

ABN AMRO Clearing Bank N.V.

# Consultation Paper

## Guidelines on Internalised Settlement reporting under Article 9 of CSDR

### General remarks

With this document ABN AMRO Clearing Bank N.V. (AACB) wishes to respond to ESMA's Consultation Paper (CP) regarding the Guidelines on Internalised Settlement Reporting under Article 9 of CSDR as published on 10 July 2017. AACB welcomes the opportunity to respond to the CP. In principal, AACB supports the responses as prepared by industry groups such as the DACSI and the European Banking Federation (EBF).

AACB agrees with the key points as submitted by the EBF:

#### **1. Account holder/Account provider (subparagraph 12d)**

In paragraph 12d of the CP is set out that in case of transfers in the books of an account provider between two accounts of the same account holder the account holder –and not, as in all cases, where the account provider should report. As a result both the account provider and account holder will need to conclude whether they should report. This is inconsistent with the CSDR and the level 2 text. Therefore, we believe this will make the reporting obligation under article 9 CSDR unnecessarily complex. The different scenarios that may occur under this ruling, will cause both under- and over reporting. According to AACB, ESMA should work towards a more consistent and simple application of this rule that is in line with the level 1 and level 2 text.

#### **2. Reporting of non-EU securities (subparagraph 13b)**

According to the CP under subparagraph 13b financial instruments initially recorded and/or centrally maintained outside of CSDs authorised in the EU but settled in an EU CSD are in scope of the internalised settlement reporting;

In practice this obligation is very broad and will be difficult to meet. It would mean that a very high percentage of all global securities are in scope of the internalised settlement reporting. As a result, the reporting obligation under paragraph 13b will lead to excessive and unnecessary reporting that will place a high burden on European market participants.

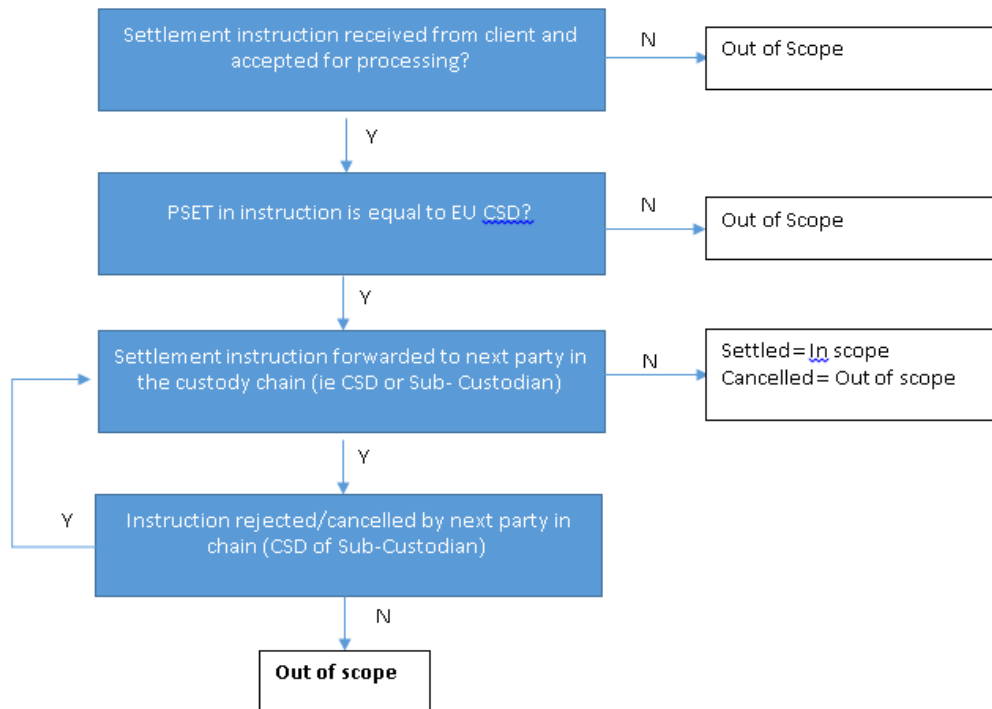
In order to minimise changes to existing processes and systems, AACB hopes that ESMA will be able to conclude guidelines with a simple and pragmatic approach which is consistent with the provisions of the CSDR and the level 2 text.

**Q1: Do you have any comments or suggestions regarding the scope of the data to be reported by settlement internalisers?**

The following principles as stated in the CSDR level 1 and level 2 text should be set out in the final ESMA guidelines, together with clear examples for clarification:

- According to article 9 (1) CSDR settlement internalisers shall report the aggregated volume and value of all securities transactions that they settle outside securities settlement systems. A settlement internaliser is defined as any institution, including one authorised in accordance with Directive 2013/36/EU or with Directive 2014/65/EU, which executes transfer orders on behalf of clients or on its own account other than through a securities settlement system.
- A securities settlement systems is a system under the first, second and third paragraph of article 2(a) of Directive 89/26/EC that is not operated by a central counterparty whose activity consists of the execution of transfer orders.
- According to Regulation (EU) 2017/391 a settlement internaliser should only report internalised settlements where it has executed a settlement instructions by client of the settlement internaliser in its own books. A settlement internaliser should not report subsequent alignments of book-entry positions to reflect the settlement of instructions by other entities in the holding chain of securities, as these do not qualify as internalised settlements. Also, a settlement internaliser should not report transactions executed on a trading venue and transferred by the trading venue to a central counterparty for clearing or to a CSD settlement.

For further clarification, it would be helpful if the guideline includes a simple diagram to determine whether transactions are in or out of scope of the internalised settlement reporting obligation. For example:



**Paragraph 4.1.**

Overall AACB agrees with the considerations under paragraph 4.1. However, to be consistent with the provisions of CSDR and the level 2 text we would like to highlight the next remarks as made by the EBF and the DACSI in their responses to the CP.

**Subparagraph 11b, c, d.**

Agreed, if:

- Movement from one account to another;
- No parallel movement higher up the custody chain occurs and;
- In execution of a settlement instruction by a client.

**Subparagraph 11e**

- The term netting needs further clarification;
- Netting on trade level does not fulfil the requirements of an internalised settlement because netted transactions do not result in internalised settlements;
- A pair-off is not relevant for the reporting of internalised settlements, therefore AACB disagrees with a reporting obligation of all paired-off transactions.

### **Subparagraph 12d**

- We refer to our comments made under point 1 of our general remarks;
- In paragraph 12d of the CP is set out that in case of transfers in the books of an account provider between two accounts of the same account holder the account holder –and not, as in all cases, where the account provider should report. As a result both the account provider and account holder will need to conclude whether they should report. This is inconsistent with the CSDR and the level 2 text. Therefore, we believe this will make the reporting obligation under article 9 CSDR unnecessarily complex. The different scenarios that may occur under this ruling, will cause both under- and over reporting. According to AACB , ESMA should work towards a more consistent and simple application of this rule that is in line with the level 1 and level 2 text.

### **Subparagraph 12g**

- We believe the second part of the sentence, starting with “however” should be deleted.

### **Q2: Do you have any comments or suggestions regarding the entities responsible for reporting to competent authorities? Please provide arguments supporting your comments and suggestions**

AACB agrees with ESMA's clarification in the first part of paragraph 15:

*"Internalised settlement can happen at different levels of a securities holding chain (global custodians, subcustodians, etc.), and it should be reported at the level where it takes place. Each settlement internaliser should be responsible for reporting the settlement that has been internalised in its books only."*

Nonetheless, the example provided in the second part of paragraph 15 is not clear. The term technical sub-accounts used within this example will lead to uncertainty as it does not exist in all member states. AACB is also of opinion that the term technical sub-account is not necessary to describe settlement internalisation. Therefore, we suggest to review this example.