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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.

***Data protection***

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

# General information about respondent

|  |  |
| --- | --- |
| Are you representing an association? | Yes |
| Activity: | Other |
| Country/Region | Italy |

##### 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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

We are largely positive on the proposed standard but would like to raise the following comments.

As clearly stated in the Consultation paper, the “transaction type” field is mandatory in the T2S messages but it is not a mandatory matching field. Although we do acknowledge that a proper use of this field may be useful for the purpose of the settlement discipline, today there is no international standard and market participants will be required to adapt their systems to manage an additional matching field with the timing and costs that this entails.

Further, the implementation of the “transaction type” field will not necessarily allow to identify the different types of trades with the aim, for instance, to exclude some of them from the application of the penalties of fails (e.g. short term repos). In case of CCP-guaranteed trades, in fact, only one net balance is generated and submitted to the settlement system for each financial instrument and settlement date regardless of the underlying trades (outright cash trades, short and long term repos, etc.). Before making any change to this post-trade workflow a more detailed analysis of the implications in terms of risk management and settlement efficiency will be necessary.

For the responsibility profile of the settlement agent, please refer to our answer to question 11.

<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>

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##### 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>

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<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>

As general comment, the buy-in rules should be consistent and coherent with the other rules for handing corporate actions on pending trades (i.e. buyer protection) that are currently being defined and that will be applied as of the transition to T2S.More precisely we need to raise ESMA’s attention on the need to stop the buy in settlement on the day of the buyer protection deadline so that the buyer can at least benefit of the buyer protection opportunity. This result has to consider the possibility to cancel the instruction of the buy in settlement on buyer protection deadline.

With regard to the application of partial settlement at the end of the extension period, we fully support the principle when the agent banks’ clients settle through a segregated account at the CSD. This is made possible by T2S, which allows automatic partial settlement unless trade counterparties opt-out.

However, when settlement takes place on an omnibus account and based on the current design of T2S, participants cannot rely on T2S to apply automatically partial settlement as any trade released for settlement is likely to result in “stock poaching” (i.e. assets belonging to one or more clients of the agent are used to settle a trade of another client).

On the basis of the above, the delivering party must be given the possibility to agree the partial with the receiving party on a bilateral basis and through a well-defined procedure. If the receiving entity refuses or does not do what is necessary to accept the partial, the delivering party will have to be penalised and/or bought-in only for the missing quantity of stock (e.g. failing delivery of 100, available position of 80, partial settlement of 80 refused by the receiving party --> the buy-in should be activated only for 20).

For the responsibility profile of the settlement agent, please refer to our answer to question 11.)<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>

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##### 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>

As clearly stated in the Consultation paper, the “transaction type” field is mandatory in the T2S messages but it is not a mandatory matching field. Although we do acknowledge that a proper use of this field may be useful for the purpose of the settlement discipline, today there is no international standard and market participants will be required to adapt their systems to manage an additional matching field with the timing and costs that this entails.

Further, the implementation of the “transaction type” field will not necessarily allow to identify the different types of trades with the aim, for instance, to exclude some of them from the application of the penalties of fails (e.g. short term repos). In case of CCP-guaranteed trades, in fact, only one net balance for each financial instrument and trade/settlement date regardless of the underlying trades. Before making any change to this post-trade workflow a more detailed analysis of the implications in terms of risk management and settlement efficiency will be necessary.

With regard to trades that are exempt from the buy-in, “open” loans or repo should be included in this category as the settlement date of the return leg of the trade is unknown when the trade is executed.

For the responsibility profile of the settlement agent, please refer to our answer to question 11.

<ESMA\_QUESTION\_TS\_CSDR\_9>

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

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##### 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>

A fundamental point for agent banks is to clarify their role and responsibilities with respect to penalties on fails and buy-in. We do acknowledge that the agent banks are the CSDs' contracting parties and consequently can be easily identified. Nonetheless, when it comes to attributing responsibilities for settlement fails and buy-ins, the CSD members cannot be held liable for fails generated by their clients.

This is relevant also when it comes to the identification of the 10 participants that fail to deliver on a "relevant and systematic" basis and the potential subsequent actions. Indeed, it seems that the authorities may decide to suspend a settlement participant that fails to deliver on a "relevant and systematic" basis.

Although the consultation paper mentions that the authorities will consult with the impacted settlement participant on a bilateral basis before taking any action and they should acknowledge that the settlement agent is not the ultimate responsible entity for the fails, CSDR attributes the responsibility to the settlement agent (failing participant).

Settlement agents, as defined in the Directive 98/26/EC, do not cause settlement fails and do not have any responsibility to fulfil the contractual trading obligations on behalf of their clients. Hence, they can facilitate the authorities to identify the ultimate entity that cause the fail and that should be penalized and/or bought-in. In no case, though, agent banks have to be the ultimate target of penalties or sanctions for fails caused by the missing provision of securities and/or cash of their clients.

Also, in case of default of a client of the settlement agent, the buy-in must not be activated on the defaulted client that failed to deliver. If the buy-in is on-going at the moment of default, the settlement agent must not be responsible for the settlement of the buy-in and should not bear any cost and risk.

The possibility that “hybrid” models fostered by T2S are adopted needs to be taken into account for the identification of the failing party. For instance, when a trading participant uses an agent only to settle the securities leg of its trades and settles the cash leg on its own cash account, the agent should not be deemed liable for fails due to lack of cash and should not be subject to penalties or any other sanction.

Furthermore, it is important to remember that CSDR Art 2.1(19) contains a definition of “participant” in line with the provisions of the Settlement Finality Directive (SFD): “(19) ‘participant’ means any participant, as defined in point (f) of Article 2 of Directive 98/26/EC in a securities settlement system”. The SFD provides for the possibility to consider “indirect participants” as equal to “participants”. The option of recognizing indirect participants as “participants” of a settlement system has been used by various EU Member States (e.g. Portugal and Luxembourg, partly also in Italy) but not by all. For these markets, it is reasonable to expect that the relevant actors (CSDs, CCPs and trading venues) should be able to define mechanisms for the application of the settlement discipline measures of CSDR Art. 7 also to these indirect participants: in particular, these mechanisms should appropriately define the settlement fail as being the ultimate responsibility of the indirect participant that originates the settlement instruction(s) and that does not provide to its appointed settlement agent the appropriate resources (cash or securities as the case may be) which are necessary to complete the settlement. Considering the uneven formal use of the option contained in SFD Art 2(f) across the EU Member States, it seems logical and strongly advisable that ESMA should recommend a complete harmonization of the rules of all settlement systems in the EU in order to achieve a common definition of the indirect participant and a harmonized applicability of the settlement discipline enforcement mechanisms (penalties and buy-ins) also to indirect participants who are identifiable as participants to a settlement system. The key focus should be on ensuring that the (direct) participant of a settlement system does not automatically become a “guarantor” of the settlement performance of its clients who are recognized as indirect participants.

<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>

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##### 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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##### 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>

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##### 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>

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##### 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>

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

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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)?

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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>

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##### 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>

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

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##### 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>

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

<ESMA\_QUESTION\_TS\_CSDR\_29>

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##### 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>

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

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