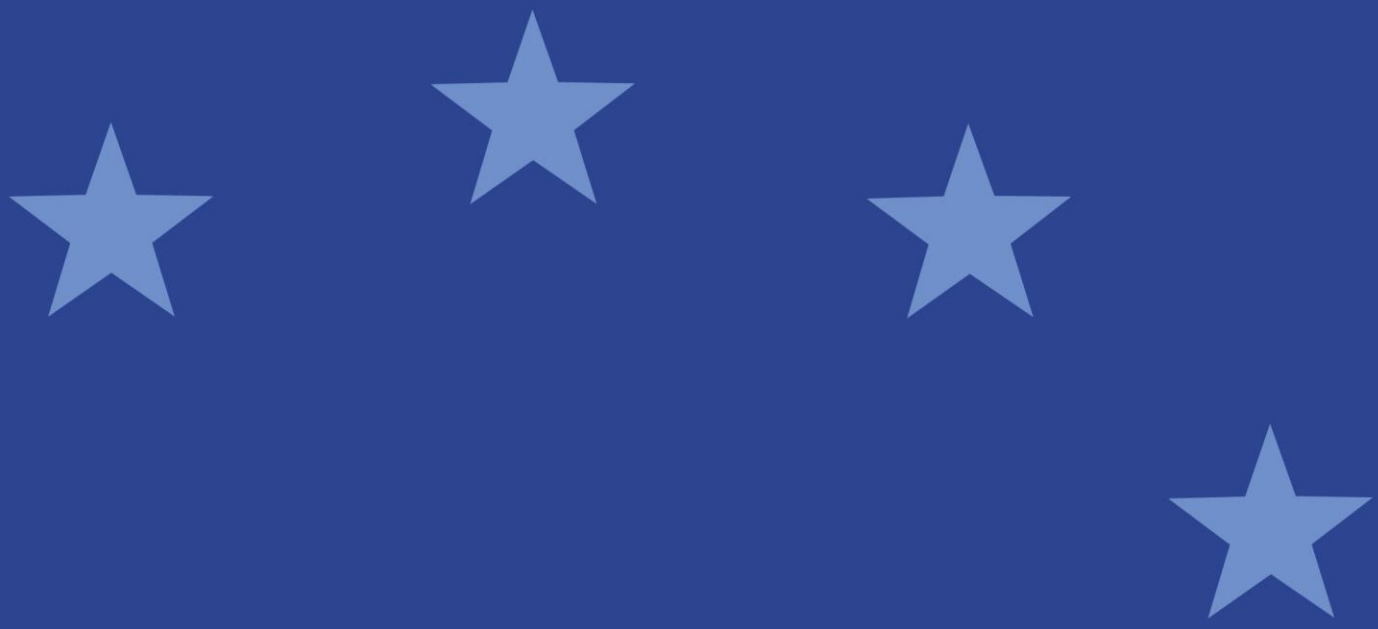
esma European Securities and Markets Authority

Reply form for the Technical Advice under the CSDR



18 December 2014

European Securities and
Markets Authority

Date: 18 December 2014

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the ESMA Consultation Paper - D Technical Advice under the CSDR, published on the ESMA website.

Instructions

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, please follow the instructions described below:

i. use this form and send your responses in Word format;

ii. do not remove the tags of type <ESMA_QUESTION_TA_CSDR_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and

iii. 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:

i. if they respond to the question stated;

ii. contain a clear rationale, including on any related costs and benefits; and

iii. describe any alternatives that ESMA should consider

Naming protocol:

In order to facilitate the handling of stakeholders responses please save your document using the following format:

ESMA_ TA_CSDR _NAMEOFCOMPANY_NAMEOFDOCUMENT.

E.g. if the respondent were ESMA, the name of the reply form would be ESMA_ TA_CSDR _ESMA_REPLYFORM or ESMA_CE_AIFMD_ESMA_ANNEX1

To help you navigate this document more easily, bookmarks are available in "Navigation Pane" for Word 2010 and in "Document Map" for Word 2007.

Responses must reach us by **19 February 2015**.

All contributions should be submitted online at www.esma.europa.eu 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 under the heading 'Disclaimer'.

General information about respondent

Are you representing an association?	Yes
Activity:	Trading Venue
Country/Region	Europe

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

<ESMA_QUESTION_TA_CSDR_1>
FESE agrees with the proposal to implement a penalty regime on an ad valorem basis, and that such a regime should be simple and proportionate and that it should work with existing holding models. However we have a number of comments on the specific proposals which we believe need to be addressed:

- We question the application of this regime to financial instruments other than equities and whether the reference to the "most liquid trading venue" is applicable for all financial securities as trading for less liquid financial instruments such as bonds is more likely to take place on an OTC basis.
- We note that the primary source of the reference price should be the regulated primary market for the security. However this does not take into account that certain securities may be dual primary listed. Such situations have been addressed by ESMA in the draft RTS 19, Article 1(1) of the MiFID II consultation. This text therefore needs to be replicated in the technical advice to the Commission.
- It is also not clear if the intention is to link it to the definition of 'most liquid market' as defined in MiFIR, although we assume this to be the case since this is the intended approach of ESMA in relation to the technical standards.

We also believe there should be consideration of a transitional concept for liquidity for securities, such as those which depart from a junior market to a main market, which may require some time before being deemed to be a liquid security.

<ESMA_QUESTION_TA_CSDR_1>

Q2: What are your views on the proposed approach regarding the categories of financial instruments and the penalty rates? In particular, do you consider that these penalty rates could dis-incentivise trading in small caps? Please provide evidence to support your views.

<ESMA_QUESTION_TA_CSDR_2>
We would like to highlight that while the framework is based on the expectation that equities are easily available to borrow, in practical terms, this is not the case for all equities. A securities lending market has not yet developed for equities in all European markets and fails may occur due to a difficulty in sourcing securities. The difficulty in borrowing securities is a key concern of market participants in some EU markets in relation to the impact of a revised settlement discipline and buy-in regime, even for liquid equities. In relation to the level of penalties proposed, we consider the daily rates proposed to be too prescriptive and too high with potentially very damaging effects on liquidity and trading in European securities. In relation to equities, the proposed daily flat rate of 1bp will be particularly damaging for SME securities, which may remain unsettled for 22 days (or longer if the deferral option is chosen) before being bought in hence being subject to a higher penalty levied on more liquid securities. This will negatively impact market making in these securities leading to less liquidity, which will have an impact on trading, liquidity and potentially IPOs.
<ESMA_QUESTION_TA_CSDR_2>

Q3: What are your views on the proposed approach regarding the increase and reduction of the basic penalty amount?

<ESMA_QUESTION_TA_CSDR_3>

We welcome and agree with ESMA's view that it is unfair to levy penalties where circumstances occur which are outside the control of the participant. We are of the view that the list of circumstances outside of market participants' control should include where securities cannot be borrowed but should be flexible enough to allow the individual markets to determine appropriate parameters.

<ESMA_QUESTION_TA_CSDR_3>

Q4: What are your views on the proposed approach regarding the cash penalties in the context of chains of interdependent transactions?

<ESMA_QUESTION_TA_CSDR_4>
We agree with ESMA's view and believe varying the parameters for determining the penalty in each stage in the chain would be too complex to maintain.
<ESMA_QUESTION_TA_CSDR_4>

Q5: Do you agree with the proposed frequency of one year for the assessment of the substantial importance of a CSD in another Member State?

<ESMA_QUESTION_TA_CSDR_5>
We agree that the frequency should be no more than annual.
<ESMA_QUESTION_TA_CSDR_5>

Q6: What are your views on the proposed indicators?

<ESMA_QUESTION_TA_CSDR_6>
We believe that ESMA also needs to include provisions for securities that have a dual primary listing when it refers to "the trading venue where the securities were first admitted to trading". Please see our response to Q1 for a suggestion on how to address this.

<ESMA_QUESTION_TA_CSDR_6>

Q7: What are your views on the proposed thresholds?

<ESMA_QUESTION_TA_CSDR_7>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_TA_CSDR_7>

Q8: Do you believe that the proposed indicators and thresholds are relevant in the case of government bonds? If not, please provide details and arguments.

<ESMA_QUESTION_TA_CSDR_8>
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<ESMA_QUESTION_TA_CSDR_8>