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| 18 December 2014 |

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| Reply form for the Technical Standards under the CSD Regulation |
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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 - Technical Standards under the CSD Regulation, 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\_TS\_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\_TS\_CSDR\_AIXX\_REPLYFORM or ESMA\_CE\_TS\_CSDR\_AIXX\_ANNEX1

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.

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# General information about respondent

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

##### Do you think the proposed timeframes for allocations and confirmations under Article 2 of the RTS on Settlement Discipline are adequate?

##### If not, what would be feasible timeframes in your opinion?

##### Please provide details and arguments in case you envisage any technical difficulties in complying with the proposed timeframes.

<ESMA\_QUESTION\_TS\_CSDR\_1>

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<ESMA\_QUESTION\_TS\_CSDR\_1>

##### Do you agree with the cases when matching would not be necessary, as specified under Article 3(2) of the draft RTS?

##### Should other cases be included? Please provide details and evidence for any proposed case.

<ESMA\_QUESTION\_TS\_CSDR\_2>

Yes, we agree with the proposed cases where matching is not necessary. Although we suggest ESMA to provide a “sunset clause” that enables CSDs to waive matching to accommodate future specific market practices that should be notified to the competent authority.

However we note that Article 3(2)(a) of ESMA’s draft RTS makes reference to “settlement instruction received by the CSD “already matched” by the trading venues or CCPs. As it is written, this sentence might create possible misunderstanding on which is the matching location relevant for settlement purposes. In this context we think RTS should be consistent with the principle that matching for settlement purposes shall be performed only at CSD level not at the level of the CCPs or trading venue. This would be without prejudice for CCPs and trading venues to send – on behalf of their participants – both legs of the transactions to the CSD who can consider those settlement instructions “matched” since all relevant matching information is received by the involved market infrastructures that de facto process the settlement information in their own systems. This use of ‘pre-matching’, favouring STP and settlement efficiency, should be supported.

As regard the provision “CSD shall require CCPs to send already matched settlement instructions […]” we believe this provision would require common settlement infrastructure for the CCPs or an agreement to be in place between the two infrastructures. In the case of interoperable CCPs the application of these requirements would be difficult and unnecessary. Therefore, we recommend that the draft RTS should leave interoperable CCPs to agree the proper arrangements to reconcile their instructions and propose the following amendments to clarify the meaning of “already matched”.

**Article 3**

**Details of the CSD procedures facilitating settlement and details of the measures to be established by CSDs to encourage and incentivise the timely settlement of transactions**

1. *~~the settlement instructions received by the CSD are “already matched” by trading venues or other entities such as or CCPs;~~*
2. […]

***For the purpose of facilitating matching and settlement processes*** CSDs shall require that **a** CCP~~s~~ send**s** ***the settlement instructions related to cleared trades on behalf of its participants*** *~~“already matched” settlement instructions~~* into the securities settlement system operated by a CSD, unless letter b) of subparagraph 1 applies.

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<ESMA\_QUESTION\_TS\_CSDR\_2>

##### What are your views on the proposed approach under Article 3(11) of the draft RTS included in Chapter II of Annex I?

##### Do you think that the 0.5% settlement fails threshold (i.e. 99.5% settlement efficiency rate) is adequate? If not, what would be an adequate threshold? Please provide details and arguments.

##### Do you think that the 2,5 billion EUR/year in terms of the value of settlement fails for a securities settlement system operated by a CSD is adequate? If not, what would be an adequate threshold? Please provide details and arguments.

<ESMA\_QUESTION\_TS\_CSDR\_3>

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<ESMA\_QUESTION\_TS\_CSDR\_3>

##### What are your views on the proposed draft RTS included in Chapter II of Annex I?

<ESMA\_QUESTION\_TS\_CSDR\_4>

In regards with the standards provided in Chapter II of Annex I, we would like to raise the following comments.

1. **Article 3(1)** **on manual intervention**

The scope of reporting requirements regarding manual intervention should be clear in order to avoid unnecessary reporting burdens and an overflow of information. In this regard we believe that such reporting should be limited to:

* **the processing of settlement instructions and thus to the settlement service only**, as stated in the first sentence of Article 3(1);
* **to direct interventions by the CSD only** and excludes, for instance, manual interventions by CSD participants e.g. via a user interface;
* **manual interventions which are not foreseen in the CSD’s operating procedures.**

CSDs should provide their competent authority with a description of all the manual interventions listed in their operating manual, with the possibility for the competent authority to assess them ex-ante and then regularly during the annual review, based on their impact on the smooth functioning of the securities settlement system (SSS). Exceptional manual intervention (i.e. outside the standard procedure) would be reported immediately.

1. **Article 3(3) on mandatory matching fields:**

We welcome ESMA’s approach of using T2S matching fields as a basis for setting mandatory matching fields and recognize that these are necessary to apply the settlement discipline regime effectively. However we note that ESMA adds some further fields (namely “trade date” and “transaction type”) that are not provided as mandatory matching fields in current market practice. Lack of harmonisation on how to populate these fields (i.e. what value to use in order to ensure successful matching) across the EU might have the opposite effect of intended, namely achieving higher degrees of safety and settlement efficiency. Rather, it increases the risk of matching fails (since certain different values will not always allow matching). This risk is particularly acute for CCPs where settlement instructions are sent on the basis of netting calculations made by the CCP and not the OTC or exchange traded transactions which are fed into the CCP’s system.

If it is decided to introduce ”trade date” and “transaction type” as mandatory matching fields, this would require a further harmonisation effort in the EU to define fully how the fields could be completed in various circumstances. It will take a considerable amount of time before a harmonised standard will be agreed, endorsed, monitored and implemented. The harmonisation governance structure of such effort would still need to be clarified.

In addition, in case the values of the “transaction type” field would involve changes in the ISO standards, the governance and timelines of the ISO changes should be taken into account.

1. **Article 3(7) possibility to partially settle**

Article 3(7) proposes that a CSD shall offer its participants the possibility to partially settle instructions. However, such partial settlement should account for rules of CCPs or trading venues which contractually require partial settlement and do not allow for discretion on the part of the participant. We suggest that the text be clarified to ensure that this provision does not undermine requirements necessary for the maintenance of CCP or trading venue rules.

1. **Article 3 (8) on information on pending transactions**

We are of the view that the proposed Article 3(8) should be re-assessed on the base that information on pending transactions (allegement messages in T2S) are not necessary for all CSD participants in order to support their processing/services.

In the case of the 24 T2S CSDs and their participants, an agreement has been achieved in order to make the allegement service optional and not mandatory. In particular, CSD participants have highlighted that they did not want to be ‘flooded’ with allegement messages which could be counter-productive in assisting them to identify the pending transactions.

1. **Article 3(9) on the provision of settlement information**

While we agree that a CSD should provide information to relevant participants on settlement instructions, the provision of information on buy-in may need to be provided by a CSD second-hand where it is being performed by another party, namely a CCP for cleared transactions. We would suggest that the reference to “*real-time*” be deleted to account for the chain of information provision as this is not likely to be achievable without direct access to CCP data feeds which is a significant requirement and not provided for in Level 1 of the CSDR.

Considering the above would like to propose an alternative drafting proposal to Article 3 of the draft RTS:

**Article 3**

**Details of the CSD procedures facilitating settlement and details of the measures to be established by CSDs to encourage and incentivise the timely settlement of transactions**

1. A CSD shall process settlement instructions on an automated basis. A CSD shall report any types of manual intervention ***by the CSD in relation to the settlement process*** to the competent authority**,** without any delay ***where such manual interventions are not foreseen in the CSD operating procedures***, covering at least:

[…]

(7) ***Subject to any rules of the relevant CCP or trading venue which mandate or restrict partial settlement of transactions, a*** CSD shall offer its participants the possibility to partially settle their settlement instructions, as well as the possibility to opt-out of partial settlement.

(8) **“**A CSD ***shall offer the possibility*** to inform its participants […]”

(9)“A CSD shall enable its participants to have *~~real time~~* access to the information regarding intended settlement date and the status of their settlement instructions in the securities settlement system that the CSD operates […].

<ESMA\_QUESTION\_TS\_CSDR\_4>

#####  What are your views on the proposed draft RTS on the monitoring of settlement fails as included in Section 1 of Chapter III of Annex I?

<ESMA\_QUESTION\_TS\_CSDR\_5>

**Article 4 - System monitoring settlement fails**

**(a) Article 4(1) information on the status of settlement instructions**

In order to comply with this monitoring and reporting requirements on status of settlement instructions, CSDs will have to use the information that is currently provided under ISO standard messages, queries and reports. If there are inconsistencies of the proposed RTS with the ISO standards, the CSDs and their participants will have to develop records with different information to what is currently managed via the ISO messages, reports and queries.

Therefore we propose that ESMA re-assesses the information required under Article 4(1) in way that is more consistent with ISO logic.

In our view settlement instructions should be divided in 2 layer information.

First layer is:

a) **pending instructions (which can still settle on ISD)**;

b) failed settlement instructions (which cannot settle on ISD),

c) fully settled settlement instructions;

d) **partially settled settlement instructions, including the settled part and the missing part of either securities or cash;**

e) cancelled settlement instructions, including information whether it is cancelled by the system or by the participant.

This categorisation ensures all the information necessary for monitoring settlement fails required by ESMA would be provided, except for the category of “Recycled settlement instructions”, which is redundant because settlement instructions not settled after they reached their ISD are either “pending or failing” by the system when recycled. In addition, no ISO code currently exists to identify recycled transactions.

Then for each type of settlement instructions the following information should be provided (where applicable/relevant):

 – whether an instruction is matched or not matched;

* whether an instruction can settle partially;
* whether and instruction is on hold;
* where relevant, what is the reason for instruction being pending or failing.

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<ESMA\_QUESTION\_TS\_CSDR\_5>

##### What are your views on the proposed draft RTS related to the penalty mechanism? Do you agree that when CSDs use a common settlement infrastructure, the procedures for cash penalties should be jointly managed?

<ESMA\_QUESTION\_TS\_CSDR\_6>

 **(a) Article 7 (6) – Collection of penalties**

We fully agree with ESMA proposal that when CSDs use a common settlement infrastructure the procedure for cash penalties should be jointly managed. These arrangements will reduce complexities in the contest of cross border settlement and, at the same time, will deliver efficiency in the management of the process allowing the involved CSDs the possibility to exploit synergies in setting and running the system.

We welcome this general principle is reflected in regulatory standard in particular in view of T2S migration as this will allow CSDs to agree on further harmonisation in particular on the following elements, thus removing uncertainty on the application of penalties mechanism:

* who will charge penalties when two CSDs are interoperable: considering that CSDs could charge penalties only on their own participants;
* how penalties collected by one CSD could be passed on the other CSD
* when the calculation is to be done
* common parameters (timelines, i.e. reference price to be used)
* how to take in to account securities available in participant’s account in order to apply fines only for the remaining part (i.e. when there two failed settlement instructions on one single account, how the CSD will calculate penalties to be applied on them considering that the availability of securities on that single account) as suggested in the CP on Technical Advice.

Once the main element of the procedure would be harmonised, interoperable CSDs may decide to develop a common solution to exploit cost synergies and would ensure a level playing field for competing cross border.

1. **Article 9 – Application of penalties mechanisms when a CCP is involved as a participant**

We do not agree with ESMA statement in paragraph 66 of the Consultation Paper. In our view of the exemption provided in the level one text does not require that the CCP should be involved in the collection/redistribution of penalties. Indeed, there are operating model whereby CSDs have all the information required for the calculation of the penalties on cleared transactions.

In such case it should be possible for CSD to collect and redistribute penalties directly from clearing members which are also participants of the CSD. In case the clearing member is not a participant of the CSD, penalties could be collected by its settlement agent who will pass on penalties on the clearing member according to their contractual relationship, without the need of involving the CCP.

Furthermore ESMA should take into account that in the proposed model CSDs will pass calculation of penalties with reference to instructions input by their participant that could not be the clearing member, so that CCPs will have to reconcile penalties with positions of clearing members.

<ESMA\_QUESTION\_TS\_CSDR\_6>

##### What are your views on the proposed draft RTS related to the buy-in process?

##### In particular, what are your views on applying partial settlement at the end of the extension period? Do you consider that the partialling of the settlement instruction would impact the rights and obligations of the participants?

#####  What do you think about the proposed approach for limiting multiple buy-in and the timing for the participant to provide the information to the CSD?

<ESMA\_QUESTION\_TS\_CSDR\_7>

 **(a) General comment on Article 11**

As for the role of the CSDs and trading venues in respect of the buy-in procedure, we disagree with Article 11(1) to the extent that it requires CSDs and trading venues to set out a prescriptive buy-in process in the contractual documentation applicable to their participant. Such a detailed provision would not be in line with Article 7(10) of CSDR, which only requires CSDs and trading venues include “*an obligation for their participants to apply”* the buy-in procedure.

Importantly, there is nothing in the Level 1 text which requires CSDs or trading venues to execute the buy-in process itself. This is in contrast to the role of a CCP where it is clear that the CCP *“shall be the entity”* undertaking the buy-in procedure.

We recommend that ESMA amends the draft RTS to be fully consistent with the principles in the Level 1 text in order to leave CSDs and trading venues the possibility to decide how much they want to intervene as system operator in the buy-in procedure, according to the different market structures and practices.

For instance the optimal level for managing the buy-in process for both bond and repo transactions is at the trading counterparty level, and not the trading venue or CSD level. Both the Level 1 text and the draft RTS of CSDR fail to reflect the realities and complexities of how bond and repo trades are transacted in the European markets.

While many trading venues provide straight through processing (STP) to support trade confirmation and settlement instructions, some of them do not remain part of the post-trade life cycle and will certainly not play any part in any post-trade disputes or contractual remedies involving the trading counterparties. In this context all the information necessary to identify where counterparty sits in terms of a chain, and for the process of settling the chain to be managed efficiently, exists at the trading counterparty level. By attempting to put the responsibility for initiating and managing the buy-in process on trading venues or CSDs, CSDR is complicating the process to a point where it could be impractical.

Furthermore, as mentioned in Article 11(2) of the draft RTS, we agree that the buy-in procedure should not entail any unnecessary risk taking for CSDs, CCPs and trading venues.

However we note that many of the requirements that ESMA is proposing for CSDs and trading venues are opposite to this principle of minimising unnecessary risks. In this regard it should be considered that extending the role of CSDs and trading venues in the procedure would increase the legal and operational risk they would bear against to their own participants. Any action requiring trading venues and CSDs to administer the buy-in process is tantamount to giving them new regulatory responsibility with reference to the enforcement of a contractual obligation between the counterparties. Such responsibilities may bring the risk of participant claims with reference to the enforcement of the buy-in procedure by CSDs and trading venues pursuant to their rules (e.g. when the failing participant does not cover the difference between the price agreed at the time when the trade was concluded and the price paid for the execution of buy-in).

In our opinion the following obligations are the most critical from a CSD and trading venue perspective: the appointment of buy-in agent, management of the auction process and the identification of chains of transactions (Article 11, paragraphs 3, 4, 5, 6 and 10).

In particular, in respect of chains of transactions, CSDs are not in the position to initiate or manage buy-ins on their own initiative. This is because CSDs will not possess all the information necessary to identify the chain of transactions for a given settlement failure. A CSD only has visibility of its own settlement system and cannot know where transactions in other systems may form part of the settlement chain. This scenario is even more complicated by different market structures where transactions are settled across different settlement systems, an individual CSD does not have the information to identify all the involved counterparties. For non cleared trades, the most efficient and practicable way of resolving a chain of settlement failures is for the counterparty at the end of the chain to instruct a buy-in against its failing counterparty, and for the buy-in to be passed along the chain, at the trading counterparty level, until it reaches the counterparty at the start of the chain who is responsible for causing the initial fail. The RTS need to be amended to reflect this in order to ensure an efficient buy-in regime that is not only workable, but that minimizes the incidents of multiple buy-ins related to a single fail.

**(b) Comments on details of the procedure**

**Paragraph 1 –** As referred above, the RTS should mirror the approach of the Level 1 text which only requires CSDs and trading venues **to include in their rules “an obligation for their participants to apply or to be subject to” the buy-in**, not that they are the entity administering the procedure. Thus details of the procedure shall not be mandatorily included in the rules of the CSD or of the trading venue according to the level one text.

**Therefore, we recommend that ESMA delete paragraph 1 of Article 11.**

**Paragraph 2** – We agree with paragraph 2.

**Paragraph 3** **and 10** – The appointment of the buy-in agent should normally be made by the receiving participant or by the CCP. There is no need to involve neither the trading venue nor the CSD in this action.

With reference to the provisions included in paragraphs 3 and 10 we would like to stress the principle that, according to the type of transaction (cleared / non cleared / OTC), buy-in could be activated only between the trading members, clearing members or settlement participants and not against clients of those participants/members. Therefore, the provision contained in Article 11(3) could not be applicable where the failing client or the underlying client are not CSDs participants or trading members. Similarly there is no way for CSDs to detect the fail that is causing the chain of failed deliveries outside the perimeter of its participants. To reflect this, we suggest removing the sentence *“The CSD and the trading venue shall allow the participant to provide the identification of its failing client or underlying client for which the buy-in shall be executed.”*

As regard provision under paragraph 10, we would like to point out that from a CSD perspective it is technical hard and legally risky to identify the “original” fail. This would imply obtaining and reconciling information from different entities in the chain and defining criteria (such as timing or amount) to design the “hierarchy” of different settlement instructions. In addition, transactions in the chain could have different amounts of securities to be delivered. Considering that neither the CSDs nor the trading venue could “net” the position of different failing participants (like a CCP does) the only way to minimise the number of buy-in would be to “pass-on” the effect of buy-in procedure to another CSD/trading participant that has failed to deliver to the another failing participant. This pass-on could be managed only among CSD participants (for OTC transactions) or trading members (for market trades not cleared by a CCP).

**Paragraph 5 –** We understand ESMA’s intention to minimise the impact of buy-in by allowing it to be executed only for the real missing part of the partial security. However, requiring CSDs to block securities to be available on participant accounts means that a CSD is *de facto* enforcing the settlement obligation. Potentially, this could entail unanticipated consequences which expose CSDs to claims by its participants. In case of omnibus accounts the CSDs is not able to identify and allocate the all failing instructions pertaining to all clients of its participants simply because it does not know the client of its participants are. Furthermore if the H&R from side is helpful to solve the issue of “withdrawal from la masse” in case of omnibus accounts from the other side it does not allow the partial settlement of the instructions pertaining to the client of the failing participant.

**Paragraph 9 -** Recital 26 already suggests that the buy-in process should be capable of being accelerated and cash compensation paid where the financial instrument is not available. However, there does not seem to be matching text on this point in Article 11 of the draft RTS to make it clear that a buy-in agent or buy-in auction can be declared “not possible” before the end of the Execution Period. Therefore, we suggest amending the text of Article 11(9) to reflect Recital 26.

In light of the above we suggest the following amendments to Article 11:

***Buy-in***

**(Article 7(15)(c) to (h) of Regulation (EU) No 909/2014)**

***Article 11***

**Details of operation of the appropriate buy-in process**

~~1. The buy-in process shall be set in the contractual documentation applicable to each participant of the CSD, CCP and trading venue.~~

1. ~~2.~~ The buy-in shall be executed in a manner to avoid unnecessary costs for the failing participant and shall not imply any unnecessary risk taking by the CSD, CCP or trading venue.

1. **The buy-in process shall be composed of the following steps** ~~4. The CSD, CCP, or trading venue, as applicable in accordance with Article 7(10) of Regulation(EU) No 909/2014, shall send a notice to both the failing and the receiving participants~~:

**(a) notification:**

 **i. of the initiation of buy-in** at the end of the business day when the extension period elapse informing **~~them~~** that the buy-in will be initiated the following business day;

 **ii. of the results of the buy-in or that the buy-in is not possible** or on the last business day of the buy-in period at the latest, ~~informing them of the results of the buy-in or that the buy-in is not possible.~~

 **For transaction not cleared by a CCP, the receiving participant shall notify the information referred to in a) and b) to the failing participant, to the CSD or to the trading venue, on the basis of the information referred to in Article 3. The receiving participant may pass on the information referred to in Article 3, to the trading venue participant for the purpose of the notification referred to in a) and b), where relevant.**

 **CSDs and trading venues as applicable in accordance with Article 7(10) of Regulation (EU) No 909/2014, shall notify to the competent authority any time the receiving CSD or trading venue participant do not perform the notification referred to in a) and b).**

 **(b) appointment of buy-in agent o execution by auction**

 **i. for transaction cleared by CCPs the CCP shall appoint the buy-in agent or execute the buy-in by auction;**

 **ii. for transaction not cleared by a CCP, the receiving participant shall appoint the buy-in agent or execute the buy-in by auction.**

~~3. The CSD, CCP, trading venue or the receiving participant shall appoint a buy-in agent or execute the buy-in by auction.~~ The buy-in agent shall not have any conflict of interest in the execution of the buy-in. ~~The CSD and the trading venue shall allow the participant to provide the identification of its failing client or underlying client for which the buy-in shall be executed. Securities shall be delivered to the receiving participant and the related settlement instruction shall be deemed executed.~~

~~4.~~~~The CSD, CCP, or trading venue, as applicable in accordance with Article 7(10) of Regulation(EU) No 909/2014, shall send a notice to both the failing and the receiving participants:~~

~~(a) at the end of the business day when the extension period elapse informing them that the buy-in will be initiated the following business day~~**; [moved to paragraph 2]**

~~(b) on the last business day of the buy-in period at the latest, informing them of the results of the buy-in or that the buy-in is not possible.~~

~~5. Except when the settlement instruction is on hold in which case the buy-in shall be performed for the full instruction, the buy-in shall only relate to the financial instruments that are not available in the failing participant’s account with the CSD. The CSD shall reserve the relevant financial instruments available in the failing participant’s account for the settlement of that instruction.~~

1. ~~6.~~ **For transaction not cleared by a CCP, during the extension period the failing and the receiving counterparties may agree on the partial settlement of the failed settlement instruction.** ~~The partialling functionality offered by the CSD, referred to under Article 3 (7), shall be applied on the last day of the extension period when the financial instruments are available in the account of the delivering participant irrespective of any opt out elected by the receiving participant.~~
2. ~~7.~~ Where the buy-in is partially successful, the receiving participant shall accept the bought-in securities. The settlement instruction shall be deemed executed for the delivered part. For the residual amount of financial instruments, the receiving participant shall choose to defer the buy-in or to receive the cash compensation. The receiving participant can defer the buy-in only once for a period equal to the timeframe established under Article ~~9~~**12**.
3. ~~8.~~ Where the buy-in fails, the receiving participant shall choose to defer the buy-in or to receive the cash compensation by the end of the business day following the receipt of the notice ~~sent by the CSD, CCP, or trading venue~~ **under paragraph 2(a)(ii)**. In the absence of response within that timeframe, the cash compensation shall be paid.
4. ~~9.~~ Where the buy-in is not possible, the following steps shall be taken **at any time prior to or upon the last day of the execution period**:

(a) the buy-in agent shall inform the receiving participant and the CSD, the trading venue or the CCP as relevant. In case of buy-in auction, the CCP shall inform the clearing members **which participated in the buy-in auction**;

(b) the receiving participant shall receive the cash compensation; and

(c) the related settlement instruction shall be cancelled.

The buy-in is deemed not to be possible in situations that include the redemption of the relevant financial instruments.

1. ~~10.~~ **For transactions not cleared by a CCP, upon receiving of the notice referred to in paragraph 6(a), a participant of the CSD or a participant of the trading venue who has failed to deliver within the extension period because another participant of the CSD or of the trading venue has failed to settle, the failing participant may pass-on the effects of the buy-in procedure to such participant by notifying the latter to the CSD or to the trading venue.** ~~For transactions not cleared by a CCP, the failing participants or the trading venue shall provide to the CSD, by the day preceding the expiration of the extension period, the details of the settlement instructions on the same financial instruments and with the same date of expiry of the execution period that are causing the failure to deliver. The details shall contain the identification of the failing participants in the chain, the identification of the settlement instructions. The CSD shall test consistency of this information with pending receipt settlement instructions in the account of the participant and process that information in order to limit the number of buy-ins to be executed.~~
2. **Considerations on buy-in in respect of best execution and transparency obligations under MiFID**

Considering that the purpose of buy-in is to ensure the delivery of financial instruments within the specified time frame to cure a failed delivery, the prevailing market and price conditions under the best execution regime as well as pre and post-trade transparency obligation do not fit with the model of execution by buy-in agent or by auction. In both models buy-in could not be performed at prevailing market conditions (for instance in current auction models the price cap starts from the market price and it is progressively increased). For this reason to avoid any misinterpretation of obligations in respect of of buy-in transactions we believe that the relevant requirements should be waived from best execution and transparency obligation.

1. **Considerations on buy-in operation towards market makers**

In markets which utilise market makers to provide liquidity to less liquid securities, there is a risk that the buy-in process could effectively require a market maker to offer a quote to a buy-in agent for securities which it has already failed to deliver for settlement, thereby making it quote for its own buy-in. This is because market makers, who are normally required to offer both a buy price and a sell price at all times, could be approached by a buy-in agent to obtain the same securities that the market maker already failed to deliver, thus leading to a settlement failure loop if the securities are illiquid. ESMA should consider clarifications that the buy-in agent or auction process should be orientated in such a way as to not lead to the result of a market maker effectively failing twice for the same transaction (once for the original ISD and again on the buy-in) Such a failure settlement loop would both lead to unnecessary increased penalties for the participant in question and an increased likelihood that they will be deemed to be a “consistently and systematically failing” when the failure is actually in respect of a single transaction repeated multiple times.

<ESMA\_QUESTION\_TS\_CSDR\_7>

##### What are your views on the proposed draft RTS related to the buy-in timeframe and extension period?

<ESMA\_QUESTION\_TS\_CSDR\_8>

 **(a) Clarification on the time frame to deliver**

We would like ESMA to clarify whether at the end of the “appropriate timeframe” bought-in securities shall be actually delivered to the receiving participant where the buy-in could be considered successfully executed after the confirmation sent by the buy-in agent, as it is provided by the current market practice for “buy-in agent model”.

The rationale for this practice is to allow the buy-in agent to buy securities on the market (that ensures the fairer prices) where the delivery of securities is subject to the standard settlement period.

1. **Possibility for the failing participant to deliver during buy-in execution**

It is not clear whether the failing participant could intervene in the buy-in process and complete delivery if it obtains securities after the extension period. Indeed it should be possible considering that the original failed settlement instruction is cancelled only at the end of the buy-in process (see Article 11(9)(c)). We think the proposed buy-in procedure should account explicitly for this possibility, especially as it is current market practice in some CCPs and tends to minimise the number of buy-ins or reduce their timelines. This would allow entities which fail to deliver during the extension period but manage to obtain securities during the execution period to cut short the process and ensure that the intended recipient obtains its desired securities earlier than it would if it waits for the buy-in process to be completed. This approach would be particularly helpful for less liquid securities whereby the buy-in agent or the auction may not succeed in finding securities and would reduce the risk of market makers increasing the costs of providing liquidity or withdrawing from these markets altogether, thus reflecting the value provided, and the additional risks taken, by those trades in less liquid securities in meeting their obligations and as recognised by level Recital 16 of CSDR. This notes that the settlement discipline should be scaled “in such a way that maintains and protects liquidity of the relevant financial instruments. In particular, market making activities play a crucial role in providing liquidity to markets within the Union, particularly to less liquid securities. Measures to prevent and address settlement fails should be balanced against the need to maintain and protect liquidity in these securities”. Our addition of a **paragraph 3** to Article 12 reflects this.

1. **Extension period for bonds**

As regard the extension period for bonds we do not agree with ESMA approach as described in paragraph **94** of the Consultation Paper. **For the purpose of defining the extension period applicable for bonds, the asset class criteria should be counted first, then the liquidity criteria.** In particular considering the following characteristic of the bond market:

a. Very large numbers of individual instruments;

b. High typical transaction values;

c. Cross-border nature of markets;

d. Multiple international custody structures, trading venues & CSDs;

e. Existing extended periods for resolution of delivery failures.

Considering these structural issues we believe that the extension period of 7 days is appropriate for all bonds. In this case liquidity issue, that are relevant in any case, should be considered in a second stage (i.e. to define the appropriate time frame to deliver.)

1. **Appropriate time frame for buy-in the execution period for bonds**

We believe that the length of the extension period should be used as a basis to define the time-frame to deliver and then further consideration should be done with reference to liquidity of the instruments (i.e. whether more than seven days should be left for buy-in execution).

Based on market experience and liquidity, a longer time frame to deliver could be justified for bonds settled in currencies other than those of the EU Member States, the experience of markets highlights strong difficulties to find the those securities within the time frame proposed by CSDR. The application of those timeframe (also 7 + 7 in the case of illiquid securities) would result in at least a significant widening of the spread and a consequent deterioration in prices, particularly for the retail investor and a subsequent fall of liquidity. To mitigate this distorting effect, we propose to apply to securities settled in currencies different from those of the EU Member States and execution period of 15 days so that they receive the same amount of time for settlement as is provided for securities shares / bonds / other instruments traded on SME Growth Market.

1. **Extension period and time frame to deliver for shares**

As for shares we take note that ESMA may not prolong the extension period for cleared shares given constraint in Level 1 text (as explained in paragraph **78** of the Consultation Paper). However, the level one text does not prevent ESMA from setting the “execution period” in order mitigate the detrimental effect of this differentiation.

On this point we recall the arguments stated in our previous response regarding the impact of having a different timing (extension/execution periods) for cleared and uncleared trades in less liquid securities and in particular:

* **incentivising market participants to trade, and to seek to provide liquidity, in an uncleared environment away from electronic order books, contrary to the stated objectives of policy makers (in MiFID and other measures), and further fragmenting liquidity on RMs and MTFs for illiquid shares.**
* creating different buy-in timetables, with the process out of line between the two types of trades, particularly with regard to the application of any cash compensation (an issue for chains of trades involving cleared and uncleared trades in particular);
* leading to a potential “bubble effect” in pricing as a result of the combination of shorter cash-out periods (2 days after end of buy-in execution/deferral period) and different buy-in timetables for cleared and uncleared trades, potentially resulting in disorderly markets in certain less liquid securities where participants seek to benefit from inflated cash-out values.

We urge ESMA to fix this impaired treatment for cleared and uncleared trades in these securities thus avoiding the creation of structural bias towards trading in an uncleared environment. We do not believe this should be the role of a buy-in regime and it is therefore vital that the buy-in process is designed to mitigate these effects. LSEG supports the idea that the timeframe to deliver financial instruments should be related to the liquidity of the instrument in question. However, the overall timeframe for delivery of illiquid shares should be aligned regardless of whether or not they are cleared by a CCP. This can be done by extending the execution period of the buy-in process to 10 business days so that the buy-in process for illiquid shares (not traded on an SME growth market) would always end on the same day (ISD + 14) regardless of whether or not they are cleared. This provides simplicity and would allow better matching of chains of transactions where a party delivering securities through a centrally-cleared transaction would be able to enter into another transaction to obtain the same securities by a non-centrally-cleared transaction and the buy-in periods where there is a failure would be the same. This would make any pass-through of penalty payments neutralised as is ESMA’s stated intention.

We believe that such an approach would, if adopted:

* Maximise the likelihood of delivery of securities to investors and reduce the need, or incentives, for cash compensation;
* Help to align the buy-in process for cleared and uncleared trades in less liquid securities and reduce the incentive for participants to seek to trade less liquid securities away from public limit order books on regulated markets and cleared environments;
* Remove the incentive to misuse the cash compensation provisions by taking advantage of different timetables for cleared and uncleared trades in less liquid securities;
* Recognise the need for a proportionate regime for less liquid securities on a regulated market, given that the size/liquidity profile regardless they are cleared or not;

In addition, the text in Article 13(3) should be clarified to say that the prolongation of the extension period is “3 business days” not “3 days”. Otherwise the statement that the buy-in process is to be initiated at the end of the 7th business day following the intended settlement date would not be correct.

***Article 12***

**Timeframe to deliver the financial instruments**

1. […]

***3 (new). The failing participant shall be allowed to deliver securities during the buy-in procedure.***

<ESMA\_QUESTION\_TS\_CSDR\_8>

##### What are your views on the proposed draft RTS related to the type of operations and their timeframe that render buy-in ineffective?

<ESMA\_QUESTION\_TS\_CSDR\_9>

 **(a) General comment on phraseology of the article**

We note that there has been some confusion already in the marketplace around this article, with certain parties believing that the considerations for repo or securities lending transactions where the delivery date for the second leg of the transaction would be shorter than the buy-in timeframe are the only considerations where buy-in should be deemed ineffective. However, the drafting in Article 14 of the proposed RTS should be revised to clarify that this provision only relates to Article 7(4)(b) of the CSDR. This article specifies that in these circumstances the buy-in process shall not apply and such transactions are “exempt”, not that the buy-in process itself is “ineffective”. The buy-in process can be ineffective in terms of providing the securities within the prescribed timeframe for a number of reasons due to the unavailability of the financial instrument in question. The draft RTS mention some of these reasons in Recital 26. Therefore, we suggest that the title of Article 14 and preface text in paragraph 1 should specifically refer to the exemption in Article 7(4)(b) of the CSDR and not be of general application.

**(b) Comments specific to the repo market**

Despite the inflexibility of the Level 1 text the enforcement of mandatory buy-ins for the first leg of a repo is inappropriate for this type of transaction and could have the affect of negatively impacting on settlement efficiency. The proposed exemptions for the first leg of repos based on the extension and buy in timeframe being longer than the term of the transaction introduces complexity and will create a two tier market between those trades that could be bought in and those that are exempt.

The repo market is high volume, low margin, and low risk. Accordingly participants are extremely sensitive to any increases in their costs. Buy-ins can result in significant costs to the counterparty being bought in. From the perspective of a repo intermediary, the potential cost of a buy-in, even if afforded very low probability, will far outweigh any potential income from engaging in repo activity. It is therefore reasonable to assume that lenders will no longer be incentivised to lend securities where there is the possibility of being bought-in. In other words, lenders will no longer lend securities for fixed terms that would be considered in-scope of buy-ins under CSDR. Meanwhile, intermediaries such as repo desks will need to adjust their prices if they are to continue lending securities for fixed terms that are in-scope of buy-ins.

Without a universal exemption we strongly recommend that all fixed income securities and Repos SFTs be subject to the maximum allowable extension period and timeframes under Level 1 (i.e. 7 business days + 7 business days) to minimize the negative impacts and market disruption that mandatory buy-ins will cause.

Similarly, we would also recommend ESMA to consider the provisions for deferring a buy-in as this relates to the term of an in-scope SFT particularly where the repo is part of a chain.

<ESMA\_QUESTION\_TS\_CSDR\_9>

##### What are your views on the proposed draft RTS related to the calculation of the cash compensation?

<ESMA\_QUESTION\_TS\_CSDR\_10>

 **(a) Pre-agreeing cash compensation**

We would like ESMA to clarify that price set by CCPs to calculate cash compensation are considered “pre-agreed”. The text in Article 15 of the draft RTS, which does not refer to pre-agreed method to calculate the cash compensation is not clear in this respect. Indeed, in the case of cleared transactions, a single failed settlement instruction may be the net of many trades from many trade sources; due to multilateral netting by a CCP, it is also likely that the net consideration of the selling party does not match that of the buying party – i.e. the equivalent ‘trade price’ is different on each side of the fail. CCPs should therefore be able to determine the price compensation according to a method set out in their rulebook. To address this point we propose the following amendment:

**Article 15**

**Calculation of cash compensation**

The cash compensation shall be determined as follows:

(a) Where the participants pre-agreed the price ***or a method to calculate such price*** to ***settle*** the cash compensation, the difference between the pre-agreed price and the price set for the failed transaction shall determine the cash compensation;

(b) Where the participants have not pre-agreed a price ***or a method to calculate such price***, the cash compensation shall be determined by the difference between the price determined by the buy-in agent by reference to the closing price of the relevant trading venue on the day before the payment of the cash compensation and the price set for the failed transaction.

**(b) National authority discretion**

Concern needs to be taken with the potential scope for investors to purchase securities in efforts to push up the price of the securities which do not settle within the set timelines in order to benefit from cash compensation paid for failed settlement. Were this to occur, a number of market participants could effectively place very large orders (or many participants ordering more moderate amounts at the same time) using the cash compensation aspect of the buy-in process as a vehicle for an abusive squeeze under Market Abuse legislation. In such instances, we suggest that national competent authorities, in their role as supervisory bodies for market abuse, should be empowered to suspend or modify certain cash compensation obligations for the duration of the abusive squeeze.

<ESMA\_QUESTION\_TS\_CSDR\_10>

##### What are your views on the proposed draft RTS related to the conditions for a participant to consistently and systematically fail?

<ESMA\_QUESTION\_TS\_CSDR\_11>

The 10% divergence reference for identifying participants who systematically fail is a reasonable reference rate. However, this should be set on the basis of its relevant peer group for a specific category of financial instrument settled on the relevant securities settlement system. For example, the settlement rate for an entity which specialises in trading low liquidity instruments should not be judged against a settlement rate for entities which do significant volumes of trading in a limited number of very highly liquid instruments. This would distort the meaning of the 10% divergence because it does not take into account the relative liquidity of the instruments which might lead to a divergence in settlement performance.

To address this, LSEG recommends that the draft RTS be amended to make the 10% divergence relative to the settlement efficiency rate of each type of financial instrument settled through the system, including taking into account their liquidity. The following amendments to the text of Article 16(1) of the RTS are suggested:

**Article 16**

**Conditions under which a participant is deemed to consistently and systematically fail to deliver the financial instruments**

A participant shall be deemed to consistently and systematically fail to deliver ***a type of*** financial ***instrument*** when its settlement efficiency rate is 10% lower than the settlement efficiency rate determined by the securities settlement system ***for that type of financial instrument*** over a number of days that exceeds 10% of the number of days when the participant is active in the securities settlement system, over a 12 ***month*** period. ***For the purposes of determining the settlement efficiency rate of a type of financial instrument, the securities settlement system shall determine whether it is considered to have a liquid market in accordance with point (a) of Article 2(1)(17) or point (b) of Article 2(1)(17), respectively, of Regulation (EU) No 600/2014***

<ESMA\_QUESTION\_TS\_CSDR\_11>

##### What are your views on the proposed draft RTS related to the settlement information for CCPs and trading venues?

<ESMA\_QUESTION\_TS\_CSDR\_12>

It should be noted that setting up information flows between trading venues and multiple CSDs involved in the settlement of different securities traded on that market will take time and will be extremely costly. Additionally, such information flows would be difficult to standardise from a technical point of view because of the different market models in place. This would be more complicated in areas where securities have fragmented market structure (such as bonds and ETFs).

<ESMA\_QUESTION\_TS\_CSDR\_12>

##### What are your views on the proposed draft RTS related to anti-avoidance rules for cash penalties and buy-in?

<ESMA\_QUESTION\_TS\_CSDR\_13>

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<ESMA\_QUESTION\_TS\_CSDR\_13>

##### Do you agree that 18 months would be an appropriate timeframe for the implementation of the settlement discipline regime under CSDR? If not, what would be an appropriate timeframe in your opinion? Please provide concrete data and evidence justifying a phase-in for the settlement discipline measures and supporting your proposals.

<ESMA\_QUESTION\_TS\_CSDR\_14>

LSEG fully supports ESMA proposal to postpone the entry into force of RTS on settlement discipline of at least 18 months.

We urge ESMA and the Commission to consider that this extended timeline of 18 months should be considered as the minimum period necessary to implement these regulatory technical standards, since, unlike other technical standards, the provisions of settlement discipline have a significant operational impact on CSDs as well as on all other relevant actors of the post-trading chain.

In particular we identified the following main operational impact on entities belonging to LSE Group:

* adaptation of settlement system functionalities to the monitoring requirements (CSDs and its participants)
* adaptation of penalties mechanism and related information flows (CSDs and CCPs);
* implementation/adaptation of buy-in procedure and related information flows (CCPs, CSDs and Trading Venues);

In this regard we remind ESMA and the Commission that the majority of European CSDs are committed to deliver T2S migration in the coming months. Although we understand that CSDR’s scope is wider, the institutional importance of T2S project is recognised in the Level 1 text as a vehicle to provide for the proper technical framework to realise cross-border settlement effectively and this is one of the main policy objectives that the Commission wants to achieve with CSDR.

The massive IT and operational activities required to implement T2S migration significantly limits the possibility to implement any other systems changes at level of the individual CSDs until the end of the 4th wave in 2017. In order to allow a smooth migration process, technical changes to the T2S platform have been frozen until 2017. In this context, the implementation of the settlement discipline regime under CSDR could not be realised without creating systemic risks, in contrast with ultimate objective of the CSDR.

In addition, ESMA and Commission should take into account that settlement discipline implementation entails huge effort in terms of resources and investment by CSDs. On this point please refer to ESCDA cost-estimates analysis of settlement discipline requirements (based on 18 months period timeframe). It is clear that shorter timeline would imply unpredictable increases of resources and investment needed.

The main cost drivers from a CSD perspective, are:

* adaptation of the IT system to comply with the granularity of failure monitoring system; and
* development of burdensome administrative and technical tools relating to the buy-in procedure (as proposed under the draft RTS);

This operational impact means IT changes and development, as well as harmonisations market practice and implementation of new ones, could not be completed overnight. Hence we suggest to extend the proposed implementation phase from 18 to 24 months following publication in the Official Journal with a phase-in period whereby functioning the settlement discipline regime would be tested but not applied.

<ESMA\_QUESTION\_TS\_CSDR\_14>

##### What are your views on the proposed draft RTS on CSD authorisation (Chapter II of Annex II) and draft ITS on CSD authorisation (Chapter I of Annex VI)?

<ESMA\_QUESTION\_TS\_CSDR\_15>

 **(a) General comment on RTS and ITS on CSDs authorisation.**

As regard the information to be provided in the context of authorisation we recommend that the re-authorisation of the operating CSDs should leverage as much as possible on the formats and information already available.

**(b) Detailed comments on RTS of ANNEX II**

**Article 2(2)(m)** – We recommend clarifying that CSD should only provide information on services provided under the MiFID when these are not already covered by the Annexes of the CSD Regulation in line with Article 73 of CSD-R;

**Article 2(2)(n)** – We understand this information is meant to assess compliance with article 30 of CSDR referring to outsourcing. We suggest amending the wording of this indent to specify that the required “list of outsourced service” should refer to “core and ancillary” services.

2. The application for authorisation of a CSD shall in particular contain the following information:

[…]

(m) where applicable, the list of any services and activities that the CSD is providing or intends to provide under Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments***in addition to services******not expressly listed in Sections A and B of the Annex to Regulation (EU) No 909/2014”***;

[…]

(n) of the list of ***any******core or ancillary services***outsourced *~~services~~* to a third party under Article 30 of Regulation (EU) No 909/2014;

1. **Article 4 – Information for groups**

**Paragraph 1** – Article 26(7) of the CSDR restricts the provision of detailed information on policies and procedures to cases *“where there are one or more CSDs and/or credit institutions in the corporate group to which the CSD belongs.”* The phrase "in particular", included in Article 4(1) of the draft RTS, suggests information might be provided in other cases. To address this potential issue we propose to amend this Article to make it consistent with the scope of level one text.

**Paragraph 4** – We understand that the purpose of this requirements is to obtain information on other market infrastructure within the group through with which the CSDs may offer trading or post-trading services to third parties . In this regard we suggest certain amendments in order to clarify the purpose of this provision.

In line with the above we propose the following amendments:

***Article 4 - Information for groups***

1. Where an applicant CSD is part of a group of undertakings ***which******includes*** *~~including in particular~~* other CSDs and credit institutions referred to in Title IV of Regulation (EU) No 909/2014, the application for authorisation shall contain the following items:

(b) information on the composition of the senior management, management body and shareholders of the parent undertaking or ***any other CSD and credit institutions belonging to the same*** group of undertakings;

(c) services as well as key individuals other than senior management that are shared by the group.

2. […]

3. […]

4. Where the applicant CSD has an agreement with an undertaking within the group relating to the offering of trading or post-trading services to ***third parties***, the application shall contain a description and a copy of such agreement.

1. **Article 5 – Financial reports, business plans recovery plans and resolution reports**

**Paragraph 5** – Regarding information requirements referring to recovery plans, we believe that ESMA should not anticipate contents of the forthcoming recovery and resolution legislation for financial markets infrastructures (FMIs). We believe that the adoption of those information requirements is premature and may lead to inconsistencies in the implementation among CSDs of recovery and resolution requirements.

Furthermore, we note that the draft RTS requests submission by the CSD of "*the resolution plan established and maintained by the CSD*". This provision is against the principle that the resolution plans shall be drafted and maintained by the resolution authority, as acknowledged by Article 22(3) of CSDR, the CPMI-IOSCO Principles for financial market infrastructures (PFMI) and the FSB Key Attributes. In this regard it worth recalling the approach taken by Directive 2014/59/EU (BRRD) whereby availability of information relevant for resolution plan should be verified and then provided by the competent authority to the resolution authority – whilst the financial institution has a general duty to cooperate and provide information “*directly or indirectly through the competent authority*” (see Article 11 of the BRRD).

Therefore we suggest ESMA removes the reference to the resolution plans from Article 5 of RTS on CSD authorisation as well as further references to those plans in text of the various draft RTS (article 41 p. 179, ANNEX I p. 192, Table 2 p. 274, Table 2 p. 290)

**Article 5 – Financial reports, business plans recovery plans and resolution reports**

The application shall also include:

5. (…)

~~(b) the resolution plan established and maintained for the CSD so as to ensure continuity of at least its core functions, having regard to the size, systemic importance, nature, scale and complexity of the activities of the CSD concerned.~~

1. **Article 10 – *Senior management, management body and shareholder***

**Paragraph 1** – We note that the self-declaration of good repute includes events with a wide range of materiality: starting from the most serious event such as conviction of crimes (i) (even if they are already covered by the official certificate required under letter (b)); to facts of minor relevance if considered separately (e.g. any “adverse decision”), that however could become material on aggregate basis; down to more neutral events (e.g. being connected with companies that have been put into liquidation). In general we believe that the content of this self-declarations could not be further standardised in the RTS as elements of good repute are normally connected to the domestic sanctioning/judicial framework. Importantly, there is no further indication on who and how the “materiality” of this information will be assessed. In this context it would be appropriate to clarify that the good repute of board members and senior management should be primarily a responsibility of the CSD in complying with CSDR governance requirements.

This approach would ensure that a high standard would be used (because it is in the interest of the CSD itself) and at the same time that the overall assessment will be conducted with due consideration of the materiality of all relevant events in the proper context. This approach is also in line with the EBA Guidelines for assessing suitability of board members in credit institutions.

Furthermore we believe that the reference to data service is not clear and in any case not relevant for assessing good repute of senior managers in the context of CSDs activities. Therefore we suggest ESMA removes the reference from paragraph 1(b) and 1(c) (i), (iii) and (viii).

Finally, we would like to point out that the declaration regarding potential conflict of interest under numeral (x) is a not an element for reputation assessment but for evaluating independence. This is addressed by declarations required by paragraph 2 and the declaration in Article 10(1)(x) should be deleted.

In light of the above consideration we propose the following amendment to Article 10 (1):

1. An application for Authorization of a CSD Shall Contain the Following information in respect of each member of the senior management and each member of the management body, enabling the competent authority to assess the Applicant CSD's compliance with Article 27 (1) and (4) of Regulation (EU) No 909/2014:

(a) [....]

(b) details regarding any criminal and administrative sanctions in connection with the provision of financial ~~or data~~ services or in relation to acts of fraud or embezzlement, notably via an official certificate if available within the relevant Member State....

(c) […]

*~~x. A declaration of any potential conflict of interest that the senior management and the members of the management body may have in performing their duties and how these conflicts are managed.~~*

***(d) a declaration by the CSD regarding the good repute of the senior management and the members of the management body, in relation to the provision of a financial service* *carried out at least on the basis of the self declaration listed above (items a, b, c).***

1. **Article 28 – Legal Risk**

**Article 28 (2)** – **Legal opinion**. We note that RTS contained many references to legal opinions in different context. In this regard we believe that RTS should be amended to clarify that CSDs could rely on legal due diligence undertaken by both internal or external advisors or on any other legal arrangements to assess relevant legal risk as appropriate. This amendment should be reflected in the whole text of the draft RTS (e.g. article 12, p. 217, article 4 p. 248, article 5 p. 249).

**Article 28**

**Legal risks**

1. An application for authorization of a CSD shall contain the information enabling the competent authority to assess that the applicant CSD’s rules, procedures, and contracts are clear and understandable and enforceable in all relevant jurisdictions, in accordance with Article 43(1) and (2) of Regulation (EU) No 909/2014.

2. Where the applicant CSD intends to conduct business in different jurisdictions, it shall provide the competent authority with information on procedures put in place to identify and mitigate the risks arising from potential conflicts of laws across jurisdictions, in accordance with Article 43(3) of Regulation (EU) No 909/2014. **Internal or external** legal **assessment** ~~opinions~~ shall be provided as appropriate.

<ESMA\_QUESTION\_TS\_CSDR\_15>

##### What are your views on the proposed draft RTS on CSD review and evaluation (Chapter III of Annex II) and draft ITS (Chapter II of Annex VI)?

<ESMA\_QUESTION\_TS\_CSDR\_16>

 **(a) General Comment on RTS relating to review and evaluation**

We believe that requirements provided under Chapter III are too detailed and impose significant administrative burdens on CSDs. On the basis of the draft RTS it seems that each review and evaluation process would be tantamount to a “re-authorisation process”. We understand from the Level 1 text that there is a difference between the two processes and these differences should be reflected by both the RTS and ITS. The drivers for reassessment should be the following:

1. the authorisation process should provide competent authority with an overall “static” picture of the approved CSDs;
2. review and evaluation should focus on dynamic developments of the CSDs and how this will impact on the compliance with CSDR requirements.

Furthermore, Article 22(4) of the Level 1 text provides for a proportionate application of requirements on reviews and evaluation where it states that *“competent authority shall establish the frequency, and depth of the review and evaluation […] having regard of “the size, systemic importance, nature, scale and complexity of the activities of the CSD”* . In contrast to this, ESMA seems to propose a “one-sized-fits-all” approach that, in our view, needs to be calibrated more specifically to each CSD.

**(b) Article 38 – Access to data by the competent authority**

**Paragraph 1** – We note that ESMA proposes that CSDs provide a self-assessment against the CSDR requirements as part of the annual review. We believe that this requirement would be very burdensome, disproportionate and this assessment is already reflected in the on-going supervision by competent authorities, information requirements on material events and policies and procedures that CSD shall have in place to ensure compliance with specific CSDR requirements. Furthermore, no similar requirement is placed on other regulated entities such as CCPs, banks or investment firms.

Thus, we recommend amending article 38(1) as follows:

**Article 38 - Access to data by the competent authority**

1. For the purpose of the review and evaluation as referred to in Article 22(7) of Regulation (EU) No 909/2014, a CSD shall provide the information as defined in this chapter ***~~together with a self-assessment on the CSD’s activities overall compliance with the provisions of Regulation (EU) No 909/2014 during the review period~~***, and any other information as requested by the competent authority.

 **(c) Articles 37, 39, 40 – Information on “material changes”**

We note that ESMA proposes that CSDs provide their competent authorities with:

1. “any material changes to the conditions under which authorisation has been granted accompanied by a self assessment regarding the compliance of the proposed changes with the requirements of the CSDR” (Article 37)
2. a report on any material changes introduced to the arrangements, strategies, processes and mechanisms implemented by a CSD (Article 39);
3. all documents submitted for the authorisation that have been modified in the review period (Article 40)

We request that ESMA reviews these provisions to avoid any unnecessary duplications of information flows. In particular suggest removing Article 40, considering that all relevant information will be included in the report and ad hoc information would be provided for by Articles 39 and 37 respectively.

***~~Article 40~~***

***~~Documents submitted in the application for authorisation that have been materially modified~~***

***~~A CSD shall provide all documents submitted to the competent authority in the application for authorisation which have been modified in the review period.~~***

**(d) Article 41 – Information pertaining to period events**

As regards Article 41(1)(h) of the draft RTS, we note the absence of a definition of what constitutes a "complaint". We recommend limiting this information requirement to formal complaints (i.e. complaints recorded and handled through the established procedures of the CSD). To this end we suggest that ESMA adds a reference to provision of Article 32(2) of CSDR.

As regards Article 41(1)(j), (k) and (t) of the draft RTS, the notion of materiality should be introduced. For Article 41(1)(k), we suggest removing the word "any" to make it clear that CSDs should report those operational incidents which have had an impact on the smooth functioning of core services.

As regards Article 41(1)(m), we believe that the obligation imposed on CSDs should be limited to giving information on the incorporation of new types of conflicts in the register of conflicts of interest, given that there is little value in reporting conflicts of interest when these were identified, raised and managed in accordance with the CSD’s approved policies and procedures.

As regards Article 41(1)(n), we believe that a further reference to conflicts of interest is confusing and unnecessary, given that these are covered by point (m).

As regards Article 41(1)(r), is not clear to us what is meant by "business operations report", especially because the term is not defined. We would thus welcome clarification, as well as the addition of the word "relevant" in order to ensure that such reports are only provided where meaningful and appropriate.

As for the requirements in Article 41(1)(u), that a CSD provides *"information to any changes to the resolution plan"* to its competent authority as part of the annual review, as mentioned in our answer to question 15 (comments on Article 5(5) of the draft RTS), we believe that the current formulation in the draft RTS is misleading. Unlike recovery plans, which are drafted and maintained by CSDs, resolution plans are the responsibility of resolution authorities*.* Hence this proposed requirement should be deleted.

In light of the above, we recommend the following amendment to Article 41 of the draft RTS:

**Article 41 - Information relating to periodic events**

1. For each review and evaluation, the CSD shall provide to the competent authority,***where relevant****:*

[…]

(h) information on any ***formal*** complaints received by the CSD in the review period, specifying the nature of the complaint, the handling of the complaint and date when the complaint was resolved ***in accordance with procedure referred to in article 32 (2) of******Regulation EU 909/2014***;

[…]

(j) information on any ***material*** changes affecting any links of the CSD, including the mechanisms and procedures used for settlement;

(k) information on ***any*** operational incidents that occurred in the review period and affected the smooth functioning of any core services provided;

[…]

***~~(m) information on cases of identified conflicts of interest that occurred in the review period, including the way in which they were managed;~~***

***~~(n) information on measures taken to address the identified technical incidents as well as the results thereof;~~***

[…]

(r) ***relevant*** business operations report concerning the review period;

[…]

(t) information on any ***material*** changes to the recovery plan, including the identification of the CSD’s critical services, results of stress scenarios and recovery triggers, as well as the CSD recovery tools.

 ***~~(u) information on any changes to the resolution plan established and maintained for the CSD so as to ensure continuity of at least its core functions, having regard to the size, systemic importance, nature, scale and complexity of the activities of the CSD concerned, and any relevant resolution plan established in accordance with Directive 2014/59/EU;~~***

**(e) Article 42 – Statistical data**

With reference to statistical data requirements we have identified issues with the following items.

**Article 42(1)(c), (d) and (e) *–*** There is not always a market value available, especially for private issues (many of which are settled and held at CSDs in various European markets). Conversely, some instruments do not have a meaningful “nominal value” (e.g. listed equities), and so CSDs should only be expected to provide market or nominal values when these are available.

Moreover, we do not understand why the country of incorporation of participants or issuers is considered relevant by ESMA for supervisory purposes. The country of incorporation of a participant is an adequate proxy for the country of establishment of ultimate investors. There are many cases of CSD participants holding securities on behalf of investors established in different (EU or non-EU) countries than the country where the participant itself is established, sometimes to a very large extent. Given that CSD participants are always wholesale financial institutions, and given that many of them operate in multiple markets, including outside the EU, we do not believe that there are particular supervisory concerns in relation to their use of a non-domestic CSDs.

As regards issuers, CSDs often do not have information on the place of incorporation of an issuer, and we believe that this information is largely irrelevant (especially in relation to debt instruments, investment funds, and non-equities). On the other hand, the law applicable to the issuances admitted for settlement in a CSD is important as it determines the rights and obligations of investors, as well as the services to be performed by the CSD.

In light of the above, we recommend the following amendments to Article 42 of the draft RTS

**Article 42 - Statistical data to be delivered for each review and evaluation**

1. For the purpose of the review and evaluation, the CSD shall provide the following statistical data to the competent authority covering the review period, ***if and when applicable***:

[…]

(c) ***where available,*** nominal ***and******or***market value of the securities maintained in each securities settlement system operated by the CSD in total and divided as follows:

(i) by asset class (as specified in point d) of Article 4(2) of Regulation (EU) No … [RTS on settlement discipline]);

***~~(ii) by country of incorporation of the participant;~~***

***~~(iii)by country of incorporation of the issuer;~~***

(d) ***where available,*** nominal ***and******or*** market value of the securities centrally maintained in each securities settlement system operated by the CSD, divided as follows:

(i) by asset class;

***~~(ii) by country of incorporation of the participant;~~***

***~~(iii)by country of incorporation of the issuer.~~***

(e)number, ***~~nominal value~~*** and ***~~market~~*** value of settlement instructions settled in each securities settlement system operated by the CSD in total and divided as follows:

(i) by asset class;

***~~(ii) by country of the incorporation of the participant;~~***

***~~(iii) by country of incorporation of the issuer;~~***

[…]

<ESMA\_QUESTION\_TS\_CSDR\_16>

##### What are your views on the proposed draft ITS on cooperation arrangements as included in Chapter III of Annex VI?

<ESMA\_QUESTION\_TS\_CSDR\_17>

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##### What are your views on the proposed draft RTS on CSD recognition (Chapter IV of Annex II)?

<ESMA\_QUESTION\_TS\_CSDR\_18>

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##### What are your views on the proposed approach regarding the determination of the most relevant currencies?

<ESMA\_QUESTION\_TS\_CSDR\_19>

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##### What are your views on the proposed draft RTS on banking type of ancillary services (Chapter VI of Annex II) and draft ITS on banking type of ancillary services (Chapter IV of Annex VI)?

<ESMA\_QUESTION\_TS\_CSDR\_20>

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##### What are your views on the proposed draft RTS on CSD participations (Chapter II of Annex III)?

<ESMA\_QUESTION\_TS\_CSDR\_21>

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##### What are your views on the proposed draft RTS on CSD risk monitoring tools (Chapter III of Annex III)?

<ESMA\_QUESTION\_TS\_CSDR\_22>

**General Comment on Risk monitoring tools**

We welcome ESMA’s approach to keep the draft RTS consistent with the CPSS – IOSCO Principles for FMIs as much as possible. However, considering that those principles have been created to address different market infrastructures, we would like to suggest some amendments in order to calibrate the transposition of those principle according to the specific characteristic of CSDs.

1. **Article 3 – Governance Arrangements**

Recital (4) – The wording of this recital should be amended to be consistent with ESMA assumptions and RTS requirements recognising the possibility to combine key functions with other corporate functions and performing these functions at group level.

Recital (4) To ensure that CSDs operate with the necessary level of human resources to meet all of their obligations they are accountable for the performance of their activities and to ensure that competent authorities have the relevant contact points within the CSDs they supervise~~, a CSD should have key dedicated staff.~~

**Paragraph 4 -** We note that the draft RTS proposes a new requirements regarding *“appropriate arrangement to mitigate overreliance on individual employees”.* Although we understand that it comes from the requirements for trade repositories (Delegated Regulation (EU) n. 150/2013), we believe that it introduces new issues of compliance considering there is no further guidance, principle or standard practice in this regard. Moreover, we think that this topic is already covered by other provisions such as Article 3(3) and Article 22(11) of this draft RTS. This amendment should be reflected also in Article 7 of Annex II on RTS on CSD authorisation.

Hence we recommend ESMA to amend Article 5 (4) as follows:

**Article 3**

**Governance Arrangements**

1. A CSD shall establish lines of responsibility which are clear, consistent and well-documented. A CSD shall ensure that the functions of the chief risk officer, chief compliance officer and chief technology officer are carried out by different individuals, who shall be employees of the CSD or an entity within the same group. A single individual shall have the responsibility for each of these functions~~, without prejudice of the appropriate arrangements to mitigate over-reliance on individual employees~~. These individuals may undertake other duties outside the scope of the risk, compliance or technology functions provided that these do not have an operational or commercial nature and specific procedures are adopted in the governance arrangements to identify and manage any kind of conflict of interest that may arise.
2. **Article 4 – Risk management and internal control arrangements**

**Paragraph 1 & 2** – We note that ESMA is requiring CSDs to be structured in such a way to ensure that *“clients of its participants properly manage and contains risk they pose to the CSDs”*. In this regard it should be taken in to account that CSD do not incur risks from the clients of their participants and have no way of exercising any control over these clients. Therefore, we do not think that this requirement should become legally binding as this would impose unreasonable regulatory expectations onto CSDs, especially given that CSDs could be sanctioned for non-compliance with these requirements. We thus recommend removing the phrase “and, where relevant, their clients" from Article 4(1).

Considering the above we propose the following amendments:

**Article 4 - Risk management and internal control mechanisms**

1. A CSD shall have a sound framework for the comprehensive management of all relevant risks to which it is or may be exposed. A CSD shall establish documented policies, procedures and systems that identify, measure, monitor and manage such risks. In establishing risk-management policies, procedures and systems, a CSD shall structure them in such a way as to ensure that participants ***~~and, where relevant, their clients~~*** properly manage and contain the risks they pose to the CSD.

2. A CSD shall take an integrated and comprehensive view of all relevant risks. These shall include the risks it bears from and poses to any other entities, including its participants and, ***~~to~~******~~the extent practicable, their clients,~~*** as well as linked CSDs and central counterparties, trading venues, payment systems, settlement banks, liquidity providers and investors.

[…]

9. The rules, procedures and contractual arrangements of the CSD shall be recorded in writing or on a durable medium. These rules, procedures, and contractual arrangements and any accompanying material shall be accurate, up-to-date and readily available to the competent authority**, *~~participants, if affecting participants‘ rights and obligations and, where known by the CSD and where affecting clients‘ rights and obligations, their clients~~***

1. **Article 5 – Organisational Structure**

**Paragraph 1 and 5** – We note that ESMA requires the establishment of an audit committee, a remuneration committee and risk committee. Considering the establishment of these committees is not prescribed by the Level 1 text we recommend that the RTS reflect a proportionate approach whereby CSDs should allowed to decide whether to set up such committees or to assign their functions to existing body, according to their size and governance structure. Furthermore, if a risk committee will be required by final RTS, the composition, the mandate and participation of external persons on this committee should be left entirely to the board. Finally, considering the committee’s functions relate to internal and sensitive matters we do not see the need to disclose its mandates and procedures. Furthermore as regard the responsibilities of the management board, letter (f) should be amended to clarify that the term “internal control functions” is referred to the compliance, risk an audit functions. Paragraph 4 is amended consistently to avoid misinterpretations of others governance requirements in the RTS.

In light of the above we suggest the following amendment to Article 5.

**Article 5**

**Organisational structure**

1. A CSD shall define the composition, role and responsibilities of the members of the management body and senior management and any relating committees. These arrangements shall be clearly specified and well-documented. The management body ***may*** *~~shall establish, at a minimum~~* an audit committee, a remuneration committee and a risk committee. The management body shall assume at least the following responsibilities:

[…]

(f) enable the independence and adequate resources of the internal control functions **referred** **to in article 3**;

4. A CSD shall have clear and direct reporting lines between its members of the management body and senior management in order to ensure that the senior management is accountable for its performance. The reporting lines for risk management, compliance ~~and internal control~~ and audit shall be clear and separate from those for the other operations of the CSD. The chief risk officer, the chief compliance officer and the ~~internal control and~~ audit functionshall *each report directly* to the management body.

5. A CSD shall establish a risk committee, that shall be responsible for advising the management body on the CSD’s overall current and future risk tolerance and strategy. It shall be chaired by a person with a recognised experience on risk management and that is independent of the CSD’s executive management. It shall be composed of a majority of non-executive members, where there are management body members sitting as members of the risk committee. It shall have a clear *~~and public~~* mandate and procedures and access to external expert advice where it may find fit.

1. **Article 7 – Internal auditing**

**Paragraph 8** – We agree with ESMA’s view that CSDs should not share its audit findings with the user committee by default as this may compromise the effectiveness of the internal audit function and the contents of the reports (as noted in paragraph 181 of the Consultation Paper). We recommend that **such findings should be shared only where they require corrective actions that would have an impact on users’ operational activities and** we suggest this be reflected in a recital to the RTS on CSD requirements. Furthermore, we think that the final provision included in Article 7(8) should be extended to any member of the user committee considering that all them may be subject to actual or potential conflict of interest with reference to information included in the audit findings. This would be also in line with the Level 1 text.

Therefore, we propose the following amendments to Article 7(8) of the draft RTS:

**Article 7 – Internal Auditing**

(8) […]

Members of the user committee *~~that are settlement internalisers~~* shall not be provided with information that could place them in a competitive advantage and or that otherwise may constitute an ***actual or potential*** conflict of interest with the CSD.”

<ESMA\_QUESTION\_TS\_CSDR\_22>

##### What are your views on the proposed draft RTS on CSD record keeping (Chapter IV of Annex III) and draft ITS on CSD record keeping (Annex VII)?

<ESMA\_QUESTION\_TS\_CSDR\_23>

As regard record keeping requirements we would like to point out the following general remarks.

**Compatibility with current ISO standards.** From the analysis made in the context of T2S and by the ECSDA we understand that many codes proposed by ESMA are in not in line with international standards. This is an issue for implementation of these requirements as the information required under these standards can only be retrieved from the settlement related messages (i.e. settlement instructions). Therefore, we recommend aligning recordkeeping requirements to the existing standards.

**Timing of implementation**. Considering the need to develop further harmonised practices in the context of standardised information on settlement process (e.g. transaction type and buy-in procedure) and adaption of IT systems required by CSDs and their users, the proposed recordkeeping requirement could be implemented by the time CSDs shall be re-authorized.

<ESMA\_QUESTION\_TS\_CSDR\_23>

##### What are your views on the types of records to be retained by CSDs in relation to ancillary services as included in the Annex to the draft RTS on CSD Requirements (Annex III)? Please provide examples regarding the formats of the records to be retained by CSDs in relation to ancillary services.

<ESMA\_QUESTION\_TS\_CSDR\_25>

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<ESMA\_QUESTION\_TS\_CSDR\_25>

##### What are your views on the proposed draft RTS on reconciliation measures included in Chapter V of Annex III?

<ESMA\_QUESTION\_TS\_CSDR\_25>

**Article 14 (1) and (2) General reconciliation measure**

**Paragraph 1 & 2** - We support the general reconciliation measures provided by draft RTS. However we would like to clarify the following with reference to the relationship with paragraphs 1 and 2 of Article 14.

Reconciliation procedures are carried out for each securities issue recorded in the CSD once all transactions to be settled are processed in the SSS. Only once this check is completed does the CSD send the intermediaries the opening and the end of day balances.

During each business day securities movements are recorded using the double entry accounting principle (i.e. for credit made on the receiving account a corresponding debit entry is made on the account of delivering participant) and once settlement occurs such securities movements are final. From an operational perspective double entry is functional to the soundness of reconciliation procedure but it could not be consider sufficient to ensure the integrity of the issue according to domestic regulation.

The same approach is supported by Article 37 (1) and (3) of CSDR whereby securities reconciliation is required for the CSD and operational issues such as securities overdraft, debit balances and securities creation are not allowed.

<ESMA\_QUESTION\_TS\_CSDR\_25>

##### Do you believe that the proposed reconciliation measures where other entities are involved in the reconciliation process for a certain securities issue within the meaning of Article 37(2) of CSDR are adequate? Please explain if you think that any of the proposed measures would not be applicable in the case of a specific entity. Please provide examples of any additional measures that would be relevant in the case of specific entities.

<ESMA\_QUESTION\_TS\_CSDR\_26>

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##### What are your views on the proposed reconciliation measures for corporate actions under Article 15 of the draft RTS included in Chapter V of Annex III?

<ESMA\_QUESTION\_TS\_CSDR\_27>

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##### What are your views on the proposed draft RTS on CSD operational risks included in Chapter VI of Annex III?

<ESMA\_QUESTION\_TS\_CSDR\_28>

**(a) Article 19 – Operational risk that may be pose by key participant**

We note ESMA proposes that CSDs should identify, monitor and manage the operational risks posed by its key participants. In this context it should be considered that operational risks posed by key participants is assessed by CSDs when defining their participation requirements. This approach ensures that the higher standards are applicable to all participants even if they are not the “key” ones. Ongoing monitoring of “key” participants can be carried on by means of tools with reference to any other participant. As a consequence, we think there is no need to mandate the establishment of ad hoc “criteria, methodologies or standards” to ensure that key participants, if any, meet additional operational requirements.

Therefore, we suggest that ESMA reassess its proposals in Article 19, to make it optional for the CSD to identify monitor and manage risk posed by its key participants.

**(b) Article 20 – Operational risk that maybe posed by utilities and service providers**

We note the draft RTS propose that CSDs identify utilities and service providers based on their dependency on them. In our opinion the outcome of this mapping exercise should be the identification of service providers towards which the CSD has a “critical” dependence for activities essential to the operations of the CSD core services (e.g. information technology or standard messaging providers which are critical for the processing and settlement of transactions) so that a failure in their performance would affect the continued provision of a core service.

Where a service provider operates for other lines of business or provides other services that are not critical for the operation of a CSD’s core services (e.g., support services with respect to an activity that remains managed by the CSD both operationally and in terms of decision-making) should not be considered critical and should be out of the scope of the other requirements referred to Article 20. This approach would be consistent with CPSS-IOSCO Principle for FMIs and related assessment methodology for expectations on critical service providers. An overly-broad scope that is not strictly related to risk or other regulatory concerns would otherwise discourage outsourcing which is generally intended to achieve higher operational efficiency by reducing costs through a specialisation of competences. Limiting the scope of the RTS to truly critical providers as suggested above will enhance the efficiency and standardisation of supervisory practices and, at the same time, will avoid putting an excessive burden on CSDs, their providers and NCAs.

In light of the above, we suggest the following amendments in order to clarify that activities not directly related to essential operations of the CSDs are out of scope provisions included in Article 20:

**Article 20 Operational risks that may be posed by utilities and service providers**

1. A CSD shall identify ***critical*** utilities providers and ***critical*** service providers based on its dependency on them ***for the continuous operation of its core services***.

2. A CSD shall take appropriate actions to manage the ***critical*** dependencies referred to in paragraph 1 through adequate contractual and organisational arrangements as well as specific provisions in its business continuity policy and disaster recovery plan, even before any relationships are made operational with such providers.

3. A CSD shall ensure that its contractual arrangements with any ***critical******service*** providers identified under paragraph 1 require the CSD’s approval before the critical service provider can itself outsource material elements of the service provided to the CSD, and that in the event of such arrangement, the level of service and its resilience is not impacted, as well as full access to the necessary information is preserved.

4. The outsourcing CSD shall establish clear lines of communication with the ***critical service*** providers referred to in paragraph 1 to facilitate the flow of information in both ordinary and exceptional circumstances.

5. A CSD shall inform its competent authority about any ***critical*** dependencies on utilities and service providers and take measures to ensure that authorities may obtain information about the performance of such ***critical******service*** providers, either directly or through the CSD.

**(c) Article 24 – Risk management function**

Article 24 (1) – We believe that the wording of Recital 13 an article 24 could be improved to reflect that Chief Risk Officer should have the role to monitor operational risk.

Therefore we propose the following amendment to Article 24 (1).

(12) (…) This framework should include operational targets, tracing features, assessment mechanisms and be integrated in the enterprise risk management system. In this context, a CSD chief risk officer should **monitor** ~~also be responsible for~~ the operational risk function. CSDs are expected to manage their risk internally - where internal controls are not sufficient or eliminating the risk is not a reasonable feasible option, a CSD may complement this risk mitigants and consider a financial coverage of those additional risks through insurance.

**Article 24**

**Risk management function**

1. ~~A CSD shall have a~~ **The** risk management function for the operational risk ~~in accordance with article 26 (1) of Regulation (EU) No. 909/2014. This function~~ shall be **monitored** by ~~performed by or under responsibility of~~ the chief risk officer referred to in Article 3 of the Regulation.
2. The CSD shall ensure that ~~the operational risk function has sufficient authority, resources are in place and access to the management body and senior management to ensure~~ that its operations are consistent with the risk-management framework set by the management body, which has final responsibility and accountability for managing the CSD’s risks.
3. The **chief risk officer** ~~risk management function~~ shall be responsible for developing strategies, policies and procedures to identify, measure, monitor and report on operational risk and for developing procedures to control operational risk, including any necessary adjustments, and shall ensure that they are implemented and used.

**(d) Articles 33 Duty to notify**

LSEG supports ESMA’s approach in the draft RTS on business continuity. However, in respect of Article 33, ECSDA has indicated that requiring a CSD to notify its competent authority of each and every test performed in the context of operational risks is excessive and could potentially result in more than a hundred notifications each year per CSD, only a few of which being truly meaningful from the point of view of the supervisor. Examples of insignificant tests from a supervisory point of view include new office software deployment for staff, routine test of the alarms systems etc. In this context, without prejudice to the obligation for CSDs to perform tests with the frequency required by the business continuity policy, we expect the results of the tests to be communicated annually to competent authorities as part of the supervisory review.

Therefore, we suggest the following amendments to Article 33:

**Article 33 – Duty to notify**

A CSD shall ***~~promptly~~***notify the competent authority of the results of any ***substantial*** tests performed in the context of this ***chapter during the annual review and evaluation process***.

<ESMA\_QUESTION\_TS\_CSDR\_28>

##### What are your views on the proposed draft RTS on CSD investment policy (Chapter VII of Annex III)?

<ESMA\_QUESTION\_TS\_CSDR\_29>

**Article 34 – Highly liquid financial instruments with minimal market and credit risk**

**Paragraph 2** – We appreciate ESMA’s proposal that CSDs maybe allowed to use derivatives to hedge currency risk. However, we would recommend an extension of the scope of these provisions to include the possible use of derivatives to hedge against negative interest rates applied on deposits or currency risks related to payments made to CSDs in different currencies.

**Paragraph 3** – We disagree with the proposal to consult the user committee before the management body shall approve the use of derivatives contracts. This competence is neither recognised nor in line with the function of this committee envisaged by Level 1 text. Indeed, the use of derivative contracts has no impact on CSDs participant operations with reference to the service provided so any mandatory advice of user committee on this matter would be unjustifiable.

Therefore, we suggest the following amendments to Article 34:

[…]

(2) Derivative contracts can also be considered highly liquid financial investments, bearing minimal credit and market risk if they are entered into for the purpose of hedging currency risk ***~~arising from the settlement in more than one currency in the securities settlement system operated by the CSD~~***.

[…]

4. The CSD’s policy for the use of derivative contracts shall be approved by the management body ***~~after having consulted the user committee~~***.

<ESMA\_QUESTION\_TS\_CSDR\_29>

##### What are your views on the proposed draft RTS on access (Chapters I-III of Annex IV) and draft ITS on access (Annex VIII)?

<ESMA\_QUESTION\_TS\_CSDR\_30>

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##### What are your views on the proposed draft RTS on CSD links as included in Chapter IV of Annex IV?

<ESMA\_QUESTION\_TS\_CSDR\_31>

**Article 4 – Conditions for "adequate protection" of linked CSDs and of their participant**

We suggest ESMA to recalibrate its approach on the following conditions.

**Letter b)** – The entry in to force of the CSD-R will establish a common regulatory framework for all European CSDs. This will ensure full harmonisation of most legal, financial and operational requirements among CSDs which would be assessed by competent authorities on an on-going basis and that would not require CSDs an ad hoc assessment during the process of setting up al link. Hence we expect that the scope and the content of the link assessment which are currently undertaken by the CSDs in absence of common requirements would be simplified. and we recommend RTS to be consistent with this approach. In relation to CSDs authorised or recognised under the CSDR, the analysis requested to CSDs is an overlapping exercise with respect to the overall compliance assessment that competent authorities. This exercise could also bring risk that the result of such analysis conflict with the evaluation of the relevant competent Authority. Hence we recommend to remove this condition.

**Letter d)** – We recommend amending this conditions to clarify that the limit disclosure requirement is related to operational conditions of the link that are relevant for CSDs participant to assess operational, legal risk and financial risk.

**Letter e)** – We strongly disagree with the condition listed under article 4(1)(e) whereby the CSD “*shall ensure that the securities maintained in the securities settlement system operated by the receiving CSDs benefit from a level of asset protection that has comparable effects to the one ensured by the regime applicable in the case of securities settlement system operated by the requesting CSD.”* and ESMA’s assumptions referred to in paragraph 305 of the Consultation Paper. This provision could endanger the continuity of many links maintained by EU CSDs (as requesting party) with non-EU CSDs (as receiving party) simply because the applicable legal regimes in the non-EU jurisdictions might not qualify as having “comparable effects”. In this regard we fully recognise the need for due diligence to be undertaken by the requesting CSD in order to verify the applicable asset protection regime, but this assessment should not go too far as “ensuring comparability of effects” of different legal frameworks. Hence we strongly recommend that ESMA removes this wording.

In light of the above, we propose the following amendments to Article 4(1).

**Article 4**

**Conditions for the adequate protection of linked CSDs and of their participants**

1. A CSD link shall be established and maintained under the following conditions:

[…]

~~(b) The requesting CSD shall conduct an analysis of the receiving CSD’s financial soundness, governance arrangements, processing capacity, operational reliability and any reliance on a critical service provider.~~

(d) The requesting CSD shall make the ***operational*** ~~terms and~~ conditions of the link arrangement available to its participants to enable the participants to assess and manage the risks involved.

(e) Before the establishment of a link with a third country CSD, the requesting CSD shall perform an initial verification of the local legislation applicable to the receiving CSD. In performing such a verification, the CSD shall ensure that the securities maintained in the securities settlement system operated by the receiving CSD benefit from a legally sound level of asset protection*~~that has comparable effects to the one ensured by the regime applicable in the case of the securities settlement system operated by the requesting CSD.~~* The requesting CSD shall require legal opinions addressing at least the following issues:

(i) the entitlement to the securities, including the law applicable to proprietary aspects, nature of the rights on the securities, permissibility of an attachment or freeze of the securities; and

(ii) the impact of insolvency proceedings on at least segregation, settlement finality, procedures and deadlines to claim the securities.

<ESMA\_QUESTION\_TS\_CSDR\_31>

##### What are your views on the proposed draft RTS on internalised settlement (Annex V) and draft ITS on internalised settlement (Annex IX)?

<ESMA\_QUESTION\_TS\_CSDR\_32>

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