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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? | No |
| Activity: | Central Securities Depository |
| Country/Region | Czech Republic |

##### 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>

We are not in the scope of art.2 of the draft RTS, which concerns measures to be taken by investment firms. However, we would like to point out that the fields required for the purpose of trade confirmations need to be consistent with the fields used in the further processing of the transaction.

<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>

We believe that the phrase “accounts opened in the name of the same participant” contained in art.3(2)(b) of the draft RTS is too narrow and should be replaced by “accounts managed by the same participant” in order to take into account the different ways in which beneficial owner accounts can be managed in CSDs.

In some CSDs, securities can be held in accounts belonging to end investors (clients of the CSD participant). The CSD participant responsible for managing these accounts can act as account operator (as mentioned under CSDR article 31) and/or it can act based on a Power of Attorney granted by the end investor. In the latter case, the securities accounts are not necessarily opened in the name of the CSD participant, but might be opened solely in the name of the end investor. This is currently not reflected in the draft RTS and must be addressed to avoid creating distortions in markets where this practice is established, well-recognised and even encouraged. Furthermore, the two exemptions set out in art.3(2) should not be considered exhaustive. Given the diversity of current market practices, more exemptions from mandatory matching will be necessary in a number of cases, including:

- in the context of corporate actions processing;

- for certain transfers effected as a result of complaints or corrections in the CSD’s registry;

- when instructions are processed as a result of a Court order (e.g. insolvency proceedings).

In order to allow for the necessary flexibility in relation to mandatory matching and to avoid any market distortions, we suggest giving CSDs the possibility to define further exemptions in addition to the cases mentioned in (a) and (b), subject to the approval of the competent authority.

<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>

We are convinced that Level 2 legislation should not mandate specific technical functionalities of CSD systems and thus believes that the draft RTS proposed by ESMA are unnecessarily prescriptive. We believe it should be up to each market to decide on the most effective and appropriate tools to prevent settlement fails, and that the objectives of the CSDR can be achieved without imposing a single technical design on all EU CSDs.

In case that this approach will not be accepted we would at least recommend to add additional thresholds. If the value of settlement fails does not exceed 10 billion EUR per year and the settlement fails rate is below 5 per cent at least 2 requirements under paragraphs 5 to 7 shall apply.

<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 the absence of a definition of “manual intervention” in art.3 of the draft RTS and in order to avoid legal uncertainty we would like ESMA to clarify the following points in relation to the reporting of manual interventions by CSDs:

- The notion of "manual intervention" is limited to the processing of settlement instructions and thus to the settlement service only, as stated in the first sentence of art.3(1);

- “Manual intervention” refers to direct interventions by the CSD only and excludes, for instance, manual interventions by CSD participants e.g. via a user interface;

- CSDs will only be expected to report manual interventions which are not foreseen in the CSD’s operating procedures. As a one-off exercise, we expect CSDs to initially 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 based on their impact on the smooth functioning of the SSS;

- In addition, if deemed necessary, CSDs could report periodically (e.g. semi-annually or annually) aggregate figures on the manual interventions having taken place in line with the CSD's operating procedures.

- Finally, reporting “without any delay” seems excessive given the lack of urgency in such cases. It would be more appropriate to require CSDs to report manual interventions “within a reasonable timeframe” to their competent authority.

In order to reflect these points better in the text, we recommend the following amendments to art.3(1) of the draft RTS:

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| *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~~******within a reasonable timeframe where such manual interventions are not foreseen in the CSD operating procedures****, covering at least: […]* |

We would like to reiterate our view that prescribing the use of standardised mandatory matching fields is not appropriate for binding Level 2 legislation and is not necessary to fulfil the Level 1 mandate granted to ESMA by the CSDR. Imposing mandatory matching fields by law will prevent flexible adaptations in the future and is unlikely to bring substantial benefits in terms of improving settlement efficiency. On the contrary, we believe that imposing mandatory matching fields by law could increase the number of settlement fails and create systemic risk. This is because the higher the number of mandatory matching fields, the more likely it becomes that two instructions do not match. Market practices take time to harmonise, and CSDs cannot guarantee that their participants will always "populate" mandatory matching fields in the correct way.

In order to avoid an adverse impact on settlement efficiency, which would clearly go against the very objective of the CSDR, we recommends an alternative approach whereby ESMA would define a list of harmonised matching fields, but would leave it up to each CSD to define which of these fields should be made mandatory for matching, and which fields remain optional matching fields.

Furthermore, ESMA should be aware that field (c) on ‘trade date’ is not currently used in most CSDs, especially for OTC transactions. We are not convinced that such a field will always be necessary, and believes that imposing it as a mandatory matching field would significantly increase the cost and complexity of CSDR implementation. We thus recommend removing it from art.3(3) of the draft RTS, knowing that CSDs can still make use of the field where this is appropriate.

We are convinced that Level 2 legislation should not mandate specific technical functionalities of CSD systems and that the draft RTS proposed by ESMA are thus unnecessarily prescriptive. CSDs believe it should be up to each market to decide on the most effective and appropriate tools to prevent settlement fails. The objectives of the CSDR can be achieved without imposing a single technical design to all EU CSDs.

If ESMA nevertheless decides to maintain art.3(5), (6) and (7) as proposed, we recommend amending art.3(6) to clarify that the obligation to recycle failed settlement instructions should only apply to instructions that have been matched and that a CSD should be allowed to foresee the cancellation of instructions after a certain time to avoid "indefinite" recycling for those instructions in financial instruments which are not subject to penalties for late settlement and buy-ins.

In the same spirit, we do not think that Level 2 technical standards should go as far as specifying the exact timing of this process, as proposed by ESMA in art.3(8) of the draft RTS. The practical modalities typically depend on the technical design of each CSD’s system and on participants’ preference based on the costs involved. The most important thing is to ensure that participants should have easy and timely access to such information.

As a result we think art.3(8) should be amended as follows:

*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*

*[…] 8. A CSD shall* ***offer its participants the possibility to be informed******~~inform its participants~~*** *about pending settlement instructions of counterparties* ***in a timely manner******~~at least within 1 hour after the first unsuccessful attempt to match the instructions and 1 hour from the beginning of the intended settlement date.~~***

<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>

Art.4(2)(b) of the draft RTS requires a CSD to identify the reasons for failed instructions. In addition to a lack of securities or a lack of cash, ESMA should be aware that there are other reasons for settlement fails, such as the linking of an instruction with the settlement of another instruction which is not yet settled, the sending of late instructions, or temporary restrictions for settlement with a certain ISIN code.

The current drafting of art.4(2)(b) would cause problems for us in case of fails due to a lack of cash, since we do not have access to information regarding the “missing amount” of cash in the cash accounts maintained by our participants. Similarly, in case of omnibus accounts we often do not have access to information on the missing part of securities on such account.

 Art.4(2)(b) should be redrafted to take these limitations into account.

We thus suggests the following amendments to art.4(2)(b):

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| *Article 4 - Details of the system monitoring settlement fails**[…] 2. A system monitoring settlement fails shall allow a CSD to identify:**[…] (b) the reason for* ***~~whether~~*** *the settlement fail* ***~~is due to a partial or total lack of securities or due to a lack of cash, and the missing amount of securities or cash,~~ based on information available to the CSD****.* |

As regards the “types of asset classes” defined in art.4(2)(d), we are concerned that these are not consistent with the categories used by ESMA to determine the applicable penalty rate in the draft technical advice and with the categories proposed in the context of the buy-in rules.

We suggest to amend art.4(2)(d) as follows:

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| *Article 4 - Details of the system monitoring settlement fails**[…] 2. A system monitoring settlement fails shall allow a CSD to identify:**[…]* ***~~(d) at least the following types of asset classes:~~******(d) the relevant ISO type of asset classes required for the purpose of compliance with requirements under article [penalty rates] and article [buy-in rules] of this Regulation.*** ***~~(i) transferable securities referred to in point (a) of Article 4(1)(44) of Directive 2014/65/EU;~~******~~(ii) transferable securities referred to in point (b) of Article 4(1)(44) of Directive 2014/65/EU issued by public authorities;~~******~~(iib) all other transferable securities referred to in point (b) of Article 4(1)(44) of Directive 2014/65/EU;~~******~~(iii) exchange-traded funds (ETFs);~~******~~(iv) units in collective investment undertakings, other than ETFs;~~******~~(v) money-market instruments;~~******~~(vi) emission allowances.~~*** |

We support art.6 of the draft RTS on the disclosure of settlement fail data to the public. However, regarding the template in Annex II, in order to be consistent with reporting templates sent to competent authorities, we believe that CSDs should report values in “EUR or equivalent”, i.e. in local currency rather than having to convert value amounts in EUR

<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>

As defined in art.7(10) of the Level 1 CSDR, settlement discipline measures will apply to all transactions in financial instruments that are admitted to trading (or traded) on a trading venue, or cleared by a CCP.

We would like to point out that we do not have access to the information required to assess if a particular financial instrument is admitted to trading to a MiFID trading venue (Regulated Market, MTF or OTF) and that giving CSDs access to a central and reliable source of information on which securities are "admitted to trading on a MiFID venue" (and not only a regulated market) will be indispensable for a proper implementation of the Level 2 standards on settlement discipline.

We thus call on ESMA to confirm whether it is in a position to develop and maintain a publicly available database of all financial instruments admitted to trading on a trading venue, so that CSDs can assess whether a given financial instrument falls under the scope of the CSDR penalty and/or buy-in provisions.

We do not believe that it is necessary for art.7(2) to distinguish between DvP and FoP instructions in order to achieve the objective of the article. In fact, determining the cut-off time as the relevant moment to calculate penalties for DvP instructions could be inappropriate in a number of circumstances. This would for instance be the case where, at the moment of the cut-off time, the reference price is not yet available as the trading venue is still open. In order to avoid any ambiguities and to keep the system as simple as possible, we therefore suggest referring to the end of the settlement day for both FoP and DvP instructions:

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| *Article 7 - The collection of cash penalties* *[…] 2. The penalty shall be calculated or applied on the failed settlement instructions* ***~~at the moment of the cut of time for DVP settlement instructions and~~*** *at the end of the settlement day* ***~~for FoP settlement instructions.~~*** |

We support art.8 of the draft RTS on the redistribution of cash penalties, but we would like ESMA to confirm our understanding as regards cases of non-payment or late payment of settlement penalties by CSD participants. Indeed, art.8(2) foresees that "The CSD shall redistribute the net amount to be received by each participant at least on a monthly basis, shortly after receiving payment of the penalty charged." We fully agree that CSDs should only redistribute monies they have actually collected, in order not to bear any financial risks. In cases where a participant does not pay late settlement penalties owed to the CSD at the end of the month (e.g. if a participant goes into default), we would like to clarify that, as per art.8 of the draft RTS, the CSD is entitled to delay the payment of the "redistributed" penalties to the suffering parties until such moment as the payment is received. Furthermore, in order not to unnecessarily delay the redistribution of penalty monies to all participants, we understand that CSDs may establish in their rules and procedures a mechanism to allocate the shortfall resulting from any outstanding penalty payment in a way that ensures that the CSD is not exposed to any credit risk from the penalty mechanism. The same is of course true for penalty monies that have been collected but cannot be redistributed by the CSD, e.g. as a result of the default of a participant.

We therefore suggest the following amendment to art.9(2) of the draft RTS:

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| *Article 9 - Application of the penalty mechanism when a CCP is involved as a participant**[…] 2. The CSD where the CCP is involved as a delivering participant shall provide to the CCP the calculation of the penalty to be charged for the receipt settlement instruction submitted by the CCP to the CSD that failed to settle. The CSD where the CCP is involved as a receiving participant shall provide to the CCP, the calculation of the penalty that it would have redistributed if the CCP would have been submitted to the penalty mechanism.* ***CSD and CCP shall coordinate closely to establish appropriate communication flows and procedures that allow the CSD to calculate and provide to the CCP the applicable penalty in each case where the CCP is involved as delivering or receiving participant.******Where feasible, a CCP shall be allowed to outsource all processes related to the operation of the penalty mechanism to the CSD to ensure efficiency of processing.*** |

As regards the notion of "dedicated cash account" in art.7(5), we believe that is not necessary to establish a separate cash account for the sole purpose of collecting and redistributing penalties from and to all their participants and an analytical separation would be sufficient.

<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>

Although the ESMA draft RTS do not require CSDs to execute buy-ins (and thus do not expose CSDs to principal risk in relation to buy-ins), they would impose totally new obligations on CSD, for instance:

(1) CSDs are expected to have access to detailed information on buy-ins, and to be able to identify buy-ins from other securities deliveries, which in most cases cannot be done today;

(2) CSDs are expected in some cases to appoint a buy-in agent, which is not a responsibility currently entrusted to CSDs;

(3) CSDs are also expected to perform “consistency tests” on the instructions they receive in order to prevent multiple buy-ins. Such tests are not currently performed today and we have serious doubts that they are even possible.

We are opposed to any involvement of CSDs in the buy-in process and believes that article 11 of the draft RTS should be redrafted in a way that reduces the CSD’s role in the buy-in process to a strict minimum and leaves responsibility for initiating and reporting buy-ins to the trading counterparties, in line with current practice.

we suggest the following amendments to art.11 of the draft RTS:

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| *Article 11 - Details of operation of the appropriate buy-in process* *[…] 3. The* ***~~CSD,~~*** *CCP****~~, trading venue~~*** *or the* ***~~receiving~~******buying trading counterparty******~~participant~~******in case of transactions not cleared by a CCP*** *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.* ***Once the buy-in has been executed,******s****ecurities shall be delivered to the receiving participant and the related settlement instruction shall be deemed executed.**4a.* ***In the case of transactions cleared by a CCP,******~~The CSD,~~*** *the 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;**(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.****4b. In the case of transactions not cleared by a CCP, the CSD 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 can be initiated the following business day;******b) on the last business day of the buy-in period at the latest, the CSD will send a notice of settlement or, in case no settlement has taken place, a notice of cancellation of the instruction as in that case a cash compensation has taken place.*** |

We disagree with the proposed wording of art.11(5) and believes that the obligation for CSDs to reserve relevant securities before partial settlement should be deleted. Not only is such "reservation" unnecessary, but it would also potentially create various problems for the CSD and its participants. Given that the financial instruments on the participant’s account are by definition not available if they are reserved by the CSD, partial settlement therefore cannot take place. Importantly, in the case of omnibus accounts, it is impossible for the CSD to know whether available securities are truly “available” from the perspective of the participant’s client. The “reservation” process described by ESMA would thus create a risks that investors holding securities in an omnibus account at a CSD would have their holdings reserved and used for the purpose of settling the failed instructions of other investors, creating a liability issue for the CSD and CSD participants managing such omnibus accounts.

CSDs are not aware of the originating trading parties behind the settlement instructions on their books, and CSD participants themselves often do not have knowledge of the whole transaction chain, so participants “in the middle” can only pass on the information down the transaction chain. As stated in the T2S AG response to the ESMA consultation, there should be an inverse flow process whereby the CSD first informs its participants of the failed settlement transactions. As a next step, CSD participants inform their own clients responsible for the failed instruction. On their part, trading parties shall inform the CSD of the status of the buy-in process, through the CSD participant (i.e. settlement agent).

We recommend deleting art.11(10). As an alternative, ESMA may want to consider replacing art.11(10) by a paragraph that describes the inverse information flow outlined above. Based on the information provided by the CSD, receiving participants themselves, in coordination with their clients, should be able, where possible, to take action in order to limit the number of buy-ins to be executed.

<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>

As regards the extension period applicable to illiquid securities under art.13 of the draft RTS, we would like ESMA to confirm that a central list of those instruments will be made available.

<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>

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<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>

We support the importance of allowing participants to calculate the cash compensation based on a pre-agreed price or a pre-agreed method to determine such price.

<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>

We think that the threshold proposed under art.16(1) of the draft RTS is too low and must be increased significantly to avoid unnecessary procedures against failing participants. In order to make sure that the notion of a “consistently and systematically failing participant” is meaningful, we suggest to raise the threshold to 25% below the average settlement efficiency rate for the SSS

<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>

We believe that CCPs already have access to the settlement information they need today via their participation in the CSD.

<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>

We recommend the deletion of art.19 of the draft RTS, we are not convince that the proposed article is necessary and we fear it might create legal uncertainty.

<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>

We strongly supports ESMA’s proposal to phase in the implementation of the settlement discipline rules under the CSDR by delaying the entry into force of the relevant technical standards. The proposed 18 month period could however still pose a risk to be ready for us and mainly for our participants, because they also have to change their interfaces and procedures. For example our participants need at least 12 months for the adjustments their interfaces and we would need more than 6 months for the final specification. We thus recommend an extension of the transition period from 18 to 24 months.

Also it is very important to keep in mind that the timing of the implementation of settlement discipline measures is closely linked to the implementation of record keeping requirements, as set out in the separate technical standards on CSD authorisation

<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>

We would like to recommend a few clarifications:

*Article 2 - Identification and legal status of a CSD*

*1. An application for authorisation of a CSD shall identify the applicant and the* ***services******~~activities~~*** *that it intends to carry out.*

*[…] 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* ***which are 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;*

*(o) the currency or currencies it processes, or intends to process* ***as part of the settlement service, irrespective of whether cash is settled on a central bank account, a CSD account, or an account at a designated credit institution;***

*Article 3 - Policies and procedures required under this Regulation*

*1. Where an applicant CSD is required to provide information regarding its policies or procedures under this Regulation, it shall ensure that the policies or procedures contain or are accompanied by each of the following items:*

*(a) an indication of the* ***~~persons~~******department(s)*** *responsible for the approval and maintenance of the policies and procedures;*

*(b) a description of how compliance with the policies and procedures will be ensured and monitored, and the* ***~~person~~department*** *responsible for compliance in that regard;*

*(c) a description of the* ***type of*** *measures to adopt in the event of a breach of policies and procedures.*

*[…]**2. An application for authorisation shall contain the procedure****s or a description of the procedures******in place******for employees to report internally actual or potential infringements of ~~for reporting to the competent authority any material breach of policies or procedures of a CSD, in particular when such infringement may result in a breach of the conditions for initial authorisation, as well as in any infringement of~~*** *Regulation (EU) No 909/2014 in accordance with Article 65 of Regulation (EU) No 909/2014.*

Indeed, we believe that identifying a department or departments is more appropriate than identifying a single person in the context of article 3(1)(a) and (b) given the way CSDs operate. Relying on a department would in particular guarantee some continuity in case of changes in the staff of the CSD.

Art.5(1)(a) and (b) of the draft RTS include a reference to specific accounting standards and financial reporting standards to which not all CSDs are subject today. Given that there is no mention of these accounting and financial reporting standards in the Level 1 CSD Regulation, and in the absence of a mandate for ESMA to harmonise CSD accounting standards, we believe that the draft RTS should not impose additional requirements on CSDs, especially as the CSDR requirements can be fulfilled by relying on existing accounting and financial reporting standards used by CSDs (and agreed with competent authorities).

As regards art.5(1)(d) of the draft RTS, we are not convinced that the requirement for CSDs to include a business plan in their application for authorisation is necessary in the case of already established CSDs. We believe that contemplating different business scenarios for CSD services over a 3-year period makes sense for newly established CSDs, but that it is unlikely to provide any important new elements to competent authorities already aware of the business plans of existing CSDs under their supervision.

The draft RTS provides helpful guidance on the structure and contents of the recovery plan that CSDs must submit to their competent authority. However, art.5(5)(b) also requests the submission by the CSD of "the resolution plan established and maintained by the CSD". We think that the current formulation in the draft RTS is misleading and should be amended.

Indeed, unlike recovery plans, which are drafted and maintained by CSDs, resolution plans are the responsibility of public authorities, as acknowledged by CSDR article 22, CPMI-IOSCO Principles for financial market infrastructures (PFMI) and the FSB Key Attributes . Asking us to provide its resolution plan to the competent authority goes against the principle that the resolution plan is to be drafted and maintained by the resolution authority, not the CSD. It also assumes that CSDs have access to their own resolution plan, which might not always be the case, given that there is no obligation for a resolution authority to communicate its resolution plan to a CSD (including when the plan is updated). In fact, some authorities might even find it is undesirable for a CSD to have access to its resolution plan. The current approach for the recovery and resolution of financial institutions is that it is the competent authority's duty to verify and provide all available information relevant for resolution planning to the resolution authority - where the authorities are different institutions - and the financial institution on the other hand has a duty to cooperate and provide information “directly or indirectly through the competent authority”, as stated for instance in article 11 of the BRRD (Directive 2014/59/EU).

A better way to ensure that the competent authority of the CSD has a copy of the CSD's resolution plan is thus to (a) require CSDs to provide the competent authority with all the information necessary for the resolution authority to draw up or update the resolution plan, and (b) to require the resolution authority to provide the resolution plan to the competent authority of the CSD, when the resolution authority is different from the competent authority.

We recommend deleting point (b) from art.8(1) of the draft RTS given that risk management procedures not part of "corporate governance" and rather relate to other (prudential) requirements under the CSDR:

*Article 8 - Corporate governance*

*1. An application for authorisation of a CSD shall contain in accordance with Article 26 of Regulation (EU) No 909/2014 and the respective RTS:*

*[No changes to (a)]*

*[…]* ***~~(b) the processes to identify, manage, monitor and report the risks to which the applicant CSD is or might be exposed.~~***

We agree with the spirit of article 11 on conflicts of interests but we believe that the draft standards should be amended to provide more clarity and thus we suggest amending art.11 of the draft RTS as follows:

*Article 11 - Management of conflicts of interest*

*1. […]*

*(a) policies and procedures with respect to the identification, management and disclosure* ***to the competent authority*** *of conflicts of interest and a description of the process used to ensure that the relevant persons are aware of the policies and procedures;*

*[no changes to (b)]*

*(c) resolution procedures whenever* ***~~possible~~*** *conflicts of interest occur; […]*

*2. Where the applicant CSD is part of a group, the register referred to in point (d) (ii) of paragraph 1 shall include any material conflicts of interest arising from other undertakings within the group* ***in relation to CSD activities*** *and the arrangements made to manage these conflicts.*

Under article 34 of the CSD Regulation, CSDs are required to "publicly disclose the prices and fees associated with the core services listed in Section A of the Annex". As regards ancillary services, CSDs are only required to disclose to the competent authority "the cost and revenue of the ancillary services provided as a whole". The different treatment of core and ancillary services under article 34 is the result of a political agreement of the EU legislator, and aims to avoid competitive distortions, since other market actors than CSDs can and do provide services listed in Section B or C of the Annex, without being subject to such transparency requirements.

We thus recommend that article 18 of the draft Regulatory Technical Standards should be amended as follows, to ensure full alignment with the Level 1 Regulation:

*Article 18 - Transparency*

*1. An application for authorisation of a CSD shall contain relevant documents regarding pricing policy, including any existing discounts and rebates and conditions to benefit from such reductions for each core* ***~~and ancillary~~*** *service****~~s~~*** *that are to be disclosed in accordance with Article 34 of Regulation (EU) No 909/2014.*

*2. The applicant CSD shall provide the competent authority with a description of methods used in order to make the information available for clients and prospective clients, including a copy of the fee structure and the evidence that the CSD services are unbundled.*

***3. The applicant CSD shall also provide the******competent authority with information on the cost and revenue of ancillary services provided by the CSD, taken as a whole.****"*

We strongly believe that article 20 on the “book entry form” should be deleted from the draft RTS as the Level 1 text of the CSD Regulation (article 3) does not impose any obligations on CSDs (only on issuers). It is actually impossible for CSDs themselves to enforce the book entry requirement, as suggested by the draft RTS, and article 4 of the CSDR further recognises this by clearly stipulating that regulators (issuers’ regulators, trading venues’ regulators, and regulators in charge of applying the Financial Collateral Directive), not CSDs, are responsible for enforcing the book entry requirement.

Given the proposed "phase-in" for settlement discipline, art.21 of the draft RTS must be amended to make it clear that CSDs will only be required to provide information on compliance with the settlement discipline provisions of the CSDR once these provisions have truly entered into effect.

Art.21(b) also needs to be amended to reflect the fact that article 6(2) of the CSDR does not apply to CSDs, unlike article 6(3) and (4).

We disagree with the proposed title of article 27 of the draft RTS on “portability”. We recognise the need for the draft RTS to further specify article 20(5) of the CSD Regulation, but we think it is important to understand that the “transfer of the assets of clients and participants to another CSD in the event of a withdrawal of authorisation” is not a synonym for portability. In fact, the term “portability” was deliberately not included in the Level 1 text of the CSD Regulation in recognition of the differences between CSDs and CCPs, in line with global standards. Indeed, we would like to remind ESMA that Principle 14 of the PFMI on portability applies exclusively to CCPs, and deliberately so. Besides, whereas EMIR includes an article on portability (article 39) in its Level 1 text, there is no mention of the term “portability” in the Level 1 text of the CSD Regulation. This is because the transfer of the positions of clearing members among competing CCPs presents specific challenges, which are different from those faced in the settlement context. We thus strongly believe that the term “portability” should not be introduced in the CSD Level 2 standards, as it would create potential inconsistencies with the Level 1 CSDR and global standards, without bringing any benefits. We believe that the aims of article 27 of the draft RTS can be achieved by simply referring the “transfer of participants and clients’ assets”, in line with the Level 1 terminology.

Assessing all potential sources of risks in the context of CSD links is not realistic and CSDs should be required to assess all material sources of risk.

We thus recommend amending art.34(1)(a) as follows:

*Article 34 - CSD Links*

*1. Where the applicant CSD has established or intends to establish a link, the application for authorisation shall contain the following information:*

*(a) procedures regarding the identification, assessment, monitoring and management of all* ***material******~~potential~~*** *sources of risk for the applicant CSD and for its participants arising from the link arrangement, including an assessment of the* ***relevant*** *insolvency law* ***~~applicable~~****, and the appropriate measures put in place to mitigate them; […]*

<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>

We are sure that requiring CSDs to provide a self-assessment against the CSDR requirements as part of the annual review, as suggested by art.38(1) of the draft RTS, would be very burdensome and disproportionate given that no such requirement is placed on other regulated entities such as CCPs, banks or investment firms.

We recommend adding “where relevant” at the end of the first sentence of article 41 of the draft RTS in order to give more flexibility to competent authorities as regards the list of documents they truly need in relation to periodic events.

As regards art.41(1)(e) and (f), we believe that it is not realistic to expect CSDs to provide information about "potential" litigation and that the draft RTS should be limited to actual litigation procedures.

<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)?

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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>

We agree with the proposed approach regarding the determination of the most relevant currencies, but we would recommend higher threshold (10 %), because in case of small CS the total value of 5 % will not be significant.

<ESMA\_QUESTION\_TS\_CSDR\_19>

##### 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>

We welcome article 3 of the draft RTS which recognises that the functions of Chief Risk Officer, Compliance Officer and Chief Technology Officer can be performed by a member of staff having other responsibilities as well, as long as potential conflicts of interest are managed appropriately. We believe that this approach is proportionate and will allow CSDs to ensure that these key functions are performed by qualified individuals in an optimal way.

However, as regards art.3(4), we are not convinced that imposing that the functions of Chief Compliance Officer and Chief Risk Officer be performed by different individuals is necessary. Although this will be the case in many firms, there are compelling reasons for CSDs to decide to “merge” both functions into one individual. Indeed, non-compliance is perceived as a major source of risk for today’s financial institutions, and there are important synergies between the risk management function and the compliance function. These synergies have been discussed and described in various press articles and reports in recent years, with many experts expressing the view that compliance should be an integral part of risk management, and that the functions would thus benefit from being combined into a single individual.

We support the spirit of art.4(1) of the draft RTS and recognises the need for CSDs assess the risks that their participants, as well as their participants' clients, pose to the CSD, in line with Principle 19 of the PFMI. That said, ESMA should keep in mind that CSDs do not incur risks from the clients of their participants and have no way of exercising any control over these clients, including in direct holding markets. We do not think that a legally binding text should 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 art.4(1).

Similarly, we are concerned that the current wording of art.4(2) would make CSDs legally responsible for assessing the risks they pose to other entities. Introducing such a requirement in Level 2 legislation would impose duties on CSDs without ensuring that they can access the required information to fulfil those duties, and is thus problematic. We thus suggest restricting the legal requirement to those risks to which the CSD itself is exposed.

As for art.4(9), we believe that the requirement to share "rules, procedures and contractual arrangements" with participants and even participants' clients is excessive and will give rise to a whole set of data protection and competitive concerns. Participants' contractual documentation should include all the information on the rights and obligation of participation in the CSD, and so there is no need for this additional requirement. As for clients of our participants, they only have a contractual relationship with a participant. Requiring a CSD to share the details of a contractual arrangement it has with a participant to that participant's client would very likely create competition concerns and violate contractual commitments and data protection rules.

As regards art.8(8), we do not believe that technical standards should include a requirement for CSDs to provide direct data feeds to their competent authority upon request. A direct data feed is not necessary to demonstrate that a CSD's compliance with the CSDR and it entails considerable costs, while potentially raising confidentiality issues in relation to participants' activity in the CSD. Given that competent authorities can obtain information promptly from the CSD upon request, we suggest deleting art.8(8).

<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>

We believe that the draft RTS on recordkeeping cannot realistically be implemented by the time CSDs obtain their authorisation, i.e. towards the end of 2016. This is especially due to the transaction and status codes being proposed by ESMA. As a result, and given that many records are related to compliance with the settlement discipline rules of the CSD Regulation, we recommend that the timeline for implementing the draft technical standards on recordkeeping be aligned with the timeline for implementing the draft technical standards on settlement discipline. In other words, compliance with both sets of requirements should only be enforced after a transition period of at least 24 months following publication of the relevant technical standards.

Furthermore, CSDs should not be required to apply CSDR record keeping requirements retroactively.

<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>

Given the existing diversity in CSD business models and the fact that many CSDs will offer services which are not explicitly listed in Section B of the Annex of the CSDR, we believe that the list of records to be kept by each CSD authorised to operate in the EU should be agreed with the competent authority, using the Annex of the draft RTS as a basis, but allowing for the list of records to be customised based on the specific types of services provided by the CSD.

<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>

Given that reconciliation via CSD links is covered separately under article 48(6) of the CSDR and under the draft RTS on access and links, we recommend using the term “centrally maintained” in article 14(1), for consistency purposes.

Although most reconciliation issues can be expected to be solved before the start of the next business day, in rare cases investigations might take more time and, in such a scenario, the damage caused by the suspension of the settlement in a whole securities issue (in terms of fails, loss of market confidence, reputational damage for the issuer…) could be greater that than resulting uncertainty from letting the reconciliation issue unsolved for a few days.

A suspension of settlement could have the following systemic consequences, for instance:

- a CCP does not receive the relevant security as collateral;

- a bank using the security to receive central bank liquidity does not have access to the liquidity when required;

- trading in the securities continues whereby settlement obligations build up;

- settlement fails generate settlement penalties and a buy-in is executed;

- reputational risk for the issuer.

Besides, ESMA should be aware that suspending settlement in a financial instrument is likely to have consequences beyond the CSD and up to the trading level.

We thus suggest a reformulation of article 17(2) as follows:

Although most reconciliation issues can be expected to be solved before the start of the next business day, in rare cases investigations might take more time and, in such a scenario, the damage caused by the suspension of the settlement in a whole securities issue (in terms of fails, loss of market confidence, reputational damage for the issuer…) could be greater that than resulting uncertainty from letting the reconciliation issue unsolved for a few days.

A suspension of settlement could have the following systemic consequences, for instance:

* a CCP does not receive the relevant security as collateral;
* a bank using the security to receive central bank liquidity does not have access to the liquidity when required;
* trading in the securities continues whereby settlement obligations build up;
* settlement fails generate settlement penalties and a buy-in is executed;
* reputational risk for the issuer.

Besides, ESMA should be aware that suspending settlement in a financial instrument is likely to have consequences beyond the CSD and up to the trading level.

We thus suggest a reformulation of article 17(2) as follows:

*Article 17 - Problems related to reconciliation*

*[…]* ***2.*** *Where the reconciliation process reveals an undue creation or deletion of securities, the CSD* ***~~shall~~ may*** *suspend the securities issue for settlement until the undue creation or deletion of securities has been remedied.*

*In the event of suspension of the settlement referred to in the first subparagraph, the CSD shall inform without undue delay its participants and its competent authority and relevant authorities.*

<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>

We are concerned that article 16 of the draft RTS will be impossible to implement unless its scope if adjusted. Indeed, the current drafting of the article covers different scenarios which are fundamentally different and must be distinguished.

These scenarios are:

- Scenario 1: The CSD provides notary services for the securities, meaning that securities are initially entered into the CSD in book-entry form.

- Scenario 2: The CSD provides central maintenance services for the securities, but not the notary service. As per article 3 of the CSDR, securities have to be recorded in book-entry form in a CSD where those securities are traded on a trading venue (article 3 does not require the “initial” recording or notary function to take place in a CSD). In this case, the notary service is performed by another entity but there is a “close relationship” with the CSD. In general, there is a one-to-one relationship between the CSD and the provider of notary services (except for eurobonds, with a two-to-one relationship between the 2 ICSDs and the common depositary).

- Scenario 3: The CSD holds securities through a CSD link.

- Scenario 4: The CSD is a mere intermediary: it does not provide central maintenance or notary services for this instrument, and it does not hold the securities via a CSD link. This scenario is typical for certain international funds kept by transfer agents.

Understanding the different implications of each scenarios is very important, and we believe that only scenario 2 should fall under the scope of article 16, both for legal and practical reasons.

Scenario 1 allows for “internal reconciliation” within the CSD between the total number of securities on the issuance account and the total number of securities on participants’ accounts. No “other entities” being involved, article 16 of the draft RTS does not need to apply.

Scenario 2, like Scenario 1, is covered under article 37 of the CSDR. However, because the notary service is not provided by the CSD but by an external party, article 16 of the draft RTS applies. Reconciliation requires comparing the total number of securities on the issuance account at the external provider of notary service and the total number of securities held on participants’ accounts at the CSD.

Scenario 3, on the other hand, is covered by article 48, and is thus elaborated further in the draft RTS on access and links (article 6). Covering this scenario under the draft RTS on reconciliation measures would create unnecessarily overlaps between different technical standards and would not follow the mandates under Level 1.

Scenario 4, finally, is not covered by the Level 1 text of the CSD Regulation, since the EU legislator deliberately decided not to include fund transfer agents in the scope of the CSDR requirements.

Including scenario 4 (and 3) in the draft RTS is thus inconsistent and, most importantly, it would not be feasible because:

- Unlike in scenarios 1 and 2, in scenario 4 (and 3), the CSD is not involved in the verification of the integrity of the issue; the CSD “reconciles” with the external notary as any other intermediary;

- Such reconciliation might be less frequent than daily, depending on the service level offered by the entity that provides notary services. CSDs have no authority to “impose” daily reconciliation on these entities, which are not subject to the CSDR requirements;

- Unlike in scenarios 1 and 2, a reconciliation difference at a CSD in scenario 4 (and 3) would not compromise the integrity of issue;

- Unlike in scenarios 1 and 2, in scenario 4 (and 3) the CSD (investor CSD in scenario 3) is not empowered to initiate a suspension of settlement in case of reconciliation problems.

We thus believe that article 16 should be amended as follows:

*Article 16 - Other entities involved in the reconciliation process*

*1. Where other entities are involved in the reconciliation process for a certain securities issue within the meaning of Article 37(2) of Regulation (EU) No 909/2014* ***and where the CSD provides the central maintenance service for that issue****, the measures to be taken by the CSD and those other entities to ensure the integrity of the issue shall include at least: […]*

<ESMA\_QUESTION\_TS\_CSDR\_26>

##### 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>

We think that art.16(5) of the draft RTS could cause severe difficulties for CSDs operating in direct holding markets. Indeed, it will often not be technically possible for those CSDs to provide information to “other holders of securities accounts” on a daily basis given the lack of direct communication channel and the fact such information is typically provided to account holders by account operators.

Furthermore, we do not think that it is necessarily practical for account operators to provide daily reconciliation information to account holders.

In order to ensure an equal treatment of CSDs operating in direct and indirect holding markets, we recommend deleting the following amendments to art.16(5):

*Article 16 - Other entities involved in the reconciliation process*

*[…] 5. The participants* ***~~and other holders of securities accounts maintained by~~******of*** *a CSD shall be entitled to receive at least the following information specified for each securities account and for each securities issue on a daily basis:*

*[…]* ***~~Where applicable, a CSD shall require the account operators to provide the information referred to in the first subparagraph to the holders of securities accounts maintained by the CSD.~~***

<ESMA\_QUESTION\_TS\_CSDR\_27>

##### 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>

We believe that it is important to restrict the scope of art.20 to critical service providers on which CSDs rely for the continuous operation of core services. CSDs should indeed be expected to identify those utilities and service providers towards which the CSD has a “critical” dependence, i.e. providers that perform, on a continuing basis, activities essential to the operation of CSD core services. Such providers might include for instance information technology or standard messaging providers whose services are critical for the processing and settlement of instructions and the failure of which might impair a CSD’s ability to meet regulatory requirements on the continued provision of a core service.

We thus recommend amending art.20 of the draft RTS as follows:

*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*** *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*** *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* ***critical*** *utilities and service providers and take measures to ensure that authorities may obtain information about the performance of such* ***critical*** *providers, either directly or through the CSD.*

We believe that annual IT audits are only appropriate for the core IT systems linked to the provision of core services by a CSD

We do not understand why the timeframe for disaster recovery should be fundamentally different in the case of a cyber-attack than in the case of a terrorist attack or a pandemic situation, for instance.

We thus suggests amending art.30(2) as follows:

*Article 30 - Business Continuity and Disaster Recovery plans*

*[…] 2. The requirement under point c) of paragraph 1 shall not apply in the case of* ***~~cyber-attacks~~******exceptionally severe events.***

*In* ***such cases******~~the case of a cyber-attack~~****, a CSD shall assess the nature of the problem and shall determine an appropriate recovery time for the CSD’s critical functions in order to minimise the damage caused by the adversarial actions.*

*The CSD’s critical functions shall be resumed within maximum 12 hours, unless this would jeopardize the integrity of the securities issues or the confidentiality of the data maintained by the CSD.*

<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>

<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>

We disagree with article 4(1)(f) and do not understand why ESMA wishes to prevent DvP links in commercial bank money, given that DvP links are on the contrary strongly encouraged by the CSDR. Today, many domestic CSDs operating without a banking licence maintain DvP links with the ICSDs, for instance, and we are not aware that such links are a cause of concern for regulators. In fact, the current practice at some (I)CSDs with a banking licence is to require participants, including CSDs acting in capacity as investor CSDs, to open a cash account in addition to a securities account at the (I)CSD in order to allow for commercial bank money settlement (e.g. when this is the only option), The current wording of article 4(1)(f) would de facto restrict all links to ICSDs and CSDs with a banking licence to FoP links, removing all the efficiencies related to DvP settlement in foreign currencies.

<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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