can trigger the suspension of a participant from all relevant trading venues and CCPs.

It should be clear that the suspension of a participant should never be triggered automatically once the thresholds are reached. Some degree of discretion is needed for the CSD to consult with the authority and assess the possible consequences of a suspension for systemic risk.

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

No threshold should be applied as each case should be studied by the CSD and consulted with the authority.

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 outlined above? If not, please explain what alternative solutions might be used to achieve the same results.

As far as buy-ins of CCP-cleared transactions is concerned, a requirement to segregate accounts of clearing members at CSD level is unnecessary. CCP obtain the required information through direct participation in the CSD.

When a CSD receives a transaction feed directly from a trading venue, it is able to link a trading counterparty and a CSD participant. This allows the CSD to send back to the trading venue the necessary information to manage the buy-in.

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

We agree that the requirements are appropriate.

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.

IBERCLEAR do not think that the information specified by ESMA under article 17(8) and detailed in Annex 1 of the Discussion Paper should be described as "minimum requirements". Since the level 1 text does not refer to "minimum" requirements, ESMA should avoid this term. Furthermore, the elements included in Annex 1 are very detailed and extensive in order to demonstrate compliance with all CSDR and its standards.

In addition, the harmonization of the contents and the process to be followed by the CSDs and the competent authorities for the application will contribute to a consistent and fair application process for all the CSDs across the European Union.

Notwithstanding it, CSDs should be allowed to leverage, where appropriate, on the extensive information provided as part of their yearly disclosure or self-assessment reports under the CPSS-IOSCO Principles for financial market infrastructures (PFMI) in order to demonstrate such compliance.

In terms of timing, the new Regulation will require changes and adaptations to CSDR and its technical standards. Given the additional complexity of having to implement these changes in parallel with the Reform of the Spanish market and the migration to T2S, a transition period is necessary to make such adaptations, not only for IBERCLEAR but also for its participants.

This is particularly relevant for items listed under points E2 and E3 of Annex I of the Discussion Paper (intended settlement dates, preventing fails and measures to address settlement fails). ESMA should clarify that they will not be required for a CSD to obtain authorisation, at least in the first three years after the Level 2 standards on settlement discipline have been adopted and once the migration to T2S is final.

In the case of CSD links (section G of Annex I in the ESMA Discussion Paper), it should be possible for CSDs and competent authorities to refer to and to rely on existing link assessments, whenever this is applicable. A complete re-assessment of CSD links for the purpose of CSDR authorisation should be avoided, especially given the resources involved in the exercise, notably as part of the ongoing and upcoming Eurosystem link assessments in preparation for CSDs' migration to T2S.

Some elements should be amended to reflect the aim of its inclusion in Annex 1. This is the case of A1.13, *pending judicial, administrative, arbitration or any other litigation*

proceedings, irrespective of their type, which the CSD may be a party to. Only those where *significant financial or reputational costs may be incurred* should be required at the moment of the application as it is stated in paragraph 105 of the Discussion Paper for the Review and evaluation process. Moreover, it is excessive to require an audit *work plan for the three years following the date of the application*, when audit work plan are generally done for one year.

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

Yes, we agree with the template

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 is advisable, in your view?

We do not agree with all the restrictions suggested by ESMA. The following restrictions on CSD participations would be faithful to the spirit and the letter of the Level 1 text of the CSD Regulation, thereby ensuring that CSDs maintain a low risk profile:

1) Prohibiting CSDs from assuming guarantees leading to unlimited liability and allowing limited liability only where the resulting risks are fully capitalised;

2) Requiring competent authorities to ensure that the activities of the entities in which a CSD holds participations are complementary to the activities of the CSD;

3) Ensuring that CSDR-authorised services, including when they are performed by a subsidiary of the CSD, constitute the main source of revenues of the CSD. Technical standards should avoid establishing any threshold to limit revenues from CSD participation which could be difficult for CSDs to manage and could expose the CSDs to legal uncertainty in relation to participations.

4) Allowing CSDs to assume control over other entities where such control contributes to a better management of the risks to which the CSD is exposed as a result of these participations. ESMA should require CSDs to hold participations in entities providing "complementary" services to their CSDR- authorised activities.

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.

IBERCLEAR agrees with the proposed approach. In general, the information listed in the Discussion Paper and the frequency of information provision specified in it is currently required to IBERCLEAR by Spanish supervisor.

Nevertheless, we believe that the notion of "materiality" could be further stressed to ensure that a CSD's supervisors focus on changes and processes that truly have a potential impact on a CSD's risk profile. Also, the relevant documents should be defined according to this notion of "materiality" to avoid the submission of documents irrelevant to this end.

For example, we share the opinion that the minutes of meetings of the management body of the CSD might sometimes provide relevant information in the course of a supervisory review, but this will not generally be the case.

The annual review of CSD's compliance with the Regulation should rely as much as possible on information already provided by the CSD and only require CSDs to provide information where such information is not yet available to the competent authorities. That said, the annual review described article 22 of CSDR should replace the previous reviews carried out using the ESCB-CESR framework.

The annual review exercise should also leverage as much as possible on CSDs' assessments against CPSS-IOSCO PFMIs, which cover most of the information required for the review.

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

We agree with ESMA approach. The applicant CSD shall provide ESMA with all information deemed necessary for its recognition. As ESMA mention in its discussion paper, 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. The CSDR technical standards should include a list of all requirements for third country CSDs to apply for recognition.

Furthermore, once a third country CSD is recognized, there should be follow-up arrangements and requirements to ensure ongoing supervisory equivalence.

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 agree with the proposal made by ESMA in §110 of its Discussion Paper which would require CSDs to monitor, not only their own risks, but also to the risks they pose to participants and other entities. This is not consistent with and 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".

It is not clear how a CSD would be able to identify, manage, monitor and report risks in relation to participants' clients. In our view, it is the responsibility of the respective participant to assess and manage the risks in relation to its clients. Technical standards on monitoring tools should be limited to the risks faced by CSDs.

Responsibilities of key personnel

We agree with the list of responsibilities of key personnel suggested by ESMA but there should be clarifications to the notion of "dedicated functions". In smaller organizations, the referred functions will not always justify a full-time job. 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 within the firm. And in the case of corporate groups, it should be possible for an individual to perform one of these functions for different entities within the group.

Taking into consideration the potential conflict of interest and the confidential information that can be contained in the audit results, we believe that the circumstances in which CSDs should share the audits with the user committee should be based on the impact and the importance of such results or contents for the mandate of the User Comittee.

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?

The requirements proposed in Annex III of the discussion paper are extremely extensive and go beyond the purpose of ensuring the compliance of the CSDs with the requirements of CSDR.

We believe that the list of records contained in Annex III of the Discussion Paper should be shortened.

A CSD needs to implement a complete new and costly IT system to fullfil the requirements as proposed. The proposed technical requirements are much more demanding than current CSD recordkeeping practices.

The purpose of recordkeeping requirement should not be to use CSDs as a trade repository We believe that the list of records contained in Annex III of the Discussion Paper should be shortened.

CSDs who do not offer the core services should not be expected to keep the relevant records

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?

Regarding the data keeping and availability, we consider that the modality for maintaining and making available the records proposed by ESMA is excessive and out of the scope of Level 1. Moreover, its implementation would be very costly for CSDs.

We believe that it is not necessary to require CSDs provide with records online. The data once stored can be retrieved when it will be needed.

More analysis should be necessary to decide if the LEIs would add value to the record keeping and if it is enough to justify the cost of implementation that would suppose to the market.

A gradual implementation of the use of LEIs should be coordinated at global level rather than imposed on EU CSDs and its participants via CSDR technical standards on recordkeeping.

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 with ESMA proposal regarding the type of risks that should be analyzed in order to justify a refusal of an applicant participant.

Notwithstanding it, regarding legal risks it must be noted that CSDs cannot be expected to assess whether the requesting party is not compliant with prudential requirements and that they should be allowed to rely on the existing authorizations obtained by the requesting party.

The criteria for refusal provided by ESMA should not be interpreted as a substitute for regular approval process for CSD participants based on positive participation criteria specified by each CSD. It should be clear that technical standards are limited to cases of refusal of a new participant.

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 time frames proposed by ESMA.

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 understand that the current reconciliation measures, as performed in the IT applications of the Spanish CSD, would be enough. This type of reconciliation measures will be available in T2S. Additional "extra" reconciliation measures are not needed and will increase the cost.

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 further measures would be necessary.

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?

Double-entry accounting principle provides a robust basis for avoiding securities overdrafts, debit balances and securities creation and no further measures are needed.

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

We agree with the definition proposed by ESMA and we consider it sufficient. We support the reference to the definition of operational risk included in the CPSS-IOSCO Principal for financial market infrastructure. The definition mentioned 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.

Given the detailed provisions included in the CPSS-IOSCO Principal for financial market infrastructure and their assessment methodology, additional requirements or details are not necessary.

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?

Yes, 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?

We do not agree to make mandatory an annual yearly review of the IT system and the IT security framework of all CSDs. The annual frequency proposed is excessive.

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?

It will be important to provide to the CSD with sufficient period of time to implement the required changes to comply with the CSDR technical standards.

It should be pointed out that independent audit does not mean external audit.

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?

Yes, we agree with the requirements proposed by ESMA.

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?

We agree with the proposed approach and the need to align rules on investment risk with the EMIR technical standards as much as possible. The restrictions on the investment policy do not need to be as strict as proposed. CSDs have a limited amount of capital to invest and generally keep that capital in cash deposits.

Whatever different treatment between CSD that do not provide banking services and CSDs that do so, should only be based on the specific banking license regime applicable to the latter.

Q42. Should ESMA consider other elements to define highly liquid financial instruments, 'prompt access' and concentration limits? If so, which, and why?

We don't think that ESMA should consider other elements to define highly liquid financial instruments, prompt access and concentration limits.

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 and the intention to treat standard and customised links equally from a risk perspective. In our opinion no additional risk should be considered.

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

We don't have any comments on the additional requirements for indirect links.

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 the elements of the reconciliation method mentioned.

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.

DvP settlement cases suggested by ESMA can be considered practical and feasible.

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 with ESMA's proposal, as regards the type of risks that need to be taken into consideration when carrying out the risk analysis to justify the refusal to offer CSDs services to an issuer.

The examples listed in the Discussion paper are helpful indications, but they should not be considered as an exhaustive list. We are of the opinion that any other risk that may impact the legal certainty of the issuer, the protection of the investors and its rights, or the rules applicable to the CSD should be considered for the benefit of the market. CSD We expect that technical standards will not affect the general rights for CSDs provided in Article 49 (3) of CSDR to refuse issuers in cases where the CSD does not provide notary services in relation to securities constituted under the law of the requesting issuer. This is important safeguard since it protects CSDs from running unnecessary legal risks arising from differences in national law in relation to securities issues.

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.

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, probably it will work. Nevertheless, the procedure proposed by ESMA should be applicable to all links between CSDs, not only for CSDs in T2S.

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?

The risk analysis performed by the receiving party should include at least legal, financial and operational risks. Nevertheless, the examples proposed should be only considered as an open 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 consider appropriate the time frames proposed in the Discussion Paper.

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

The information specified by ESMA, in which the CSD shall provide the competent authority to obtain the relevant authorization, should be requested to all CSDs, not only the ones who apply now for the authorizations but also the CSDs who already have it. We understand that authorization to provide banking services should be given if all the criteria specified in the CSDR have been applied to all CSDs, apart from the CSDs current status.

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?

The ESMA proposals are adequate to demonstrate that there are no adverse interconnections and risks stemming from combining together the two activities. However, we strongly believe that authorization to provide banking services should be

given if all the criteria specified in the CSDR have been applied to all CSDs, apart from the CSDs current status.