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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: | Central Securities Depository |
| Country/Region | Poland |

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

<ESMA\_QUESTION\_TA\_CSDR\_1>

In our opinion the basis for the cash penalty calculation should be the same for all the instructions on the same financial instruments which are failed to be delivered on a given ISD day. The value of the instruction that fails to settle should be calibrated not on the price used in the specific instruction that is failing, but on a reference price of the instrument involved.

In case of partial settlement in our opinion the penalty should be always applicable to the failing part of settlement instruction, irrespective of the fact that the impossibility to settle partially is due to the choice of the receiving or delivering participant. The other approach is not appropriate and costly.

<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 our opinion the penalty rate should be considered on the basis of the asset type/liquidity. We agree with the proposal to limit the number of categories of rates for automation reasons and propose to specify the following asset classes:

* equities and others,
* government bonds
* corporate bonds.

However in our opinion the size of transaction is not a key issue, because the penalty rate is proportional. Moreover, in order to facilitate and simplify the calculation of penalties, the daily cash penalty rate related to settlement instructions that fail to settle on ISD should be the same in the case of lack of cash and lack of securities.

The proposed settlement penalty rates do not take into account diversity of European securities markets and they do not refer (in every market) to real costs of securities lending concluded to liquidate settlement fail. It is necessary to remember the very important factor, which are the securities lending costs. The fee for securities lending supplier should be higher in case of the “last resort” securities lending than in case of market securities lending, but lower than settlement penalty rates for settlement fail on ISD. Moreover, the fees for securities lending supplier may depend on the type of assets which are used as collateral and the way the supplier may use it. Therefore in our opinion the settlement penalty rates proposed in the Technical Advice may not be found deterrent on some, especially smaller markets.

<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>

In our opinion the full amount of the collected penalty should be redistributed to the suffering participant. The possibility of a reduction or an increase of the basic penalties would break the balance of the system and make its implementation and management more complex.

<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>

We agree with the assumption that the penalty regime should disincentivise the original fails, which are the root cause of the issue. The mechanism of penalties should allow the redistribution of the collected penalty from the failing party to the suffering participant.

<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>

In general, we agree with the ESMA approach that the substantial importance should be assessed from the perspective of the host Member State and that the thresholds should not lead to an over-excessive number of cooperation arrangements. In our opinion, the substantial importance should not be assessed in relation to all the core services of a CSD, but, as defined in article 23 of the Level 1 of the CSD Regulation, in relation to provision of the core services referred to in points 1 and 2 of Section A of the Annex or setting up a branch in another Member State.

We 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>

Q6: What are your views on the proposed indicators?

<ESMA\_QUESTION\_TA\_CSDR\_6>

We have no reservations to the assessment of the ‘substantial importance’ of notary services (p. 3.3 pages 19-20).

As regards the assessment of the ‘substantial importance’ of central maintenance services (p. 3.4 pages 20-22) KDPW supports ESMA’s decision not to include collateral management services in the assessment of the threshold.

We cannot agree, though, with the assumption that the country of establishment of CSD participants is a good indicator. Indeed, it is perfectly possible for a foreign intermediary (CSD participant) to hold securities primarily for domestic end investors, and vice-versa to hold securities for investors which are established in foreign countries (EU and non-EU) different from that where the participant is established. Since the criteria and thresholds to be defined by ESMA for determining “substantial importance” are meant to involve host authorities from a safety/investor protection perspective, the “nationality” of CSD participants is actually largely irrelevant, since it might be totally different from that of the actual holders of the security. We recognise the difficulty of establishing a workable thresholds in those cases where CSDs have no information on the country of establishment of their participant’s clients, but we think this limitation should not be a reason to use an inaccurate threshold that will not accommodate the natural evolution of the EU single market.

As a result, KDPW thinks that the indicators included in Section 3.4 of the Consultation Paper as regards the central maintenance service (p.20-22) are not adequate and should be reviewed.

As regards the assessment of the ‘substantial importance’ of settlement services (p. 3.5 pages 22-24), KDPW is of the opinion, in line with the approach taken in article 23 of the Level 1 of the CSD Regulation, that the notion of “provision of services” should be limited to cases where the CSD has set up a branch in another Member State or provides notary and/or central maintenance services in that country, i.e. excluding the settlement service.

We thus disagree with Section 3.5 of the ESMA Consultation Paper on technical advice (p.22-24) and believe that the "settlement indicator" is not appropriate.

<ESMA\_QUESTION\_TA\_CSDR\_6>

Q7: What are your views on the proposed thresholds?

<ESMA\_QUESTION\_TA\_CSDR\_7>

We have no reservations to the 15% level of thresholds.

<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>

We believe that the proposed indicators are relevant in the case of the government bonds.

<ESMA\_QUESTION\_TA\_CSDR\_8>