SWEDISH SECURITIES DEALERS ASSOCIATION

SVENSKA FONDHANDLAREFÖRENINGEN

2014-05-21

European Securities and Markets Authority

***Comments to the Discussion Paper from ESMA regarding Draft Technical Standards for the Regulation on improving securities settlement in the European Union and on central securities depositories (CSD)***

***ESMA /2014/299***

The Swedish Securities Dealers Association (SSDA)[[1]](#footnote-1) welcomes the opportunity to comment on the discussion paper from ESMA.

General

The different holding models for securities in the EU (direct, indirect and mixed) are clearly recognized in the level 1 legislation. Those models as well as the diversity in CSD business models in the EU should be taken into account when ESMA drafts the technical standards. The technical standards should of course be flexible enough to cover the different models.

The SSDA has focused its comment on the settlement discipline part of the Discussion Paper and in general we fully support the comments from the European Banking Federation (EBF). Further to comments sent by the EBF we have some observations and comments mainly from a Nordic view on the Discussion Paper.

## Settlement discipline

We find the settlement discipline regime on the CSDR level 1 very heavy and detailed. The regime might have some unintended consequences for the functioning of local securities markets and we therefore encourage ESMA to adopt pragmatic level II provisions. It should be noted that we have not detected any market failures in the Nordic securities markets. Quite to the contrary, the settlement efficiency is on a high level with very few exceptions. In our opinion the technical standards must be flexible enough to allow room for different market structures. The rules must also be compatible with all the holding structures (direct and indirect) in the EEA. Furthermore, it is of utmost importance that rules do not produce unjustified costs, such as unnecessary changes of IT and administrative systems before joining a new technical platform (for exampleT2S).

## Settlement internalisers

We are not against the principle of quarterly reporting of internalized settlement but we are of the opinion that the proposed requirements are too detailed and too costly. Furthermore we are not sure of the reasons for those detailed requirements. Such requirements should be based on a clear assessment of the need for the relevant authorities to require such detailed information. As far as we know there is no market failure in this area.

Regarding the proposed standards for settlement internalisers we also have some doubts if the proposed detailed reporting is covered by the mandate in the level 1 legislation.

Article 9 states that settlement internalisers shall report to the competent authorities the aggregated volume and value of all securities transactions that they settle outside securities settlement systems on quarterly basis. According to article 9.2 ESMA may in close cooperation with the members of the ESCB, develop draft regulatory technical standards further specifying the content of such reporting.

In our opinion all delegation of powers must be clear, precise and detailed. The limits of the delegation, which the delegation may not exceed, should be clear. It is essential that the delegation of powers to the Commission and ESMA should be precisely described by the legislator. Otherwise the possibility to scrutinize the delegation could be jeopardized.

The limits of the delegation could be set out directly in the article or in the delegation (the mandate), but it should be possible to understand the aim of and the content of the delegation. Comparing the delegation in article 9 of CSDR with for example the delegation in article 9 of EMIR and article 9 of the Short Selling Regulation gives the impression that the delegation in CSDR is not far from a “carte blanche” to the Commission and ESMA. In the light of the legal uncertainty created by the loose mandate we are of the opinion that ESMA should take a careful stand and not stretch the mandate to much.

Furthermore, we have some doubt that the far-fetching information requirements proposed by ESMA could not be seen as a non-essential element of the legislative act (costs and administrative burdens).

## Communication procedures and standards

In our opinion technical aspects of settlement (such as matching standards or message standards) should not be included in the forthcoming binding Technical Standards. Such standards change over time and some standards may sooner or later be outdated.

Regarding the discussion in question 3 and 4 about relevant communication procedures and standards to ensure STP and the matching procedure it should be clarified that those rules are limited to (aimed for) the participants in a CSD and not include for example end investors in direct holding systems. It is clear that the concept of participants is limited to certain financial institutions according to the definition in article 2.19 and the forth-coming technical standards must be limited to participants in CSDs, CCPs and trading venue. The only exception is in article 6.1 which require investment firms to put in place certain arrangements between the investment firms and their professional clients. It is of utmost importance that the rules regarding settlement discipline not include end investors in for example direct holding systems. There is no mandate for such inclusion and also no rationale.

## Recordkeeping

Regarding record-keeping, article 29 (3) and (4) ESMA states that LEI could be considered as the code for identifying legal entities under CSDR. In our opinion the level 1 legislation does not mandate CSDs to harmonize data records or to introduce LEI. Imposing the use of LEI for the purpose of recordkeeping is unlikely to bring any substantial benefits. It should be further noted that the scope of any requirements to use LEI would need to be carefully considered. If the requirements were to include account holders/end investors at the CSD it would in the Nordic direct holding market include several hundred thousand companies. The impact of such proposals will fall mainly on the smallest holders and should be more carefully studied. Besides the significant administrative costs this would mean for the concerned companies, it would also be a serious break of the stated principle that CSDR should be neutral in relation to different holding models in the EU.

The technical standards for CSDR are clearly not the right place to promote the use of LEI. LEI should be used and allowed to be used when available for the entity in question. In case an entity does not already have an LEI based on other requirements stemming from EU legislation, a unique client code with basic details or BIC codes should be accepted.

## Transitional provisions

Finally, we want to mention that we are not sure how to interpret some of the transitional provisions and the rules on entry into force in the regulation and it would be of great value if ESMA could clarify those provisions and rules.

One issue is the measures to address settlement fails. In CSDR article 15 of the Short-selling regulation is deleted. The reason is of course that article 15 should be replaced by the rules in article 7 of the CSDR. For article 7 or the article deleting article 15 of the Short Selling regulation there is no transitional provision and those articles could therefore enter into force twenty days after the publication of CSDR in the Official Journal. The problem is however that the rules in the CSDR regarding buy-in must be further specified in forthcoming technical standards. In EMIR it was stated that the obligations should not be applied before the technical standards were adopted and had entered into force (recital 93). No such recital exists in CSDR but we presume that the same principle should be applicable.

Furthermore, we are not sure when the rules for CPPs, Investment Firms and Trading Venues will enter into force, twenty day after the publication?

*Specific comments*

Q1

As stated in our general comment technical aspects of settlement (such as matching standards or message standards) should not be included in the forthcoming binding Technical Standards. Such standards change over time and some standards may sooner or later be outdated.

Q2

We agree that securities settlement should be based on STP and manual intervention should be avoided as much possible. However, manual interventions could be needed in exceptional cases related to corrections of transactions, specific corporate actions or for primary market transactions.

There is no need and no purpose to regulate the definition of exceptional circumstances. It should be enough to state that manual intervention should only be used in exceptional circumstances. Exceptional circumstances will probably be difficult to define.

Q3

Regulatory technical standards could seek to encourage the use of communication procedures and standards that facilitate STP. However, level 2 legislation should not mandate the use of specific communication standards since this would freeze the development of new, better standards or procedures. Instead EU should take note of the international groups working in this field.

Q4

Matching fields should be standardized only for markets in T2S (and from their migration to T2S onwards). Most likely market pressure will drive other markets to follow same standards, so there is no strong need to enforce those markets. Some markets, not joining T2S from the start have an intention to join at later stage. Not harmonizing matching fields at this stage would give them more flexibility to make their roadmap to T2S and would avoid unnecessary costs for those markets (ex. updating systems that will be discontinued).

Q5

We support matching as early as possible, but different types of participants have different possibilities to provide early matching. For example broker dealers have better possibilities than intermediaries to match early as they are dependent on their clients to deliver instructions (or corrections to these).

A better idea is to encourage incentives for early matching rather than disincentives for late matching.

Q6

We can give our support for at least three daily settlement batches.

*Q7*

We support optimization algorithms and technical netting (first bullet in ESMA’s p.30) and recycling of settlement instructions by the CSD (third bullet in ESMA’s p.30). In our view partials/shaping should not be mandatory.

Q8

We agree with the Discussion Paper that CSDs should not be obliged to offer arrangements for the lending and borrowing of securities. We also doubt whether such a mandatory regime would be in line with the mandate envisaged on in the level I text of the CSDR.

On a local market level we believe that it is worth to consider centralized securities lending facilities in line with CESR-ESCB –standards. However, it should be up to each market itself to decide if it should be implemented or not. Securities lending to support the settlement of transaction should be supported by the legislators to increase the settlement efficiency. We are therefore of the opinion that an exception in the forthcoming Securities Financing Regulation for securities lending is needed*.*

Q 9

The CSDR envisages that the competent authorities shall share with ESMA any relevant information on settlement fails. We support the reporting but encourage ESMA to concentrate on information and reporting frequency that is strictly relevant for the market supervision. We are worried that summing up detailed reporting fields potentially based on experiences from multiple regulators and markets might add complexity and costs and finally end up to “reporting for reporting sake” scenario.

It is unclear how and to which purposes this data would be used by the supervisors and what would be the real benefits for this. Before proceeding with this type or requirements, a thorough impact assessment is needed to ensure there is a clear “business case” and benefits for the market exceed the costs.

Q10

In Principle we agree that the CSD should provide information on settlement failures, however we should be cautious also from a cost/benefit perspective that CSDs are not sending excessive amounts of data to an excessive cost. CSDs should be encouraged to provide useful data services around settlement failures rather than making it mandatory.

*Q13 -19*

In our view the Buy-in rules could have a very negative impact on less liquid securities and increase the risk to trade smaller firms shares compared with trading blue chip.

There is many low-liquid instruments there it might not be possible to buy-in. Large buy-in transactions might have an unhealthy impact on the price on illiquid markets. In our opinion Buy-in should always be the last resort. The focus should instead be on incentives for securities lending and voluntary Buy-in first.

Q16

Buy-in and other sanctions need to be lined together with other sanction regimes (CCPs, trading venues etc.). Most effective sanction regime should be preferred and multiple sanctions should be avoided for a same failure. If failed to do so Buy-in will not be effective from a marker perspective.

Q17

The calculation of cash compensation seems reasonable.

Q18

This is not a duty for the legislator; it should be the responsibility for the CSD.

Limit to suspend a participant should be rather high, over a period of time, including pre-warnings and also participants own measures to reduce settlement failures should be taken into account. For intermediaries reason may also be in one or few large clients with poor performance. Due to legal agreements etc. it may take time before an intermediary is able to close those from settlement.

There are also examples of markets which do not have formal sanctions, but instead have processes in place to discuss these kinds of situations with market participants. This has worked well, in for example Denmark.

Q21

See general comments.

Q28 and 29

See general comments.

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1. SSDA represents the common interest of banks and investment-services-firms active on the securities market. The mission of SSDA is a sound, strong and efficient securities market in Sweden. SSDA promotes member’s view in regards to regulatory, market and infrastructure-related issues. It also provides a neutral forum for discussing and exchanging views on matters which are of common interest to its members.

SSDA have a close cooperation with other trade associations in Sweden, in the Nordic area and in the UK. SSDA is also active on European arena via EBF (European Banking Federation) and EFSA (European Forum of Securities Associations) and globally through ICSA (International Committee of Securities Associations). [↑](#footnote-ref-1)