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| 18 December 2014 |

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| Reply form for the  Technical Advice under the CSDR |
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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 - 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:

1. use this form and send your responses in Word format;
2. 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
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\_ 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](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

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| --- | --- |
| Are you representing an association? | No |
| Activity: | Trading Venue |
| Country/Region | Ireland |

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

<ESMA\_QUESTION\_TA\_CSDR\_1>

We agree 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.

We also support the proposal to require CSDs to offer ‘partials’ functionality as an effective means to encourage settlement where possible, although we believe that there may be some practical difficulties in implementing this functionality. We also agree that where the receiving participant does not accept partials, the penalty applying to the failing participant should only be in relation to the missing financial instrument or cash, particularly given the high penalty rates that are proposed for the daily fines.

Furthermore, we have a number of comments on the specific proposals which we believe need to be addressed:

* We note that ESMA proposes 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.
* If ESMA continues with its proposed approach to use a reference price rather than the trade price, then we would urge ESMA to ensure that such prices are available in a transparent, centralised and consistent manner.
* We question whether the reference to the “most liquid trading venue” is the most appropriate approach for all financial securities, as trading in less liquid financial instruments such as bonds is more likely to take place on an OTC basis. Therefore we suggest setting a minimum threshold for a market to be considered the “most liquid trading venue”. In such cases where no market exceeds the threshold, the last option, taking the market prices from brokers, should be applied.
* It is also not clear if the intention is to link the “most liquid trading venue 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 would support such an alignment.

<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>

Our main concerns regarding the proposed approach, namely:

* The high level of penalties applied;
* The absence of a liquidity adjustment within the equity asset class;
* The applicability of penalties during the deferral period.

High level of penalties applied

We believe the penalties proposed by ESMA are too high.

While we welcome the simplicity of the proposed approach, we are extremely concerned that no impact analysis on the effect of the fines has been provided by ESMA, particularly on the market structure in the trading of small and mid-cap shares. Furthermore, although we agree that the penalty rates should be higher than the relevant borrowing costs, we are concerned that the penalty rates proposed are far in excess of those costs. We do not believe this is in line with ESMA’s objective that the penalties should not be structured so as to compensate for the loss but rather should only be sufficiently high to encourage borrowing where possible, thereby minimising settlement fails.

We believe it would be better to take a cautious approach, introducing fees that are just marginally higher than borrowing costs, which can then be increased at a later date if it is established that they are not sufficiently high to act as a deterrent as intended. Therefore we believe that further analysis needs to be done and the proposed penalties reduced.

Absence of a liquidity adjustment within the equity asset class

We welcome ESMA’s approach to take both liquidity and the asset type into account, and agree that the penalty rates should be higher for the most liquid instruments. However we do not believe that the proposed table sufficiently takes liquidity into account as it (incorrectly) assumes that all securities within each asset class can be treated as having the same liquidity. In particular, there is an assumption that all equities are more liquid than all other financial instruments in every other asset class and should therefore be subject to a higher penalty rate as they are easily available to borrow. However this is not the case.

Liquidity can vary considerably across equities. For example, the securities lending market for Irish equities is still limited and fails may occur due to a difficulty in sourcing securities. This is particularly true for the small and mid-cap Irish shares which would see an overall higher penalty regime than for liquid shares due to the longer extension period. If we consider the 15 day extension period and the 7 day period for delivery of securities following a successful buy-in, transactions in such shares would effectively be subject to a 22bp penalty. Furthermore, if the buy-in completely fails and the receiving participant opts for deferral rather than the cash compensation, due to the fact that the deferral period has not been defined or limited in such cases (see Article 11(8) of the draft RTS), the total penalty will in fact be higher than 22bp. Such high penalty fees will act as a deterrent to market making in these securities, which will have an impact on trading, liquidity and potentially IPOs. It also has the potential to have the opposite effect than that anticipated as the penalty will be sufficiently high to encourage the receiving party to defer settlement in order to continue to receive the daily fine. However this is not in line with ESMA’s principle (in paragraph 37) that the penalty should not be structured to compensate for the loss. This is a key concern of the Irish market in relation to the impact of the proposed settlement discipline and buy-in regime.

We therefore urge ESMA to introduce a liquidity consideration for equities into the table. In order to maintain the approach of a limited number of categories, we believe that equities should be separated into two categories based on whether or not the share has a liquid market as defined by MiFIR. Such an approach would still be easy to implement, in line with ESMA’s determination of the length of the buy-in period and would also meet the assertion by ESMA that the penalty rates should be “lower for the instruments that are less liquid”. In adopting such an approach, ESMA should also include transitional arrangements for shares migrating from the illiquid category to the liquid category. This would be particularly important for securities which graduate from a junior market to a main market, as the liquidity in those shares would not immediately increase due to the admission to the new market but rather would increase over time. In order to enable such securities to grow and develop, a more relaxed transitional arrangement is required.

Applicability of penalties during the deferral period

We support ESMA’s approach to situations where the partial delivery of financial instrument or cash is not accepted by the receiving participant as a proportional approach with the aim of encouraging settlement where possible. We therefore urge ESMA to apply the same approach to the deferral period by excluding the daily penalty during this period in order to ensure that the deferral option is not chosen solely as a means to increase the overall penalty compensation received. We believe that by excluding the penalty from the deferral period participants would be encouraged to choose the cash compensation, therefore increasing settlement efficiency. This is particularly important for those less liquid securities for which there is no lending market available, and for which the failing participant could be subject to a high fine although there are no securities available for borrowing. We believe this is still consistent with the Level 1 text as Article 7(2) requires the cash penalty to be calculated for each business day a transaction fails to be settled until the end of the buy-in process and no longer than the actual settlement date. Therefore it does not have to be applied during the deferral period.

<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.

We also agree that no increases or decreases in the penalty rates should be proposed at this stage.

<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 implement and 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 Question 1 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>