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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 | Norway |

##### 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>

VPS refers to the response of ECSDA, which we fully support.

<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>

VPS refers to the response of ECSDA, which we fully support. We refer particularly to ECSDAs comments regarding exception b) that needs to be modified to work in direct holding markets. 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. Not exempting such account allocations from mandatory matching would create major practical problems, since compulsory matching is practically not feasible (Participant B would have to match “with himself”). As a result, we strongly recommend that the exemption from compulsory matching for FoP instructions contained in art.3(2)(b) to be extended to all FoP transfers between *accounts managed by the same participant,* irrespective of the name in which the securities accounts were opened.

VPS also strongly support the proposal in ECSDA’s response to give CSDs the option to define further exemptions in addition to the cases mentioned in (a) and (b), subject to the approval of the competent authority.

In addition to comments raised by ESMA, VPS would like to address the proposal in article 3.2 of the proposed RTS. According to the proposal, the CSDs shall require that CCPs send already matched settlement instructions into the settlement system operated by a CSD. VPS would like to point out that there are currently at least two models for settlement instructions for CCP transactions used in the EU. One is in line with the proposed rule (i.e. that the CCP has power of attorney to make instructions on its members’ CSD accounts, and may therefore send matched settlement instructions directly to the CSD). The other one, however, is that the settlement instructions are sent to the CSD by the CCP members via the chain of intermediaries (if any), based on information provided by the CCP, and matched in the CSD against the corresponding settlement instructions sent by the CCP. The choice between the two models is dependent on, among other things, the type of market and the infrastructure of the relevant market, and also whether the transaction is cross-CSD and/or cross-CCP. We are of the opinion that EU should not favour one model over the other one, as both are being used and are acceptable. Further, no arguments are put forward that motivate mandating only one of these models. In particular, it has not been shown that late settlement of CCP transactions are at all related to late matching of these. In our view, there is clearly no case for making one of the two models mandatory.

<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>

VPS refers to the response of ECSDA, which we fully support. <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>

VPS refers to the response of ECSDA, which we fully support.

In particular, VPS would prefer that Level 2 legislation should not mandate specific technical functionalities of CSD systems. The draft ESMA technical standards are in some instances too prescriptive, without this being necessary to achieve the objectives of the CSDR. For instance, this is the case for standards mandating the type of matching fields that should be compulsory in settlement instruments, the technical functionalities that CSDs should have in place to prevent settlement fails (e.g. partial settlement, hold/ release mechanism), the number and duration of settlement batches CSDs should have at a minimum, or the technical solutions used to inform CSD participants of pending settlement instructions. In many such instances, VPS believes that a high level of settlement efficiency can better be achieved by allowing CSDs themselves to decide on the most appropriate tools and technical solutions, based on the specific characteristics of the market in which it operates.

As regards certain matching fields and in particular the identification of “transaction types”, VPS fears that ESMA underestimates the importance of harmonising market practices prior to imposing the use of certain codes. Imposing mandatory matching fields by law might not only create obstacles to future adaptations, it also is unlikely to bring substantial benefits in terms of improving settlement efficiency. On the contrary, imposing mandatory matching fields without having ensured that all market participants have first agreed and implemented a harmonised market practice as to how these fields should be populated, could increase the number of settlement fails and create systemic risk.

VPS would also like to point out that ESMA should not mandate the use of codes which are not compatible with global standards. Some of the codes currently being proposed by ESMA in relation to CSD records and the identification of certain transactions and instruments for the purpose of the settlement discipline regime are not aligned with internationally recognised ISO standards. Given that CSDs and their participants operate in global markets, and given the CSDR requirement for CSDs to use open and international communication standards, VPS strongly believes that, when harmonised standards are required in Level 2 legislation, these should be compatible with international standards.

<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>

VPS refers to the response of ECSDA, which we fully support.

<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>

VPS refers to the response of ECSDA, which we fully support. The draft Level 2 measures issued by ESMA for consultation in December 2014 in the context of the CSD Regulation (CSDR), would create a settlement discipline framework which has the potential to substantially affect the way securities transactions are cleared and settled today. As shown by ECSDA, despite generally high settlement efficiency rates across EU CSDs, the volume and value of instructions at stake mean that the impact of ESMA’s draft standards is likely to be substantial. The implementation cost of the measures for CSDs to comply with the proposed settlement discipline rules will as shown by as shown by ECSDA, amount to over EUR 67 million, or EUR 3.5 million per CSD on average. In addition, the cost incurred by CSD participants and other impacted infrastructure institutions, such as CCPs, will have to be added to this and is also expected to be substantial. The negative impact of the adaptions from CSDs and market participants on the efficiency and stability of post trade processes should not be underestimated.

In our opinion, only transactions in instruments a) admitted to trading on a trading venue, or b) traded on a trading venue, or cleared by a CCP, should be subject to late settlement penalties under article 7 (2) and buy-ins under article 7 (3) of the CSDR. This limitation is in line with the original Commission proposal and article 7 (10) of the CSDR. A wider scope could have unintended consequences for less-traded instruments and private transactions.

VPS is also, as ECSDA, particularly concerned about ESMA’s proposal to give CSDs a unprecedented central role in relation to buy-ins. VPS fear that some of the tasks connected to this new role might not be practically possible for CSDs to perform, and are also worried that these new responsibilities will unavoidably have an impact on CSDs’ liability, increasing their risk profile. VPS strongly believes that an alternative approach is required, whereby buy-ins will be handled at trading level, in line with today’s accepted market practice, rather than at the settlement level.

<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>

VPS refers to the response of ECSDA, which we fully support.

<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>

VPS refers to the response of ECSDA, which we fully support.

<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>

VPS refers to the response of ECSDA, which we fully support.

<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>

VPS refers to the response of ECSDA. which we fully support.

<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>

VPS refers to the response of ECSDA, which we fully support.

<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>

VPS refers to the response of ECSDA, which we fully support.

<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>

VPS refers to the response of ECSDA, which we fully support.

<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>

VPS refers to the response of ECSDA, which we fully support. We particularly refer to ECSDA’s comments regarding the fact 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. It is our opinion that the implementation timeline of record keeping requirements must be aligned with the timeline for penalties and buy-ins. At the very least, the CSD records linked to the settlement discipline framework need to be decoupled from other records, as they will not be practically “implementable” until the entry into force of the settlement discipline provisions, i.e. ideally at least 24 months after publication of the technical standards.

<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>

VPS refers to the response of ECSDA, which we fully support.

We particularly refer to ECSDAs comments regarding art 4 RTS, p 161 Information for groups. We believe that the first sentence of the article should be rephrased to be more closely aligned with art.26(7) of the CSDR which 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. As regards art.4(1)(b), we assume that ESMA wishes the competent authority to obtain information on the parent company and other relevant group entities (other CSDs or credit institutions), rather than on all entities of the group. Thus, we recommend amending the article to specify more clearly in relation to which group entities the information should be provided.

In particular, VPS would also like to refer to the statement by ECSDA that the art 18 of the draft RTS should be amended to ensure full alignment with the Level 1 Regulation. We refer to the fact that 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 among the EU legislators, 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.

<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>

VPS refers to the response of ECSDA, which we fully support.

<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>

VPS has decided not to comment on Question 17, since it pertains to communication among authorities.

<ESMA\_QUESTION\_TS\_CSDR\_17>

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

<ESMA\_QUESTION\_TS\_CSDR\_18>

VPS refers to the response of ECSDA, which we fully support.

<ESMA\_QUESTION\_TS\_CSDR\_18>

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

<ESMA\_QUESTION\_TS\_CSDR\_19>

VPS refers to the response of ECSDA, which we fully support.

<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>

VPS refers to the response of ECSDA, which we fully support.

<ESMA\_QUESTION\_TS\_CSDR\_20>

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

<ESMA\_QUESTION\_TS\_CSDR\_21>

VPS refers to the response of ECSDA, which we fully support. VPS particularly refer to the statement by ECSDA that it should be clearly stated that the list of services provided in art.2(1)(c)(i), (ii) and (iii) is not exhaustive and that other services might be considered as complementary to a CSD's core and ancillary services. We refer to the text of art.18(4) of the CSDR, where it is made clear that one of the criteria to be taken into account by competent authorities when deciding whether to authorise participations of CSDs in legal persons other than those providing the services listed in Sections A and B of the Annex, is the extent to which the services provided by the other legal person are complementary to the services provided by the CSD.

<ESMA\_QUESTION\_TS\_CSDR\_21>

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

<ESMA\_QUESTION\_TS\_CSDR\_22>

VPS refers to the response of ECSDA, which we fully support. Particularly, VPS refers to the statement by ECSDA that Level 2 regulation should not impose the functions of Chief Compliance Officer and Chief Risk Officer to be performed by different individuals. Although this will be the case in many firms, there are compelling reasons for CSDs to decide to entrust both functions to 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 these functions would thus benefit from being combined into a single individual.

<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>

VPS refers to the response of ECSDA, which we fully support.

The proposed record keeping requirements are in our opinion too far-reaching and would also impose obligations on other entities than CSDs, including CSD account holders and issuers as regards the obligation to obtain a Legal Entity Identifier (LEI). Without denying the benefits of using LEIs, CSDs are concerned that they will not be able to impose their use by third parties, especially when these are established outside the European Union. Thus, there is a risk that CSDs will be unable to comply with the ESMA standards in practice. Particularly, VPS refers to the statement by ECSDA regarding identifiers for issuers, and for account holders in direct holding markets. For legal persons, the requirement to use a BIC or a LEI will be impossible to fulfil, given that many businesses recorded as account holders in CSD s are not banks (and thus do not have a BIC) and cannot be forced by the CSD to obtain a LEI. These legal persons include small brokers, asset managers, and often non-financial firms which hold securities on their own account. Such legal persons are typically identified by CSDs using a business ID or other similar identifier. As in the case of issuers, we foresee significant enforcement problems if CSDs are required to record LEIs for such entities, since the CSD Regulation does not impose obligations on these entities and CSDs have no means to impose the acquisition of a LEI by these legal persons, especially in a retro-active way.

VPS is convinced that the draft standards on record keeping must be reconsidered and refer to the proposals by ECSDA in this respect.

In particular, we would also refer to ECSDAs statement regarding the timing of implementation for record keeping requirements. Despite important improvements compared to the record keeping requirements initially suggested in the Discussion Paper of March 2014, VPS believes that the draft RTS on record keeping cannot be realistically implemented by the time CSDs obtain their authorisation. Since many records are related to compliance with the settlement discipline rules of the CSDR, VPS strongly recommends that the timeline for implementing the draft technical standards on record keeping 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, the RTS should clarify that CSDs are not 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>

VPS refers to the response of ECSDA, which we fully support.

<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>

VPS refers to the response of ECSDA, which we fully support.

<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>

VPS refers to the response of ECSDA, which we fully support.

<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>

VPS refers to the response of ECSDA, which we fully support.

<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>

VPS refers to the response of ECSDA, which we fully support. Particularly, VPS refers to the statement by ECSDA regarding business continuity. 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. CSDs will always do their utmost to resume operations as soon as possible, and the two hours recovery-time contained in the PFMI and the CSDR Level 1 is a helpful benchmark. However, regulators must also recognise that exceptional crises might be of such scale that the benchmark cannot be met, irrespective of the cause (whether a cyber-attack or another event).

<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>

VPS refers to the response of ECSDA, which we fully support.

<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>

VPS refers to the response of ECSDA, which we fully support.

<ESMA\_QUESTION\_TS\_CSDR\_30>

##### 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>

VPS refers to the response of ECSDA, which we fully support. Particularly, VPS refers to the statement by ECSDA regarding the importance of allowing CSDs to continue to maintain links with non-EU CSDs. Expecting CSDs or intermediaries established in non-EU jurisdictions to be subject to a comparable regulatory regime to that in place in the EU is not realistic, given that European rules are among the strictest in the world. It is also not justified from a risk perspective, since CSD links do not expose the linked CSDs to credit risk. Forcing European CSDs to discontinue existing links with non-EU CSDs would be detrimental to market integration and would not in any way enhance the safety of cross-border settlements, since transactions would have to occur outside the network of existing infrastructures. Thus, it is important that the technical standards on CSD links are reconsidered to take into account the need to maintain access to non-EU markets.

VPS would also like to draw ESMA’s attention to ECSDA’s statement regarding the need to adapt the proposed reconciliation rules. Suspension of settlement in a financial instrument should not be automatic in case of discrepancies identified during the reconciliation process. There should be an element of proportionality to ensure that the damage caused by the suspension is not greater than that caused by the reconciliation error. Also, the requirements on daily reconciliation should be adapted so that it is made clear that those only apply to cases where the CSD provides central maintenance services for a financial instrument. In other cases, the CSD is not in a position to impose daily reconciliation to the third party, and can only perform reconciliation as any other intermediary in the chain. Taking such cases into account is fundamental to avoid that CSDs are forced to discontinue their services in such markets; services that contribute to reduce risk and support settlement efficiency for market participants.

<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>

VPS refers to the response of ECSDA, which we fully support.

<ESMA\_QUESTION\_TS\_CSDR\_32>