19 February 2015

ESMA Consultation Paper on Draft Technical Standards under the CSD Regulation ("CSDR")

Euroclear SA/NV response

This response covers the views of all (I)CSDs within the Euroclear Group to ESMA's RTS Consultation and also to the Technical Advice Consultations under the CSDR.

Euroclear is also a Board Member of ECSDA and chairs both its Public Policy Working Group and its Settlement Practice Working Group. As a consequence, Euroclear has been extremely closely involved in the production of ECSDA's comprehensive consultation response. In addition ESES and Euroclear Finland will migrate to T2S between 2016 and 2017 and these CSDs are active participants at all levels of T2S Governance. This response should therefore, be read in close conjunction with that of ECSDA and that of the T2S Advisory Group, with which it is consistent.

The response has been submitted to ESMA in the appropriate template, but it is also replicated here in full and split into two sections each with its own Executive Summary.

- Pages 1-29 cover the Standards and Technical Advice relating to Settlement Discipline and Buy-Ins (questions 1-14)
- Page 30 onwards cover the Standards (covering questions 15 to 31), technical advice (questions 5 to 8) and guidelines (1 question) under the CSDR.

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PART I Executive Summary

Questions 1-14 and the Technical Advice on Settlement Discipline

1. No Impact Analysis of the Proposals

The specification of a detailed, mandatory and wide-ranging settlement discipline regime could have significant effects on the structure of EU and global securities markets, unless the fines and the scope of the regime are carefully analysed. The regime applies (broadly) to any security admitted to trading in the EU and to any participant in an EU CSD (including central banks, fund management companies, distributors etc, and non-EU participants) and any transaction type (including repos, even with central banks, corporate actions, portfolio transfers etc). No analysis has been undertaken of the effects of the proposed SDR and buy-in regime on market behaviour. For instance:

- Will the fines and the buy-in processes improve settlement rates?
- Will they enhance the attractiveness of issuing, trading and settling overseas securities in Europe?
- Will they further enhance the attractiveness to invest in Europe for non-European investors?
- Will they enhance the liquidity in illiquid and SME securities?
- Will they alter the economics of the repo market with material effects on the ability to deliver secured financing?
- How will they affect monetary policy or other collateralised operations (which are now in scope)?
- How can they effectively be applied to UCITS transactions which are a primary (not secondary) market?
- And what is the impact of the proposals on Member States and CSDs with different account structures?

The proposals remain an enormous "leap in the dark" by the authorities.

This concern was expressed by the Commission itself in 2012 when it first considered the introduction of settlement discipline. The Commission concluded that one "… *option would aim at having a comprehensive framework for market discipline, including all the steps from trading to settlement. … However, it would be a very complex exercise that would increase significantly the cost on all stakeholders (market infrastructures, market participants and intermediaries) and the timeframe for design and implementation. It seems also too early to adopt such a "big bang" approach, as many of the issues have not crystallised in the public debate. It is preferable to restrict the framework to settlement discipline and reassess matters in a few years with the industry."*[1] ESMA therefore, appears to have taken the opposite approach to that suggested by the Commission in 2012.

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[1] COMMISSION STAFF WORKING DOCUMENT [SWD(2012) 22], Impact Assessment, accompanying the Proposal for a Regulation of the European Parliament and of the Council on improving securities settlement in the European Union and on Central Securities Depositories (CSDs) and amending Directive 98/26/EC.

The regime now proposed, including the measures to address settlement failures, the penalty regime and the new Buy-in process are significant builds for CSDs and for the Euroclear Group in particular. The total implementation costs for the Euroclear group for the measures to reduce settlement fails, the Settlement Discipline Regime itself and the Buy-in Regime together represent in excess of 27% of the group's total T2S build. We do not disclose the full costs in this response but will discuss them bilaterally with ESMA. Aggregated CSD costs have been provided in the ECSDA response to the Consultation. We do not believe that these costs are proportionate to the potential (and to date undisclosed) benefits, when pan-European settlement rates are already around 98.9% (by value) and 97.4% (by volume).

2. Timing of Introduction

Designing, building, testing, and trialling such a significant IT project is a complex task; particularly since the build would need to be replicated by all of our global clients (who would need to be able to pass on any net fines to their underlying clients). The earliest, that an IT and business project could start is around September 2015 when the final Standards are published in the Official Journal, thereby freezing the high level requirements. A detailed business feasibility analysis would be needed before starting actual implementation. This might require market consultation with CSD participants to ensure a consistent and detailed implementation. We have attached in an Annex 1 (page 77) to this response a detailed structure of the project and timelines that we would need to put in place. This shows that around two years would be needed to roll-out this project successfully. This does not include agreeing new ISO and market practice standards (see below).

This timeframe is consistent with the response of the T2S Advisory Group which explains (inter alia) the impossibility of making software changes to the T2S infrastructure prior to the end of the migration of all T2S markets. All 24 CSDs participating in T2S are reliant on the settlement processing and reporting, as well as reconciliation and record keeping, services of the T2S platform which will need to change as a result of the implementation of CSDR.

3. Establishing a "toolbox" of measures for CSDs to enhance settlement rates

The standards should establish a set of tools that CSDs could choose to employ in order to prevent settlement fails. Which tools to be used at which stage would be a decision for each CSD in consultation with its market and, in particular, with its Competent Authority. This is because CSDs operate in a non-harmonised market and therefore, their services cannot realistically be harmonised. For example, a centralised securities lending and borrowing facility can help reduce the level of settlement fails, but will not always be an appropriate solution for all instrument types and markets. Some CSDs may offer partial settlement (in a T2S environment) but some might choose to offer shaping and splitting functionalities (which have a similar effect). The CSDR Technical Standards should provide a common toolbox for all CSDs, whilst allowing CSDs to pick the most appropriate tools at their disposal, based on the needs of the market(s) in which they operate and their Competent Authorities. This is also in line with Recital 16 of CSDR.

4. CSDs and Buy-Ins and inconsistency with Level 1

The draft Standards give CSDs a new and unprecedented role in relation to Buy-ins which is inconsistent first, with the CSDR's main aim of limiting the risk profile of a CSD, and secondly with the Level 1 CSDR text (which limits the role of CSDs in Article 7(10)(c)).

5. No Compliance with International standards (ISO etc) and Article 35 of CSDR

The Standards impose the use of new fields and messages without any reference to Article 35 of CSDR which requires market infrastructures to use "international open communication procedures and standards for messaging and reference data …."

Many CSDs have global clients that require the use of globally agreed message standards and market practices through ISO and SWIFT. The draft Standards impose new proprietary messages and standards which are not replicated by ISO and which would be complex to implement and largely unacceptable to international clients. The areas of non-compliance are described throughout this document and also in the T2S Advisory Group's response to the Consultation.

6. Changing matching fields will have a materially adverse effect on matching rates and settlement rates greatly increasing market risk in EU securities markets.

Settlement rates in the EU are around 98.9% by value; the Standards should be focused on improving not destabilising that rate. Specifying exact matching procedures, which are non-compliant with International Standards and practices (as described above) in a big bang globally for all international users of EU infrastructures will lead to greatly reduced matching rates, increased settlement fails and greater operational risks.

We strongly believe, as we explained in our Response to the Discussion Paper in 2014, that matching fields and matching standards should not be included in law, without permitting significant flexibility of implementation and development (see also point 3 above).

7. Significant inconsistency between CSDR Article 7(10) and 7(13) which should be adjusted in the Standards.

Article 7(13) itself sets the important and vital precedent that 9,500 shares that are principally traded outside the EU, should not be covered by the SDR and buy-In regimes. However the use of the word "shares" in Article 7(13) means that other securities are included where they are admitted to trading in the EU. So, for example Microsoft shares traded in the EU are exempt from SDR. But, US Treasury Bills traded in the EU are not. ESMA must ensure that this inconsistency (which appears to result entirely from a lack of consistency checks by linguists, and for which no policy explanation has been given) is corrected in the Level 2 text.

In addition, UCITS transactions (which are primary market transactions) should be excluded from settlement fining (and buy-ins) even where they may be listed on an EU exchange and therefore theoretically admitted

to trading. They are listed for transparency purposes only, since they are not traded on any MIFID trading venue. We do not understand, for instance, how the concept of a buy-in can be applied to a primary market UCITS purchase, since the only party which can deliver the units is the issuer or his agent.

General Comment on the approach to our response

We have suggested amendments in many areas but in some others, where we have fundamental concerns with ESMA's proposal (such as Buy-ins) we have not offered suggestions, since we believe that for the benefit of market efficiency and effectiveness a fundamental change to the approach adopted by ESMA is needed. These points are explained in the document.

Responses to the ESMA Consultation Questions (Technical Standards)

Questions 1-14

Q1: 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.

Early allocation and confirmation is a sound and desirable principle which can contribute to the prevention of settlement fails and assist timely settlement at (I)CSD level.

However, the fields required for the purpose of trade confirmations should not be required as mandatory fields for settlement (where different operational requirements are required). We comment in further detail on matching below.

Q2: 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.

We support ESMA's proposal to create standardized market practices to ensure matching is correctly performed in a timely manner in order to improve the chances of successful settlement. We also support the proposal that CSDs offer matching on a continuous basis throughout the business day (which is already the case within the Euroclear group).

However, we have three general points on ESMA's approach to matching.

- As we pointed out in our Response to the ESMA discussion paper on 22 May 2014 (page 9) we remain unclear why ESMA continues to believe that matching fields need to be harmonized and standardized in law. Standard 1 of the ESSF-ECSDA matching standards (2006) already contains a list of harmonized matching fields and compliance rates with these standards has steadily improved over the years indicating that there is no market failure in matching rates which demands a legal solution. The current text freezes the list of fields and inhibits market development. Article 3(3) of the RTS allows additions to the list of matching fields, but prohibits removal. We continue to believe that such specific requirements and restrictions are in excess of the mandate given to ESMA in Article 6(5) of the CSDR itself.

- In addition, we note that the inclusion of new matching fields, without any detailed guidance on market practice for completion, will inevitably lead to lower matching rates, more settlement fails, greater market inefficiency and more market risk; the complete opposite of what ESMA is intending to achieve. This is particularly true for international markets (in which the ICSDs operate) where the new rules will need to be explained (and implemented simultaneously) globally.
- Finally, we note (and this is a comment that appears in many sections of our response) that all new messages and fields proposed by ESMA must be compliant with ISO standards, to ensure international acceptability and to allow the level 2 Standards to be compliant with Article 37 of the CSDR itself.

Exemptions

Article 3 demonstrates the complexity of trying to standardize extremely complex operational processes in law. The changes to matching fields, processes and exemptions are (by necessity) in an EU Regulation extremely prescriptive and very restrictive. And they apply not just to EU CSDs, but to clients globally. As a consequence the EU Law needs to recognize global differences in market practices and procedures; which is why Articles, such Article 3, should not appear in a Regulation, but rather in market practice standards supported by a high level Framework Regulation dictating the core principles that the market practice should follow.

We set down below some of the challenges with the current exemptions:

- Already matched trades should be able to apply to all settlement instructions sent by all CSD participants (not just restricted to only CCPs or trading venues). Of course 'already matched' trades would require such participants to have the right to do so (such as settlement agents having Power of Attorney to act on behalf of CSD's clients, or also in case of instructions instructed by National Central Banks).
- FoP instructions should not just be limited to transfers between different account names in the name of the same participant. This is, for example, because some CSDs today (especially in direct holding markets) process portfolio transfers and technical account allocations in a highly efficient and unmatched process – we are unclear why ESMA would wish to ban such processes which are permitted by the CSDR and which work efficiently today. Not all CSDs require matching of FOP transactions.
- The drafting is overly restrictive as some CSDs do not recognise the concept of 'pre-matched' instructions from external parties. Rather, matching is a function of the CSD with a participant (whether a CSD or other settlement agent) inputting two separate instructions which match in the CSD system (ie the CCP may input standard one sided instructions for itself and on behalf of its counterparty).
- Non-matching must also be permitted in the context of settlement instructions resulting from corporate actions processing. Many of these processes in some markets require unilateral input by (for example) registrars on behalf of issuers. Corporate action processing is not harmonized across European markets. Imposing matching would often be illogical in these circumstances and have no benefit.
- Non-matching should also apply to settlement instructions which are processed as a result of a Court Order (e.g. insolvency proceedings, bankruptcy).
- Flexibility must be offered to non-matching operations which might be linked to anything required by domestic law (such as the system controller's adjustments functions in the UK). Flexibility can also be

appropriate in other specific circumstances (such as rematerialisation requests by a participant or escrow balance related transfers in the UK and Ireland).

- ESMA's proposal that "CSDs shall require that CCPs send already matched settlement instructions into the securities settlement system operated by a CSD" is not possible when multiple CCPs are involved. Indeed, two CSD participants might each use a different CCP and, in such cases, matching cannot occur at the CCP level, but must occur at the CSD level. The "already matched" concept is also not possible or appropriate in a cross-CSD settlement scenario, and this should be removed from Article 3(2).

In order to allow for the necessary flexibility in relation to mandatory matching and to avoid any market distortions, CSDs must have the possibility of defining further exemptions subject to the approval of the competent authority.

Finally, we agree with ESMA' s proposals in relation to matching tolerance levels as a way to smooth the matching process. The proposed amounts are in line with existing tolerance levels used at Euroclear and we understand that they will also be in line with T2S tolerance levels.

We recommend the following amendments to Article 3(2) of the draft RTS:

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

[…] 2. A CSD shall match settlement instructions prior to settlement, based on the instructions sent by participants, except in the following circumstances:

(a) the settlement instructions received by the CSD are already matched by trading venues or other entities such as CCPs;
(b) FoP instructions which consist of transfers of financial instruments between different accounts ***opened in the name of or managed by*** *the same participant or* ***account operator.;***
(c) any other circumstances deemed necessary by the CSD, provided these are approved by the competent authority.

CSDs shall require that CCPs, where possible, send already matched settlement instructions into the securities settlement system operated by a CSD, unless letter b) of subparagraph 1 applies.

Q3: 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 de-tails 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.

Articles 3.5 to 3.7 require a CSD to offer its participants certain mandatory functionality, such as a hold and release mechanism, although Article 3.11 offers exemptions which are irrelevant for most CSDs.

If the goal of ESMA is to deliver smooth and highly efficient cross border settlement, then there should be no exceptions at all. The rules should be the same for all CSDs. If there are exemptions in a settlement chain, settlement efficiency would deteriorate.

Articles 3.11 and the related 3.12 and 3.13 should therefore, be deleted.

Q4: What are your views on the proposed draft RTS included in Chapter II of Annex I?

Manual interventions

Automation and the promotion of straight-through-processing (STP) is core to a CSD's business. But, as we argued in our May 2014 paper on page 7, we do not see how manual intervention can be prohibited, nor do we believe it would be practical or sensible to do so in a legal text.

Manual interventions in CSD procedures are necessary and essential for the smooth processing and timely settlement of instructions, in particular where corrective actions are required, or in times of crisis.

Article 3(1) is now extremely restrictive and, we believe goes beyond ESMA's mandate; the CSDR itself makes no reference to Manual Procedures and the ESMA Standards do not define them. Article 3(2) only allows manual intervention (which is undefined) when the Competent Authority agrees that the intervention is "appropriate for the smooth functioning of the securities settlement system".

We list below examples (non-exhaustive) of manual interventions which may be required for the smooth and efficient functioning of a settlement engine:

- Certain non-STP processing (e.g. update of static data such as ISINs, corporate events),
- Specific and non-standardised settlement procedures (e.g. in the context of corp. actions processing for blocking of transactions and accounts),
- Adjustment of System diaries,

- Set-up of auto-collateralisation services or service subscriptions (typically both cases will apply in T2S),
- Processes for which automation would be too costly compared to the benefits earned (e.g. certain reconciliation measures),
- Manual interventions could also be required in the context of crises or major IT incidents (where standard contingency procedures would apply).

Therefore, the RTS should clearly recognize that certain manual interventions must be allowed in the CSD in accordance with each CSD's operating procedures. These CSD operating procedures should be discussed and agreed by the competent authorities, but should not be detailed in the technical standards. CSDs should report periodically (e.g. semi-annually or annually) aggregate figures on any manual interventions which have taken place in line with the CSD's operating procedures.

We recommend the following amendments to Article 3(1) of the draft RTS:

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*~~ ***regularly, where such manual interventions are not foreseen in the CSD operating procedures****, covering at least: […]*

Mandatory Matching Fields

We agree with the approach of ESMA that matching is a vital process to ensure settlement efficiency. But, as explained above we do not believe such technical standards should be frozen in law. ESMA should take into account the reality of the functioning of the settlement systems, use only internationally agreed messages and fields, and understand the necessary specific market practices for the use of matching fields (without which matching rates will decline). For this very reason ISO does not prescribe precise matching fields.

The complexities of the approach adopted by ESMA can be analysed in respect of two proposed fields (Trade Date and Transaction types).

- **Trade Date:** is generally used for stock exchange and other market activity, but it is not a field which is systematically required for all transactions and is not systematically used for OTC activity. For cross-border activity outside the EU its use will depend on market practice. Even for certain EU markets its usage may be limited for OTC activity and even more for FOP transactions (eg in Italy and Portugal). While T2S made the trade date a matching field for participating CSDs (after much debate) the standards should not just cut and paste the T2S rules, since to do so would de iure (not de facto) force changes on all users of ICSDs globally. It is only logical to consider to make trade date mandatory where market practice requires; it cannot be mandatory for non-EU markets (e.g.

Australia, Mexico and Japan) where trade date may not be mandatorily requested locally for input of settlement instructions.

- **Transaction type:** The field as proposed by ESMA is a new matching field, not supported by T2S and not supported by existing ISO message codes (see our response to question 23 of the Consultation Paper). EU markets have discussed such a field over many years including most recently within the T2S Harmonisation Sub group – no agreement has yet been reached because there is no agreed harmonised market practice in the EU on how to populate such a field (i.e. what value to assign for the different types of transactions in different circumstances). Introducing "transaction type" as a new mandatory matching field would increase the risk of matching fails and is therefore very likely to have a negative impact on settlement efficiency, contrary to the objective of the CSDR. The field should be non-matching and optional. The field should be used by participants, with reporting driven by market practice conventions, possibly through the input made by the failing party.

Euroclear 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 two instructions to match and which fields are optional matching fields only. In effect, CSDR technical standards should establish a set of tools that CSDs could choose to employ in order to prevent settlement fails. Which tools to be used at which stage would be a decision for each CSD in consultation with its market and in particular with its Competent Authority. For example, a centralised securities lending and borrowing facility can help reduce the level of settlement fails, but will not always be an appropriate solution for all instrument types and markets. CSDR technical standards should provide a common basis for all CSDs, while allowing CSDs to pick the most appropriate tools at their disposal, based on the needs of the market(s) in which they operate. This is also in line with Recital 16 of CSDR, which states that rules concerning penalties "should be adapted to the specificities of different securities markets".

We recommend the following amendments to Article 3(3) of the draft RTS:

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

[…] 3. A CSD shall require its participants to use at least the following mandatory ***(unless specified)*** *matching fields for the matching of settlement instructions:*

(a) instruction type (covering at least the types of instructions specified in point h) of Article 4(2));

(b) intended settlement date;

(c) trade date ***(optional****)*

(d) transaction type (covering at least the types of transactions specified in point f) of Article 4(2)) ***(optional);*** […]

Mandatory bilateral cancellation facility, hold and release mechanism, recycling, partial settlement

Such facilities are best practice, and CSDs should be encouraged to offer such functionality, but based on market demand and Competent Authority approval. It is unnecessary to mandate such use in Level 2 legislation (see our comments above and in point 3 of the Executive Summary describing the advantages of a "toolkit" approach to measures designed to enhance settlement rates). The current standards appear to have been drafted from the assumption that the T2S Standards can be 'cut and pasted' into EU law and immediately applied globally. These features are not common in all European CSDs (the UK uses "splitting" functionality, not partialling, and Sweden does not offer mandatory recycling, partialling or hold and release). Clients may prefer to use lending and borrowing programmes (such as the one offered by Euroclear Bank) rather than centrally provided partialling functionality.

If ESMA however continues to maintain Article 3(4), we believe that it should be clarified that this article only applies to instructions that are already matched and that it does not impact the ability of the CSD to cancel instructions as necessary, for instance in the context of corporate actions on flows.

If ESMA decides to maintain Articles 3(5), (6) and (7), we would recommend amending Article 3(6) to clarify that the obligation to recycle failed settlement instructions should only apply to instructions that have been matched and that CSD should be allowed to foresee the cancellation of instructions after a certain time to avoid "indefinite" recycling (e.g. for those instructions in financial instruments which are not subject to penalties for late settlement and buy-ins. Or more generally for all pending transactions after a certain period of time).

Pending Instructions

Article 3(8) requires CSDs to provide up-to-date information on pending settlement instructions, although not all CSD participants require allegment/pending messages to support their processing. T2S participating CSDs and their participants have agreed to make the allegment service optional and not mandatory (the danger if this market practice is not followed is that CSDs and their participants are flooded with allegment traffic).

We also believe that the RTS should not prescribe precise timings for the provision of information to participants which appears beyond the requirements of Level 1 (Article 3.8 and 3.9). The 1 hour time frame specified might work for real-time systems, but is not realistic when settlement systems run in batches overnight (where information is provided at the end of each batch sequence or the end of the settlement cycle).

Article 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 information*** *about pending settlement instructions of counterparties* ***in a timely manner after the first unsuccessful attempt to match the instructions and before the beginning of the intended settlement date.***

Real Time Information

The requirements for real-time information include a variety of fields related to Buy-ins – these fields also appear in the record keeping requirements. We comment on Buy-Ins under Question 7.

However, the fields and data required by ESMA in Article 3(9) are not in compliance with ISO nor in compliance with Article 37 of the CSDR itself (eg; the buy-in information under point (e), but also for fields (a) to (d)). The use of such fields (even once approved by ISO) would require SWIFT, (for example) to define the market practice for use. Please also see our comments in relation to Question 14 on timing of introduction of the RTS in this area.

Q5: 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?

Monitoring system

The reporting requirements specified by ESMA need to properly reflect the fact that CSDs can only identify and report information to which they have access. In addition, the requirements for the monitoring of settlement fails needs to be consistent with the SDR and Buy-In requirements, matching rules and record keeping.

Furthermore, as explained in our answer to question 23 on recordkeeping, many of the proposed items that CSDs would need to identify and record for the purpose of monitoring and reporting settlement fails are not consistent with existing global ISO standards. It is essential that these codes are fully aligned with existing global standards. CSDs and their participants operate in global financial markets and compatibility with open and internationally-recognised standards must be ensured when creating new transaction and status codes.

In particular ESMA needs to re-examine the following fields in the light of international market practice

- Transaction types (see specific section above on "transaction types")

- Trade Date (see specific section above on "trade date")

- Buy-in related information required (see response to Q7)

Article 4(1)(f) on "recycled settlement instructions" should be deleted as it is redundant. Settlement instructions which are recycled are either pending settlement on ISD (i.e. covered under Article 4(1)(a)), or

failed (i.e. covered under Article4(1)(e)) until they are settled or cancelled. In addition, no ISO code currently exists to identify recycled transactions (either in T2S or outside T2S). In any case, competent authorities can deduct which instructions have been recycled from the use of the other codes and will be aware in case a given CSD is exempt from the recycling requirement in Article 3(11), if this Article is retained. If Central Bank money takes place outside the CSD, the cash amount lacking may not be known to the CSD.

In line with the T2S AG response to the ESMA consultation, we support the following amendments to Article 4(1):

Article 4 - Details of the system monitoring settlement fails

1. A system monitoring settlement fails shall enable a CSD to identify and to keep a record of information about the intended settlement date and the status of settlement instructions entered into the securities settlement system that it operates, covering at least the following including per intended settlement date:

(a) ***pending instructions, which can still settle on the intended settlement date ISD*** *~~matched settlement instructions that are not settled~~****;***

(b) settlement instructions that are not matched;

(c) settlement instructions on hold;

(d) partially settled settlement instructions, including the settled part and the missing part of ~~either~~ securities ~~or cash~~;

(e) failed settlement instructions, including, ***where available[2],*** *information on:*

(i) initiation of buy-in;

(ii) extension period;

(iii) deferral period;

(iv) buy-in period;

(v) outcome of buy-in process;

(vi) payment of cash compensation or settlement of the buy-in transaction;

(vii) penalties referred to in Article 7(2) of Regulation (EU) No 909/2014.

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[2] However, please see page 21 for our comments on the inappropriateness of the current Buy-in proposals

~~(f) recycled settlement instructions;~~

*(g) cancelled settlement instructions**, including information whether it is cancelled by the system or by the participant;***

*(h) **fully** settled settlement instructions.*

Article 4(2)(b) 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, or temporary restrictions for settlement with a certain ISIN code, or lack of liquidity at a settlement bank. These reasons are captured by ISO codes and should be available in the reports produced by CSDs.

Article 4(2)(b) cannot be implemented since CSDs often do not have access to information regarding the "missing amount" of cash in the cash accounts maintained by their participants, typically at the central bank.

We suggest the following amendment to Article 4(2)(b):

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~~ based on information available to the CSD.

Asset Classes

The "types of asset classes" defined in Article 4(2)(d) for the purpose of fails monitoring and reporting are inconsistent with the categories used to determine the applicable penalty rate, and also with the categories proposed in the context of the buy-in rules. Asset classes must be consistent across the CSDR.

The asset classes described under Article 4(2)(d)(ii) do not distinguish between government and corporate bonds, although different penalty rates would apply. We are concerned about these inconsistencies and believe that, to be meaningful, fails reporting should reflect the categories of financial instruments subject to different penalty rates. We believe a complete review of asset classes is needed while keeping the categorisation as simple as possible. This is expanded further in our answers to Technical Advice on Settlement discipline paper. At a minimum, we suggest amending Article 4(2)(d) as follows:

2. *A system monitoring settlement fails shall allow a CSD to identify:*

(a) all the settlement fails per intended settlement date, including the length of such settlement fails based on the number of business days in which a transaction fails to be settled after its intended settlement date.

(b) 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.~~

(c) any settlement restrictions.

(d) at least the following types of asset classes:

(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;~~

~~(iii) exchange-traded funds (ETFs);~~

(i) ***Equities***

(ii) Fixed Income (splitting Government and Corporate debt - or debt instruments issued by non-public authorities)

(iii) International securities (mainly Eurobonds)

(iv) units in collective investment undertakings, other than ETFs;

(v) Others (ETFs and warrants and ERs etc)

(v) ~~money-market instruments~~;

~~(vi) emission allowances.~~

Types of transactions

We remain concerned that a redrafting of the ESMA proposal is necessary to ensure a more meaningful categorisation. In particular, ESMA should address the following problems:

- A financial transaction is either concluded on a trading venue or OTC: the category currently described in Article 4(2)(e)(v) is thus in all likelihood unnecessary and void, since all transactions will either fall under Article 4(2)(e)(i) or 4(2)(e)(ii). Article4(2)(e)(v) can thus be deleted;
- Similarly, a repo transaction falling under Article 4(2)(e)(iii) might also qualify as an OTC purchase or sale under Article 4(2)(e)(ii). The categories should thus be revised to clarify which ones are mutually exclusive, and which ones are "cumulative";
- In Table 2 of Annex 1 of the draft RTS (p.140-151), there is an additional transaction type called "Others" (please specify)", which is not included in Article 4(2)(e). ESMA must ensure that, if this

category of "others" is truly necessary, it is included in Article 4(2)(e) to ensure full consistency between the article of the draft RTS and the annex;

- The codes being proposed by ESMA for recording and reporting transaction types must be made compatible with ISO standards. Today, the ISO field for "transaction type" does not provide all the information required by ESMA under Article 4(2)(e). In fact, the purpose of the current "transaction type" field is not to identify the location of trading or clearing but rather to provide information on underlying business transaction or type of business operation per financial instrument. If ESMA wishes to collect information on the place of trading or clearing for fails monitoring purposes, it should require CSDs and their participants to use the ISO fields "place of trading" and "place of clearing" instead. For the "place of trading", the Market Identification Code ISO 10383 could be used if the instruction is resulting from a trade concluded on a trading venue. When the field is left blank, the settlement instruction would be considered as an OTC instruction. For the "place of clearing", the BIC or LEI of the CCP could be included in the settlement instruction.

Working "Flow"

First, we assume that "flow" in Article 4(3) should be read as "group". While we understand the need for dialogue with participants on settlement fails, we believe that there is no need in Level 2 to specify the format and the attendees at such groups. The number of 10 participants is arbitrary and does not relate to the absolute number of fails by the participants or the securities markets served by the CSD, nor the total number of transactions processed by the CSD itself. A CSD whose participants achieve a settlement rate of 99.99% on average presumably does not need to convene a meeting of the ten firms with the worst settlement fail rates. The CSD should have discretion to convene such a meeting in discussion with the User Group and with the Competent Authority.

We suggest the following redrafting of Article 4(3):

Article 4 - Details of the system monitoring settlement fails

[…] 3. A CSD shall set up a working ***group*** *~~flow~~ with the* ***most relevant ~~top ten~~*** *participants* ***with the highest rates of settlement fails****, as well as, if applicable, with relevant CCPs and trading venues, in order to identify the main reasons for settlement fails and to establish measures to improve settlement efficiency.*

Reports to public authorities

We support the reporting requirements to public authorities set out in Article 5 of the draft RTS. We also agree with the general structure of the two templates provided in Annex I, provided that our comments on Article 4 of the draft RTS are taken into account and properly reflected in the reporting templates.

Public disclosure

Euroclear supports Article 6 of the draft RTS on the disclosure of settlement fail data to the public. However, in order to be consistent with the reporting to competent authorities, CSDs should report values in "EUR or equivalent", i.e. local currency rather than having to convert value amounts to EUR (in the table in Annex II).

We are unclear how the reference to "machine-readable" (an undefined term in Article 6(2)) relates to Item 18 on page 153 which is a free text field. References to "machine-readable" should be removed from the text.

Q6: 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?

Scope

The CSDR includes an extremely wide range of assets and transactions in the scope of settlement discipline. In short we understand from Article 7(10) that SDR applies to all transactions in financial instruments that are admitted to trading (or traded) on a trading venue, or cleared by a CCP. This is information which a CSD does not currently possess and which is not transmitted by existing data feeds. We therefore believe that ESMA should ensure that a daily list of such securities is posted in a downloadable form to be agreed by the market, on the ESMA website as the golden copy of such information. We believe this is consistent with ESMA's role of publishing a list of those shares which are principally traded on a venue outside the EU (Article 7(13)).

In addition we strongly believe that Article 7(13) itself sets the important and vital precedent that securities that are principally traded outside the EU, should not be covered by the SDR and Buy-In regimes. However the use of the word "shares" in Article 7(13) means that all other securities are included where they are admitted to trading in the EU. So, for example Microsoft shares traded in the EU are exempt from SDR. But, US Treasury Bills traded in the EU are not. ESMA must ensure that this inconsistency (which appears to result entirely from a lack of consistency checks by linguists, and for which no policy explanation has been given) is corrected in the Level 2 text.

In addition, we repeat our belief that UCITS transactions (which are primary market transactions) should be excluded from settlement fining (and buy-ins) even where they may be listed on an EU exchange and therefore theoretically admitted to trading. They are listed for transparency purposes only, since they are not traded on any MIFID trading venue. We do not understand, for instance, how the concept of a buy-in can be applied to a primary market UCITS purchase, since the only party which can deliver the units is the issuer or his agent. We also note that non-UCITS (such as instruments caught by the AIFMD) would appear to be exempt from the regime.

Finally, we note that the scope of transactions includes all transfer orders (as defined in the Settlement Finality Directive). This means that the SDR and Buy-In requirements apply to corporate actions on stocks, portfolio transfers and collateral movements even to and from a central bank. This appears unnecessary given that the purpose of settlement discipline is to focus on the completion of trading obligations.

Collection and redistribution

We understand the logic of the proposed SDR calculation mechanism (in effect a gross charge netted each month). We comment further on the regime in our comments on the Technical Advice Consultation. But we question whether it is appropriate to charge instructions which are on hold by both parties to the transaction. If an instruction is on hold at the end of ISD each party will be fined, but probably with different rates because cash and securities are subject to different methodologies. There is a potential level playing field issue here.

Article 7(2) should be revised to ensure that fines only apply on failed settlement instructions at the end of the settlement day (i.e. accounting day) for both FoP and DVP transactions to avoid having two calculation points.

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 **DVP and** FoP settlement instructions.*

Article 7(6) – jointly managed systems

We find the terminology and the intention of this section confused. It appears to be placing an obligation on T2S to build and develop an SDR for all and current CSDs which participate in T2S. In addition its use of the word "interoperable links" would appear to cover those CSDs which (outside of T2S) offer interoperable links within the meaning of interoperability given in Article 2(32) of the CSDR itself. This would, for example, seem to compel CBL and EB (which operate a bridge between their two systems) to also build a common SDR platform between them, when EB and CBL have not outsourced any services to each other and operate entirely separate settlement systems. "Interoperable links" therefore, should be removed from the scope of Article 7(6).

In terms of the effects of Article 7(6) on the design and operation of T2S, we agree fully with the proposals made by the T2S Advisory Group on which Euroclear is represented.

CCP exemption

We understand that, when a CCP is involved (as one of the two parties to the settlement instructions), CSDs should calculate the penalty that should be applied to the two transactions, but should not charge the CCP

or the counterparty. Rather, the CSD should provide the calculations to the CCP which would then deal directly with the related clearing member.

This is a consequence of Level 1 removing CCPs from the scope of the CSDR SDR regime. However, ESMA and Competent Authorities should note that this information will need to be agreed with the CCPs, specified in detail, and with full ISO compliance, tested, trialed and implemented. Euroclear Bank will in the future have CCPs from outside the EU as participants in its settlement system, so the flows of information will need to be agreed globally according to international standards.

In addition, ESMA should recognise that CCPs have different netting methods and this may trigger differences in the settlement processing and handling of failed settlements. For instance, under Trade Date Netting, the netting is typically outsourced to a settlement engine and automatic recycling applied to each failed settlement. Under Continual Net Settlement, netting is typically handled by the CCP and failed settlement is cancelled end-of-day and re-instructed for next netting day.

We suggest the following amendment to Article 9.

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 standardised and internationally compliant 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.***

Costs of the Penalty Mechanism (including Buy-ins)

We remain extremely concerned that no impact analysis of the effect of the SDR fines has been provided by ESMA and that no analysis has been undertaken of the market effects of the fines, particularly on the market structure in the trading of shares in the small and medium sized corporate sector, and on the international securities markets given that participants globally will be subject to penalties for late settlement of global securities, not just those issued in the EU.

We have analysed the total cost of building and running the entire proposed settlement discipline (including the buy-in processes which are discussed below) as described in Articles 1-20 only of the Draft RTS on Settlement Discipline. The total implementation costs for the Euroclear group for the measures to reduce settlement fails, the Settlement Discipline Regime itself and the Buy-in regime together represent in excess of 27% of the group's total T2S build. We do not disclose the full costs in this response but will discuss them bilaterally with ESMA. Aggregated costs for the CSD industry are included in the ECSDA response. We do not believe that these costs are proportionate to the potential (and to date undisclosed) benefits, when pan European settlement rates are already around 98.9% (by value) and 97.4% (by volume).

Q7: 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?

The draft RTS would give CSDs a new and unprecedented central role in relation to buy-ins. As ESMA is well aware, CSDs are, with a couple of exceptions in markets where there is no CCP clearing trades executed on a trading venue, not involved in the buy-in process today. Today, no CSD is involved in buy-ins on OTC activity. The role that is applied to CSDs is wide ranging, imprecise and complex.

The Level 1 text gives a very limited role to CSDs in the buy-in process. In Article 7(10)(c) CSDs are required to include in their own rules an obligation for a participant to an OTC non-centrally cleared trade to be subject to buy-in procedures and to provide settlement information and trading venues with information which allows them to manage their own obligations under Article 7 of CSDR. The Level 2 text goes much further. CSDs are now required to:

- (i) appoint buy-in agents in Article 11(3),
- (ii) send notices to failing and receiving participants in Article 11(4),
- (iii) reserve securities to fulfil a buy-in Article 11(5),
- (iv) manage partial settlement in a particular way in Article 11(6) ,
- (v) 'deem' execution of certain settlement instructions in Article 11(7)[3],
- (vi) receive notification from buy-in agents when a buy-in is not possible,
- (vii) manually cancel settlement instructions in these circumstances in 11(9), and to
- (viii) test information provided by participants in non-centrally cleared transactions and to limit the number of buy-ins accordingly[4].

This is an inconsistent set of obligations when compared to those set down in Level 1. The above steps would also involve extensive manual intervention by CSDs, in contradiction of Article 3(1). Giving CSDs this primary role in relation to buy-ins (even if it is administrative only) will inevitably result in new liabilities, as disputes with clients over which transaction should be bought-in will become highly probable. This will increase a CSD's risk profile significantly, and contrary to the overall objective of the CSDR, which is for CSDs to maintain the lowest possible risk profile.

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[3] 'Deemed' settlement is an unclear concept and may involve complex settlement finality considerations.

[4] Such tests are not currently performed today and we have serious doubts that they are even possible.

By way of example, domestic CSDs do not purchase or hold securities for their own account and cannot be exposed to such risks. The buy-in agent therefore, should not be an agent of the CSD, but agent for the failing participant. Would a CSD need to appoint 3 agents to enable avoidance of conflicts of interest? What if reasonable commercial and risk grounds acceptable to a domestic CSD were not obtainable (the necessity of appointing an agent could greatly reduce a CSDs negotiation ability with a prospective agent)? How would an agent locate the securities if the counterparties to the trade had failed to do so? And who would be exposed to the insolvency of the Buy-in agent?

We believe that the main problem with the buy-in provisions is that Level 1 does not define a Buy-in and appears to assume that Buy-ins are required at trading, clearing and settlement levels, even though the chains of transactions are very different across each of these three activities. Buy-ins are about participants being able to fulfil a contractual obligation fixed at the point of trade. The mechanism for doing this between participants should remain at the level of the trading parties. CSDs rarely have any contractual relationship with the trade counterparties, nor trading venues, but only with CSD participants who act as their settlement agents.

The draft RTS would require CSDs and participants to develop entirely new communication flows across their global client bases. In addition to being suboptimal (collecting trading information at settlement level rather than allowing trading counterparties to report to regulators directly), such communication flows will require substantial development costs for new messages which in turn would need to be ISO compliant in line with Article 37 of CSDR. There are other reasons why we believe that the Buy-in Process proposed is unworkable. For instance

- Article 11(5) requires CSDs to reserve securities against a Buy-in transaction. This process is cumbersome, likely to reduce overall settlement efficiency and is a practice that is generally only observed in emerging markets. A CSD should offer its participants the possibility to segregate activity (at account level or even at settlement transaction level), but the exact process should not be governed by law. Furthermore any restrictions should remain the choice of participants and not be forced by the CSD.
- Art 11(6) is not workable. A partial settlement indicator cannot be amended by the CSD. If a participant does not agree to a partial settlement taking place, the CSD would have to create an amendment message to change the partial indicator, thereby intervening in the client's transaction flows. It should not be mandatory to partial prior to buy-in.
- Art 11 (8) cash compensation should be a possibility before buy-in.
- CSDs cannot identify (Article 11(10)) the client that caused the fail beyond its own CSD participants. The RTS is requiring CSDs to test the consistency of this information in relation to settlement chains. In a securities market which is based on the concept of fungible securities, neither participants nor CSDs can identify such chains with any accuracy.

The table below shows the settlement fails from ISD+1 to ISD+4 and the number of buy-ins that each CSD in the Euroclear Group (with the exception of Euroclear Sweden) would have to be performed each day. These are worst case numbers. They assume that all transactions subject to buy-in are OTC (as the vast majority would be for Euroclear Bank's activity) since CSDs are unable to identify whether transactions

settled are OTC or on exchange. In addition, no allowance has been made for possible extension periods after ISD + 4 (which is unlikely to affect the figures materially). We do not believe that when mandating Buy-ins at the settlement level the Authorities had realised the scale of the effort that would be needed by the market to comply with the request. For Euroclear Bank, with an international client and asset base, engaged in predominantly OTC transactions, the ESMA RTS could require around 2000 buy-ins a day[5] in a variety of global securities the liquidity of which may vary substantially (meaning that they may not be available in the market to support the buy-in at all). Given that this process would require discussion with counterparties the support that would be needed would be immense. In order to put these numbers in perspective, Euroclear Bank currently operates a fully manual Buy-in process for its Automated Stock Borrowing and Lending Programme (to ensure that stock on loan is returned by the borrower on due date). Such Buy-ins are often triggered by less liquid securities. Each day Euroclear Bank performs only around four Buy-ins for which the manual process requires around 2 full-time staff. The ESMA Standards could potentially multiply the number of buy-ins for Euroclear Bank each day by a factor of 500; the scale of the support operation to manage this would be extremely significant.

In addition, the table calculates the gross amount of settlement fines that would be applied monthly and annually across the group. These numbers do not model the effect of the netting regime introduced by the Standards.

Euroclear settlement fails, estimated CSDR penalties and buy-ins												
Age Fails									**Penalty (EUR)**		**Estimated buy-in (Nb)**	
	ISD +1		**ISD +2**		**ISD +3**		**ISD +4**		**Calculated on failed settlement instructions by value**			
	Nb	**Value**	**Nb**	**Value**	**Nb**	**Value**	**Nb**	**Value**	**Monthly**	**Yearly**	**Daily**	**Monthly**
EB	2.06%	0.97%	0.58%	0.19%	0.55%	0.18%	0.54%	0.16%	31,298,954	375,587,446	2,042	40,830
ESES	1.08%	1.02%	0.08%	0.08%	0.03%	0.02%	0.04%	0.02%	3,049,479	36,593,743	99	1,987
EUI	5.48%	1.79%	1.40%	0.28%	0.60%	0.09%	0.34%	0.03%	6,825,803	81,909,636	338	6,769
Esw	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	742,300	8,907,605	N/A	N/A
Efi	2.30%	N/A	0.44%	N/A	0.16%	N/A	0.16%	N/A	315,623	3,815,636	47	923

Article 11 therefore needs to be restructured completely to

(i) define buy-ins precisely

(ii) remove CSDs from any role in the buy-in process which might increase their risk profile and therefore, adversely affect the stability of the financial system, and

(iii) allocate a pure information gathering and dissemination role to a CSD for OTC non-centrally cleared transactions only, requiring trading counterparties to inform their settlement agents to pass information to the CSD setting out the status of each stage of the buy-in process for all such unsettled transactions. This information could then be submitted to the CSD’s Competent Authority.

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[5] Not taking into account chains of transactions, which CSDs are unable to identify

We have not suggested drafting changes to the buy-in section because we believe much more detailed dialogue is needed with the market and the authorities before a regime can be accurately specified.

Q8: What are your views on the proposed draft RTS related to the buy-in timeframe and extension period?

We would like ESMA to confirm that a central list of those instruments falling under the definition of "liquid market" in accordance with point (a) of Article 2(1)(17) or point (b) of Article 2(1)(17), respectively, of Regulation (EU) No 600/2014, will be made available by ESMA and updated on a regular basis.

Q9: What are your views on the proposed draft RTS related to the type of operations and their timeframe that render buy-in ineffective?

Article 14 is based on two false assumptions. First, it assumes that CSDs can identify, in their own systems, operations composed of several transactions, and secondly it assumes that CSDs can already identify near and far legs of a repo transaction (article 14(1)(a)) and also a loan and return of securities (article 14(1)(a)).

The first assumption is contrary to the operation of the European securities markets where securities, like cash are fungible. So links cannot be identified with any degree of accuracy.

The second assumption appears to be predicated on a belief that a "repo flag" is needed. Securities financing transactions are handled as standard DVP settlement instructions. From the individual instruction, a CSD does not know whether the instruction is the first or the second leg of a repo, nor the terms of the repo. Furthermore, such functionality will not be available in T2S. This means that CSDs participating in T2S will not be able to comply with the requirements proposed by ESMA in Article 14 of the draft RTS. Indeed, it does not make sense for T2S participating CSDs to develop a mechanism to identify short-term repos outside of T2S, since transactions can be sent by directly into T2S (by directly connected participants) and that matching will always takes place in T2S.

Although ISO messages could accommodate the inclusion of the necessary information on repos in the future, there is currently no harmonised practice on how to use these fields; much more work is necessary before a comprehensive solution can be put in place allowing CSDs to identify the details of such transactions. In particular whether such IDs should be a mandatory matching field, and if so how the matching should work (match to blank, or match to a similar input). These market practices would need to be agreed globally due to the nature of the ICSDs' client base.

Q10: What are your views on the proposed draft RTS related to the calculation of the cash compensation?

The methodology to arrive at the reference price, and the source of the reference price, is unclear.

Q11: What are your views on the proposed draft RTS related to the conditions for a participant to consistently and systematically fail?

The threshold proposed under Article 16(1) appears low; and should be increased to avoid unnecessary procedures against failing participants, given the severe potential consequences. In order to make sure that the notion of a "consistently and systematically failing participant" is meaningful, we suggest the threshold is raised to (say) 25% below the average settlement efficiency rate for the SSS. We also reiterate that the fact that a participant falls under the threshold defined in Article 16(1) of the draft RTS should never lead to the automatic suspension of that participant. The suspension of a participant is an extreme measure that can only be implemented after careful consideration of the circumstances in each case and in close consultation with the competent authority.

Q12: What are your views on the proposed draft RTS related to the settlement information for CCPs and trading venues?

CSDs already provide settlement information to those CCPs which act as a standard client of a CSDs. In this case they receive the same settlement reporting available via STP processing to all clients.

Trading venues are not standard CSD participants, so there are no technical or contractual ties between them. As a result of Article 17, CSDs and trading venues might thus have to design new types of agreements allowing trading venues to obtain the necessary information in relation to buy-ins for non-CCP cleared transactions executed on trading venues.

In addition, CSDs are not always in a position today to identify the trading venue to which the settlement information should be communicated (e.g. if settlement instructions are input by CSD participants and not received via a trade feed). For this to be identified would require a global market practice change through the use of ISO "Place of Trade" (populated by the ISO Market Identifier Code – MIC).

Q13: What are your views on the proposed draft RTS related to anti-avoidance rules for cash penalties and buy-in?

We do not understand the purpose of Article 19 which appears merely to repeat that the CSDR and the Standards are legally binding.

Q14: 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.

We welcome the fact that ESMA accepts that the introduction of SDR and Buy-ins is a complex IT and market practice project which is due to be undertaken around the same time as the largest infrastructure change in

the history of EU securities settlement (T2S) is being implemented. However, we continue to believe that 18 months is still too short. This is for the following reasons (in no particular order of importance).

(i) First, the Buy-in and SDR provisions are highly complex and the detailed thinking of ESMA has only been known by the market for 2 months. Given the concerns expressed by the market, the CSDs and the T2S Advisory Group it is probable that the proposals will undergo significant change or adjustment before they are finalised. The earliest therefore, that an IT and business project could start is around September 2015 when the final Standards are published in the Official Journal, thereby freezing the high level requirements. In Annex 1 (page 77) we attach a detailed (and draft) structure of the project we would need to put in place to deliver a settlement discipline regime (not including buy-ins, or any other CSDR mandated IT project, such as record keeping). This shows that around two years would be needed to roll out this project successfully globally. This does not include agreeing new standards with ISO and the market (probably through the SWIFT MPGs) for which additional time would be needed (especially since clients affected are not just based in Europe).

(ii) As the T2S AG has explained in detail, many of the record keeping requirements and the SDR/Buy-in requirements contained within CSDR do not appear within T2S. These items are fully described in the T2S AG response. So 24 CSDs in Europe would need to request changes to the T2S system to ensure their own compliance with the CSDR. As the T2S AG and the ECB explain, making such changes in the middle of the two year T2S migration path would jeopardise and destabilise the successful launch of the project.

(iii) Those 24 T2S-participating CSDs would have to decide whether, and if so when, they would wish to outsource part of the SDR regime to T2S. This would require internal and external costings and then negotiation between the CSDs and the supplier (the ECB). This process could only begin once the Standards are final and all parties have a firm base on which to begin negotiations.

(iv) Many of the fields required by the Level 2 Standards, and the new messages that may be required by the new Buy-in regime, would have to be constructed in compliance with CSDR Article 37 and ISO standards. This would also take time to agree.

Taking these four issues into account, such a major change would take a minimum of 24 months from the publication of the Standards in the Official Journal (ie, very end of 2017, at the earliest). We do not believe this timetable should be of concern to the authorities given the already very high levels of settlement efficiency in EU securities markets.

In addition, ESMA should clarify that the Record Keeping requirements, with which compliance is required at the point of authorisation (ie end 2016, well before the introduction of the SDR and Buy-In requirements) can only be implemented in respect of non-SDR and Buy-In record keeping requirements. If this is not the case, then the implementation of the Record Keeping requirements must be aligned with the implementation of the SDR and Buy-In regime. We comment separately on the feasibility of introducing the record keeping requirements in Part II of this document.

Responses to the ESMA consultation questions (Technical Advice)

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

We support the mark to market approach proposed by ESMA, provided that there is clarity on the reference price to be used and provided that CSDs are able to access a single and reliable source for such prices. There must be a workable harmonised source for CSDs to access reference prices for the relevant instruments, and thereby ensuring a level playing field across the EU. In practice, it remains to be confirmed how a single source of price data can be established, and we believe that ESMA must explore practical options with market participants and relevant authorities prior to the finalisation of its advice. Any monopoly supplier would have to cover reference prices for almost all global securities on a daily basis (given the international coverage of the ICSDs) and would probably raise important competition law issues. Allowing CSDs to locate their own reference price from their own providers would be more practical but would inevitably mean that different CSDs would be using different prices for the same security fails; creating an unlevel playing field across Europe. We do not believe that ESMA has considered the consequences of "reference prices" in sufficient detail.

The ESMA approach for partial deliveries is very complex to implement. Partial indicators cannot be amended by a CSD. So if a participant was to opt-out of partials, a CSD cannot override that choice. As a result if a participant does not accept a partial delivery, the penalties will have to apply to the total amount of the failing settlement instruction.

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 disincentivise trading in small caps? Please provide evidence to support your views.

We welcome ESMA's approach of taking into account liquidity and in particular the borrowing costs when specifying the rates for different categories of financial instruments. But we believe the structure of the fines themselves is (i) inconsistent with the structure for Buy-ins and (ii) inconsistent with the categories used by ESMA to distinguish different asset types for the purpose of fails reporting in the draft RTS on settlement discipline. In particular, the distinction between government bonds and corporate bonds in relation to penalty rates is not consistent with the use of a single category for debt instruments under Article 4(2)(d)(ii) of the draft RTS on settlement discipline. ESMA should also be aware that there is currently no global standard (ISO 10962) available for categorising of corporate bonds, and that these should as a result rather be defined as debt instruments issued by non-public authorities. To be meaningful, fails reporting should reflect the categories of financial instruments subject to different penalty rates.

We do not understand the methodology that has been used to set the rates in the ESMA Consultation Document and there is no analysis of their effects. The rates should indeed be higher than the relevant borrowing costs, but the daily fines chosen appear to be significantly in excess (between three and ten times the market borrowing costs). Of course, for many securities in scope (illiquid securities, UCITS etc) borrowing might not even be possible or even practical (due to unavailability of stock).

Fines could be directly related to the liquidity of the instrument as we argued in our 2014 Consultation response; where a security is highly liquid (such as an EU government debt security or a FTSE100 equity) borrowing is always a possibility. For other securities it becomes more problematic and it would be prudent to exempt illiquid securities from the buy-in and SDR wherever possible. MiFID definitions of liquidity could be used for consistency. Borrowing is not systematically available; not all CSDs offer borrowing programs, and availability depends on the size of the borrowing pools which vary in accordance with liquidity of security

We also note that the structure used by ESMA would result in SME transactions (with a deferral of the buy-in process) being fined for far longer than liquid equities. This would further disincentivise market making in such securities or even trading them in the first place. This would appear to run counter to the objectives of Capital Markets Union to make SMEs more attractive to investors.

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

We agree that no increases or decreases of the penalty rate should be foreseen at this stage. As explained in our response to the ESMA Discussion Paper in 2014, a system involving increases and/or decreases would make the implementation of the penalty mechanism very complex and would lead to various problems in relation to the "passing on" of penalties.

We also welcome ESMA's proposal to allow CSDs, in limited circumstances and on an ad hoc basis, to decrease the penalty rate to zero (e.g. if a fail is caused by circumstances outside the control of the failing participant). It is appropriate to include a more general rule whereby penalties could be set to zero for all fails which are not due to a lack of cash or of securities.

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

We share ESMA's view that the "passing on" and "netting" of penalties should be sufficient to address issues related to chains of interdependent transactions, whether identifiable by the CSD or not. We agree that, for the sake of simplicity of the penalty mechanism, the parameters of penalty calculation should not be changed in cases of chains of interdependent transactions.

Part II Executive Summary

Questions 15-31, the Technical Advice and the Guidelines

We have identified a number of major concerns on the impact of the proposed ESMA standards, most of which we believe are unintended consequences as they could cause market disruption, excessive costs for CSD clients and disproportionate or unnecessary changes for CSDs. We therefore propose amendments or solutions for such cases and remain ready to work with ESMA to find a balance which implements the CSDR proportionately and with minimal unintended consequences.

1. **The highly prescriptive ESMA technical standards will require substantial adaptation cost and implementation time for CSDs. This is at odds with the policy orientation of the CSDR itself which does not call for substantial harmonisation of CSD activities and practices.**

Indeed, the CSDR level 1 has been designed with a view of allowing the wide diversity of CSD business models and services to be authorised as EU CSDs. This is clearly demonstrated in the open definition of CSD activities in the CSDR Annex, authorisation of which can be granted by the CSDs' national competent authorities. We therefore believe that ESMA should introduce more flexibility in the standards. The national competent authority should be allowed to authorise some specific elements, depending on the local market and specific CSD business models and services. Otherwise, the compliance costs for CSDs will be substantial. In this response, we propose several suggestions for amendments to make the RTS more proportionate while retaining full consistency with the Level 1 CSDR text.

2. **ESMA has not presented a cost benefit analysis on the proposed standards, and has therefore not demonstrated a positive net impact of the standards**.

For some standards (such as Record Keeping, Reconciliation and Links), we have identified substantial negative impact on Euroclear CSDs (and the market) for which we cannot identify equally substantial or higher benefits. We therefore urge ESMA to complete and publish its cost benefit analysis before finalising its standards. Euroclear CSDs have provided input into the cost benefit analysis which was based on elements of the ESMA Discussion Paper (DP) from March 2014. However, in the current ESMA consultation paper some standards differ substantially from the proposals in the DP; other standards are new and on which we had not provided input for the cost benefit analysis.

3. **The proposed standards could have a substantial structural, negative - and probably unintended - impact, on the international activities of CSDs.**

As currently drafted, the standards could:

- Lead to the removal of thousands of international funds from the Euroclear Bank FundSettle service offering
- Have negative impact on EB indirect CSD links
- Create difficulties to attract non-EU issuers

The above effects would be the result of the combination of elements of the RTS related to recordkeeping, reconciliation, access and links (details are provided below under the respective consultation questions). We do not believe that such a restructuring of the business has been intended by the authorities as it has not been described as a clear agreed policy choice in the Level 1 text. Moreover, we are unaware of regulatory concerns on the international business of Euroclear Bank (which has been positively assessed by the IMF against the 2012 CPMI/IOSCO Principles for FMIs) and assume that it is not ESMA's intention to impact the business of particular CSDs in such a material way. We make proposals below on how the text of the standards could be amended.

4. Recordkeeping is not record creation; recordkeeping is not record harmonisation.

Despite some welcome improvements compared to the DP, the standards on recordkeeping remain problematic as they go beyond the intended CSDR objective of showing compliance with CSDR. The standards on recordkeeping should not by themselves include new requirements on the way CSDs operate and interact with participants and other market players.

ESMA requests CSDs to keep records on information they do not need or use in their day-to-day operations, introduces harmonisation of record formats (which is not mandated in Level 1), proposes formats which are not ISO compatible, co-mingles the objectives of recordkeeping and business continuity processes, and is overly prescriptive on records to be kept for ancillary services. As a result, the implementation of the recordkeeping requirements will be very costly for CSDs and their participants and CSDs will not be able to meet the requirements in the proposed timeframe.

We urge ESMA to review the standards on Recordkeeping and to bring them to a more reasonable scope in line with CSDR Level 1, i.e.:

- Allow CSDs to only keep those records that are resulting from their provision of CSD core, ancillary and banking ancillary services;
- Allow CSDs to keep their records in current formats;
- Allow the CSDs' national competent authorities to agree on precise recordkeeping requirements depending on the CSDs' authorisation file.

Euroclear CSDs have estimated that the implementation cost of the proposed standards on recordkeeping alone[6] will range between 15% and 35% of the total Euroclear investments for implementation of T2S. This is a very sizeable implementation effort that would need be made at the same time as the T2S implementation itself (and utilise the same resources). The proposed 12 month extension for implementation of recordkeeping is therefore, too short. In addition, ESMA has not provided a cost-benefit analysis that would justify this cost.

[6] These costs need to be added to the figures on page 21 which are related to the SDR and Buy-In implementation costs only.

Given that many records are related to compliance with the settlement discipline rules of the CSD Regulation, we strongly recommend that the timeline for implementing the draft technical standards on recordkeeping is aligned with the timeline for implementing the draft technical standards on settlement discipline.

Despite our above comments, Euroclear understands that ESMA may wish to construct a better and more holistic view on the EU securities markets and related post-trade activities. We do not believe that the data kept by CSDs as part of the recordkeeping requirements can, or should, be used for this purpose. We would therefore suggest that ESMA should reflect on the data/figures/statistics ESMA would like to collect on EU CSD activities (starting from the data available through the BIS Blue Book). We are committed to work with ESMA to find an acceptable methodology to gradually build more refined statistical data for Competent Authorities. Such an approach would be much less resource intense for CSDs and the first results could be available much more quickly. Such effort should ideally take place outside of the frame of the CSDR.

5. We believe ESMA should make the drafting of the RTS and ITS more consistent

We have noted a number of drafting inconsistencies across the Standards. In particular;

- The ESMA RTS on CSD authorisation (Annex II) contain new CSD requirements or interpretations of CSD requirements from Level 1 or Annex III. We urge ESMA to review both Annex II and III to ensure that Annex II is limited to information required for authorisation, review, evaluation and recognition and Annex III contains all CSD requirements.
- ESMA should streamline definitions as we notice inconsistencies of definitions between Level 1 and Level 2 and within Level 2 text. These concerns relate mainly to definitions of central maintenance, integrity of the issue, and home/host. ESMA also introduces definitions of "issuer" and "investor" CSD whereas CSDR level 1 uses the terms "requesting" and "receiving" CSD and falls short of defining an issuer and investor CSD.
- ESMA introduces the notion of "portability" which is not present in CSDR Level 1 and is not relevant for CSDs. Such a complex and wide-ranging concept should have been covered in the Level 1 text, or should be covered in the forthcoming R&R directive, since any concept of portability is of relevance only in the case of a CSD Resolution discussion.
- The ESMA RTS on Access are complicated as they combine criteria for refusal of access to issuers, participants and market infrastructures. This makes the reading of (and therefore compliance with) the article unnecessarily complex. We suggest to ESMA to make the article simpler (even if that would mean that there is repetition from one paragraph to the other).

6. We believe ESMA's rationale for proposing suspension of settlement in case of reconciliation problems as such suspension could have systemic consequences.

7. The ESMA proposals on Investment Policy may lead to an erosion of CSDs' capital.

8. **The ESMA Technical Advice on the definition of substantial importance of CSD activities shows major inconsistencies with regard to the CSDR Level 1 as approved by the co-legislators. This topic requires significant revision by the European Commission and ESMA.**

Responses to the ESMA Consultation Questions (Technical Standards)

A. CSD authorisation, supervision and recognition

> ***Q15: 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)?***

As a general comment, we point out that the RTS on authorisation requirements (Annex II) contains several CSD requirements which either complement or interpret the RTS on CSD requirements (Annex III) or the Level 1 CSDR. For example, Art 11 and 12 of the authorisation requirements seem to go beyond, and are much more specific than, Art 6 of the CSD requirements. As currently drafted, the relationship between both Annexes is complicated and make it difficult to establish the obligations of CSDs with certainty. It would facilitate the subsequent application of the rules if Annex II merely focuses on the information that is required from CSDs to request authorisation, without imposing additional requirements compared to Level 1 and the other RTSs.

Comments on the RTS (Annex II, Chapter II)

We hereby provide detailed comments and suggested amendments on the articles of the RTS. Some of the recitals will need to be amended accordingly.

General information to be provided on the applicant CSD (articles 2, p.159-161)

- Art 2 (1): "activities" should be "***services***"
- Art 2(2) (i): it is unclear how a CSD could determine "indirect" holdings. We believe this information requirement should be dropped.
- Art 2(2) (n): We believe it is necessary to limit the list of outsourced services to be included in the authorisation file to outsourcing "under [CSDR] article 30**(4)**". Other outsourcing is not subject to authorisation.
- Art 2(2) (j): it is unclear how a CSD could determine "significant influence". Again, we believe this information requirement should be dropped.
- Art 2(2) (m): in accordance with CSDR art 73, MiFID is not relevant for a CSD to the extent its services are explicitly listed in Sections A and B of the CSDR Annex. Text should be amended to include ***"… which are not expressly listed in Sections A and B of the Annex to Regulation (EU) No 909/2014***".
- Art 2 (2) (o): clarification is needed on what is meant by "currencies it intends to process".

Suggested amendments:

> ***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:*

*[…] (i) a list containing the name of each person or entity who directly ~~**or indirectly**~~ holds 5 % or more of the applicant CSD's capital or of its voting rights or whose holding makes it possible to exercise a significant influence over the applicant CSD's management;*
*[…] (j) a list of any undertakings in which the applicant CSD holds 5 % or more of the capital or voting rights ~~**or over whose management they exercise a significant influence**~~;*
[…] (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"****;*
[…](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;***

CSD policies and procedures (art 3. RTS, p 160-161)

- Art 3(2) is unclear. The information to be given should be brought in line with CSDR level 1 (Art 26(5) and 65(3)) which require internal whistle-blowing procedures. It could say "***an application for authorisation shall contain the procedures or a description of the procedures in place for employees to report internally actual or potential infringements of Regulation (EU) No 909/2014*"**. The procedure for reporting to the NCA is laid down by the authority, not the CSD.

Suggested amendments

Article 3 - Policies and procedures required under this Regulation
*[…] 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.*

Information for groups (article 4 RTS, p.161)

- Art 4(1) (b): we do not understand for which entities the information has to be given. We assume the text was meant to refer to the parent company of the group of undertakings and not to each entity in the group. If information about entities other than the parent is required, the text should specify which information is required for which company and clarify that this is only for other CSDs.
- Art 4(3): refers to commercial arrangements with the group, or "through an undertaking with which the applicant CSD has an agreement". The last part should be dropped as this is not related to Art 4 "information for groups".
- Art 4(4): what is meant by "an agreement relating to the offering of trading or post-trading services"? Outsourcing by the CSD of CSDR services is covered in Art 2 of the authorisation requirements so if this article is meant to cover something else, we would appreciate that it be clarified.

Financial reports, business plans, recovery plans and resolution plans (article 5 RTS, p.162-163)

- Art 5(1) (a) and (b) make reference to specific accounting standards and financial reporting standards which are not included in the CSDR Level 1. These references should be removed as they add CSD requirements which are not within scope of the level 2 mandate.
- Art 5 (5) (b) requests the submission by the CSD of *"**the resolution plan established and maintained by the CSD**".* We believe that the current formulation in the draft RTS is misleading and should be deleted.

Indeed, unlike recovery plans, which are drafted and maintained by CSDs, resolution plans are the responsibility of public authorities, as acknowledged by CSDR Art 22, the PFMI and the FSB Key Attributes. During the trilogue discussions on CSDR, the requirement for a resolution plan was expressly dissociated from the CSD's obligation to prepare a recovery plan to recognise the fact that the resolution plan falls under the responsibility of the authorities.

Asking CSDs 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 implies that CSDs will always have access to their own resolution plan, which might not always be the case, given that there is no obligation for resolution authorities to communicate the resolution plan to the CSD every time this plan is updated.

Suggested amendments:

Article 5 - Financial reports, business plans, recovery plans and resolution plans

1. An application for authorisation of a CSD shall contain the following financial and business information about the applicant CSD:

(a) a complete set of financial statements, ***~~prepared in conformity with Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards,~~*** *for the preceding three years;*

(b) financial reports including the statutory audit report on the annual and consolidated financial statements, ***~~within the meaning of Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts,~~*** *for the preceding three years,*

[…]

5. The application shall also include:

[No changes to point (a)]

~~(b) the resolution plan established and maintained for the CSD so as to ensure continuity of at least its core functions, having regard to the size, systemic importance, nature, scale and complexity of the activities of the CSD concerned.~~

Board and senior management, management of conflicts of interest, confidentiality policy (articles 10, 11 and 12 RTS, p.165-169)

- Art 10(1) (c) (vii) an undertaking being subject to an adverse decision by a regulatory body is a potentially very wide concept because undertakings may have files pending with their regulators on a continuous basis. It would be less ambiguous to refer to an undertaking subject to "a sanction".
- Art 10(1) (c) (x): declaration of conflict of interest is not linked to "good repute". Should be deleted.
- Art 10(4) (a) and (b) We do not see any use in repeating in article 10 requirements already listed in article 2. For purposes of simplifying the structure of the authorisation request, we recommend to regroup all ownership, shareholder and controller information in a single place, possibly under a separate heading. (To note that the cross-reference in (a) is incorrect).

Suggested amendments:

Article 10 - Senior management, management body and shareholders

1. An application for authorisation of a CSD shall contain the following information in respect of each member of the senior management and each member of the management body, enabling the competent authority to assess the applicant CSD's compliance with Article 27(1) and (4) of Regulation (EU) No 909/2014:

[…] (c) a self-declaration of good repute in relation to the provision of a financial or data service, where each member of the senior management and the management body shall state whether they:

[…] vii. have been member of the management body or senior management of an undertaking which was subject to ***a sanction*** ~~***an adverse decision or penalty***~~ *by a regulatory body while this person was connected to the undertaking or within a year of the person ceasing to be connected to the undertaking;*

~~***[…] x. a declaration of any potential conflicts of interests that the senior management and the members of the management body may have in performing their duties and how these conflicts are managed.***~~

~~***4. The information referred to in the preceding paragraphs shall be accompanied by:***~~

~~***(a) the description of the ownership structure of the applicant CSD referred to in point g) of Article 1(2) including a description of the identity and scale of interests of any parties in a position to exercise control over the operation of the CSD as referred to in Article 27(7)(a) of Regulation (EU) No 909/2014;***~~

~~***(b) a list of the shareholders and persons who are in a position to exercise, directly or indirectly, control over the management of the applicant CSD to satisfy the competent authority that the requirement set out in Article 27(6) of Regulation (EU) No909/2014 is met.***~~

- Art 11 (1) (c) refers to "whenever possible conflicts of interest occur". This is very broad. We suggest to limit it to "whenever ***actual*** conflicts of interest occur"

- ***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**~~ **actual** 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.*

- Art 12 should be aligned with the underlying prudential obligation to protect confidential information (please also refer to our comments on RTS III article 6).

Article 12 - Confidentiality

~~1.~~ *An application for authorisation of a CSD shall contain the internal policies and the procedures put in place **for preventing any unauthorised use or disclosure, for commercial purposes, or any illegitimate purposes of,** ~~**Requirements for preventing any unauthorised use or disclosure, for commercial purposes, or any illegitimate purposes, of:**~~*

a) *confidential information~~**;**~~*

~~*b)*~~ ~~***information***~~ *related to participants, **their underlying** clients or issuers~~;~~*

c) *any other **confidential** information, not permitted to be used for commercial purposes, that the applicant CSD may have stored in the performance of its duties**.***

2. *(…).*

Transparency (Article 18 RTS, p.170)

The text of Art 18 is not fully coherent with the text of CSDR Art 34. To remove any ambiguity and ensure alignment with CSDR Art 34, we propose to redraft Art 18 as follows (with corresponding amendments in the box in the table of forms and templates for CSD authorisation):

Article 18 - Transparency

*1. An application for authorisation of a CSD shall contain relevant documents regarding **prices and fees** ~~**pricing policy**~~, including any ~~**existing**~~ discounts and rebates and **the** conditions to benefit from **those** ~~**such**~~ reductions for **the** ~~**each core**~~ ~~**and ancillary**~~ services 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 **published pricing policy for its core services** ~~**fee structure**~~ and the evidence that the CSD **core** services are unbundled.*

For the same reason, Recital (8) (page 155) would need to be amended as follows "*…to enable the competent authorities to verify whether* ***they are proportionate, non-discriminatory and unbundled conditions of Regulation 909/2014 are met."***

Book entry form (article 20 RTS, p. 170)

Art 20 on the "book entry form" should be deleted from the draft RTS as the Level 1 text of the CSD Regulation (Art 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 Art 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.

~~Article 20 – Book-entry form~~
~~An application for authorisation of a CSD shall contain information that demonstrates that the applicant CSD is capable to comply with Article 3 of Regulation (EU) No 909/2014.~~

ISD and fails (article 21 RTS, p.171)

The content of the Art 21 needs to be adapted depending on the outcome of the discussions on the Settlement Discipline Regime. Art 21 mistakenly refers to CSDR Art 6(2) which does not apply to CSDs.

Asset protection (article 23 RTS, p.171)

- Art 23(1) refers only to "safekeeping" but should be written in more neutral language to include direct holding countries where there is no 'safekeeping' by the CSD.
- Art 23(2) sets out substantive requirements on the CSD and would be better placed in the RTS on prudential requirements.

Portability (article 27 RTS, p.172)

We recommend not to use the term "portability" because a *"transfer of the assets of clients and participants to another CSD in the event of a withdrawal of authorisation"* is a fundamentally different exercise (and one that has never been discussed with the authorities) than managing the default of a clearing member of a CCP and much closer to a resolution event.

Art 27 of the draft RTS should in our view simply refer to the "transfer of participants' and clients' assets", in line with the Level 1 terminology.

Suggested amendment:

Article 27 – ~~Portability~~ Transfer of participants and clients' assets in case of a withdrawal of authorisation
An application for authorisation of a CSD shall contain the procedure put in place by the applicant CSD in accordance with Article 20(5) of Regulation (EU) No 909/2014, ensuring the timely and orderly settlement

and transfer of the assets of clients and participants to another CSD in the event of a withdrawal of authorisation of the applicant CSD.

Prudential requirements (articles 28 to 32 RTS, p.173-174)

- Art 29(2): ESMA may need to clarify what is a "risk rating": is it a credit rating?
- Art 30(2): the reference to "outsourcing agreements referred to in article 30 CSDR" should be amended to clarify that the information to be provided relates to outsourcing agreements subject to regulatory authorisation under article 30(4). Also it would be preferable to limit the obligation to ***material*** outsourcing agreements, i.e. those that are directly related to the delivery of operational services offered by the CSD.

Suggested amendments:

Article 30 - Operational risks

*[…] 2. An application for authorisation of a CSD shall also contain the information on **~~the~~** outsourcing agreements **directly related to the delivery of the operational services of the CSD ~~referred to in Article 30 of Regulation (EU) No 909/2014~~**, entered into by the applicant CSD **in accordance with Article 30 (4) of Regulation (EU) No 909/2014**, together with the methods employed to monitor the service level of the outsourced functions and a copy of the contracts governing such arrangements.*

CSD services (articles 33 to 34 RTS, p.174-176)

- Art 33: It is not clear what the reference to "procedures to be applied <u>*in the case of services that the CSD provides*</u>" means. We would rephrase the first sentence to say "The application for authorisation of a CSD shall include a description of the services which it provides or intends to provide ***and which it has listed in accordance with [RTS annex II] article 2(2) points (k), (l) and (m)***". If the sub-points in Art 33 are maintained, then we believe point (d) should be amended by adding "***… which are not expressly listed in Sections A and B of the Annex to Regulation (EU) No 909/2014***" to make it fully consistent with CSDR article 73.

Suggested amendments:

Article 33 - CSD Services

*An application for authorisation of a CSD shall include **a ~~detailed~~** description**~~s and procedures to be applied in the case~~** of **the** services that the CSD provides or intends to provide **and which it has listed in accordance with [RTS annex II] article 2(2) points (k), (l) and (m)** covering the following:*

(a) the core services specified under Section A of the Annex Regulation (EU) No 909/2014 that the applicant CSD is providing or intends to provide;

(b) the ancillary services specified under section B of the Annex to Regulation (EU) No 909/2014, if the applicant CSD is providing or intends to provide such services;

(c) any other services permitted under, but not explicitly specified under Section B of the Annex to Regulation (EU) No 909/2014, that the applicant CSD is providing, or intends to provide.

*(d) any services and activities that the CSD is providing or intends to provide under Directive 2014/65/EU" **which are not expressly listed in Sections A and B of the Annex to Regulation (EU) No 909/2014"** .*

- Art 34(1) (a):
  - "…*all potential sources* of risk" is very far-reaching. We think it should sufficient to give comfort to the authorities if the CSD provides information regarding "… all ***material*** sources of risk".
  - "*… the insolvency law applicable*" should be amended into "***the relevant insolvency law***".

Suggested amendments:

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; […]*

Access rules (article 35 RTS, p 175-176)

Art 35 (a) should also refer to natural persons that can become participants (e.g. in direct holding markets).

Suggested amendments:

Article 35 - Access rules

An application for authorisation of a CSD shall contain the procedures put in place for dealing with requests for access:

*(a) from legal persons, **and if relevant, from natural persons** that intend to become participants to the CSD under Article 33 of Regulation (EU) No 909/2014 and Regulation (EU) No… [RTS];*

(…)

Comments on the ITS (Annex VI, Chapter I)

Translation of application documents

Art 1(5) of the ITS states that CSDs can be required by their competent authority to provide translations of their application documents in other languages (*"The competent authority may request the CSD submit the same information in more than one language"*). As the authorisation file is likely to be composed of several hundreds of pages, we believe it is not reasonable nor realistic to require CSDs to translate their application documents. The NCA should indicate to the CSD prior to the start of the authorisation filing which language should be used for the application.

Q16: 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)?

Information submitted to the competent authority (articles 38 to 40 RTS, p.177)

- Art 38 (1) requires CSDs to do a self-assessment on their compliance with CSDR. This is disproportionate and a practice that is not followed by other regulated entities such as banks and investment firms.
- Art 38 (2): the arrangements, strategies, etc. will not "demonstrate" the CSD's compliance, they will assist the CSD in ensuring its compliance.

Suggested amendments:

Article 38 - Access to data by the competent authority

1. For the purpose of the review and evaluation as referred to in Article 22(7) of Regulation (EU) No 909/2014, a CSD shall provide the information as defined in this chapter ~~***together with a self-assessment on the CSD's activities overall compliance with the provisions of Regulation (EU) No 909/2014 during the review period***~~*, and any other information as requested by the competent authority.*

- Art 40: the word "***materially***" has mistakenly been omitted in the text which should be aligned with the title.

Suggested amendments:

Article 40 - Documents submitted in the application for authorisation that have been materially modified

A CSD shall provide all documents submitted to the competent authority in the application for authorisation which have been ***materially*** *modified in the review period.*

Information relating to periodic events (article 41 RTS, p.178-179)

- Art 41: in general, the requested information is very extensive and does not only refer to periodic events. We believe some changes need to be introduced to strike a better balance between the

CSD's effort to provide information and the need for the competent authority to obtain useful information. For example, we believe the information flow between the CSD and the NCA will be more meaningful if some obligations are subject to a materiality test:

- Art 41(1) (e) and (f) introduce significant uncertainty by requiring a CSD to provide information about *potential* litigation. The assessment of what is "potential" is difficult and subjective. The obligation should be limited to ***pending*** litigation.
- Point (h): we believe it would be more proportionate to require the CSD to just report the number of complaints received. If the competent authority finds the number high or wants to investigate further, it can of course inquire for more details. For direct holding market CSDs with hundreds of thousands of participants/individual investors, reporting on all complaints would be disproportionate.
- Points (j) (k) (r) (t) to make the information useful, it should be limited to ***material*** changes.
- Point (m): we believe the obligation must be limited to giving information on the incorporation of new types of conflicts in the conflicts register. We do not see the value of reporting conflicts of interest when they were identified, raised and managed in accordance with the CSD's policies. For any conflict which was not managed, there would be a breach of policy – please refer to our comments on (p) about reporting infringements.
- Point (n): It is confusing to address conflicts of interest in two points, so we suggest to delete conflicts of interest from point (n).
- Point (p): It is in our view not reasonable to submit the CSD to an obligation of self-incrimination and we believe this goes beyond CSDR level 1 which limits the obligations of the CSD to a) have adequate policies and procedures in place to ensure compliance – CSDR article 26(2), and b) have appropriate internal procedure for reporting of infringements by employees – CSDR articles 26(5) and 65(3).
- Point (u): As mentioned under **financial reports, business plans, recovery plans and resolution plans**, any reference to the resolution plan should be deleted as it does not fall under the responsibility of the CSD.
- Art 41 (2) mentions events but the list in (1) includes more than periodic events.

Suggested amendments:

Article 41 - Information relating to periodic events

1. For each review and evaluation, the CSD shall provide to the competent authority, ***where relevant****:*

[…] (e) information on any pending judicial, administrative, arbitration or any other litigation proceedings, particularly as regards tax and insolvency matters, that the CSD ***~~may be~~ is*** *party to, and which may incur significant financial or reputational costs;*

(f) information on any pending judicial, administrative, arbitration or any other litigation proceedings, irrespective of their type, that a member of the management body or a member of the senior management ***~~may be~~ is*** *party to and that may have an adverse impact upon the CSD;*

[…] (h) information on any ***formal*** *complaints received by the CSD in the review period, specifying the nature of the complaint, the handling of the complaint and date when the complaint was resolved;*

[…] (j) information on any ***material*** *changes affecting any links of the CSD, including the mechanisms and procedures used for settlement;*

*[…] (k) information on ~~**any**~~ operational incidents that occurred in the review period and affected the smooth functioning of any core services provided;*

*[…] (m) information on ~~**all**~~ **new** cases of identified conflicts of interest that occurred in the review period, including the way in which they were managed;*

*(n) information on measures taken to address the identified technical incidents ~~**and conflicts of interest**~~ as well as the results thereof;*

*(…) (p) information on any identified infringements of CSD's rules and obligations under Regulation (EU) No 909/2014, ~~**including in connection**~~ **reported through the channel foreseen** in to Article**s** 26(5) **and 65(3)** of Regulation (EU) No 909/2014;*

*[…] (r) **relevant** business operations report concerning the review period;*

*[…] (t) information on any **material** changes to the recovery plan, including the identification of the CSD's critical services, results of stress scenarios and recovery triggers, as well as the CSD recovery tools.*

*[…] ~~**(u) information on any changes to the resolution plan established and maintained for the CSD so as to ensure continuity of at least its core functions, having regard to the size, systemic importance, nature, scale and complexity of the activities of the CSD concerned, and any relevant resolution plan established in accordance with Directive 2014/59/EU;**~~*

Statistical data (Article 42 RTS, p.180-181)

Art 42 (1) is very prescriptive on the data elements to be provided for ***each*** review. Such harmonisation of data elements is not in line with the diversity of CSD business models that can be authorised as per CSD Level 1. Some of the data elements are not required or relevant for the CSD to demonstrate compliance with the CSDR: e.g. information on country of incorporation of issuers is not maintained by some CSDs, for CSDs which accept natural persons as participants, country of incorporation of participant is irrelevant. CSDs may not be able to determine the market value of settlement instructions, etc. We therefore suggest including "***if and when available***" in the first sentence of art 42 (1).

Art 42 (1) (f) reference to buy-in transactions is dependent on overall discussion on CSD role in buy-ins.

Suggested amendments:

Article 42 - Statistical data to be delivered for each review and evaluation

*1. For the purpose of the review and evaluation, the CSD shall provide the following statistical data**, if and when available,** to the competent authority covering the review period, **when requested by the Competent Authority**:*

[No changes to (a)]

*(b) a list of ~~**issuers and a list of**~~ securities issues ~~**maintained**~~ **settled** by the CSD, including information on ~~**the issuers' country of incorporation, highlighting**~~ those **securities** for **which** ~~**whom**~~ the CSD provides notary services;*

*(c) **where available,** ~~**nominal and or market**~~ value of the securities maintained in each securities settlement system operated by the CSD in total and divided as follows:*

(i) by asset class (as specified in point d) of Article 4(2) of Regulation (EU) No … [RTS on settlement discipline]);

~~(ii) by country of incorporation of the participant;~~

~~(iii)by country of incorporation of the issuer;~~

(d) ***where available,*** ***~~nominal and or market~~*** *value of the securities centrally maintained in each securities settlement system operated by the CSD, divided as follows:*

(i) by asset class;

~~(ii) by country of incorporation of the participant;~~

~~(iii)by country of incorporation of the issuer.~~

(e) ***where available,*** *number,* ***~~nominal value and market~~*** *value of settlement instructions settled in each securities settlement system operated by the CSD in total and divided as follows:*

(i) by asset class;

~~(ii) by country of the incorporation of the participant;~~

~~(iii) by country of incorporation of the issuer;~~

(…)

Q17: What are your views on the proposed draft ITS on cooperation arrangements as included in Chapter III of Annex VI?

No Euroclear comments.

Q18: What are your views on the proposed draft RTS on CSD recognition (Chapter IV of Annex II)?

No Euroclear comments.

Q19: What are your views on the proposed approach regarding the determination of the most relevant currencies?

No Euroclear comments

Q20: 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)?

We would like to note that CSDs that request authorisation to perform banking services will want to submit a single authorisation file for the CSD and banking type of ancillary services at the same time.

- Art 50(1) (g): Delete first sentence referring to resolution plan (as explained above)
- Art 50 (1) (g) (h): there is a numbering problem

- Arte 50 (1) (g) (ii) The requirement is not aligned with the level 1 text and should be amended as follows: "*evidences how those services are directly related to core or ancillary services* ***listed in Sections A and B of the CSDR annex*** ~~***which the CSD is authorised to provide***~~".
- Art 50 (h) (iii) (d): "*the relevant arrangements with third parties involved in the cash transfer process such as arrangements covering the outsourced functions and the existing interoperable links*": it is not clear to us what the latter part of the paragraph refers to. We propose to delete it.
- Art 50(3) (m)(v): The reference to outsourcing requirements in CSDR should be Art 30 not 31.

Suggested amendments

Article 50 - Authorisation to provide banking-type ancillary services

1. A CSD shall ensure its application for the authorisation referred to in point (a) of Article 54(2) of Regulation (EU) No 909/2014 contains at least the following information […]

(g) ~~***the resolution plan established in accordance with Directive 2014/59/EU;***~~

(h)-*a programme of operations which as a minimum:*

(…)

(ii) evidences how those services are directly related to core or ancillary services ***listed in Sections A and B of the CSDR annex*** ~~***which the CSD is authorised to provide***~~*;*

(…)

[…] ~~***(h)***~~ ***(g)*** *a formal written commitment that: […] (iii)*

[…] d. the relevant arrangements with third parties involved in the cash transfer process, ~~***such as arrangements covering the outsourced functions and the existing interoperable links;***~~

[…] 3. An application for authorisation of a CSD referred to in point (b) of Article 54(2) of Regulation (EU) No 909/2014 shall contain at least the following information […]

(m) detailed information concerning the structural organisation of the relations between the CSD and the designated credit institution, including in particular information concerning:

*[…] (v) the service level agreement establishing the details of functions to be outsourced by the CSD to the designated credit institution or from the designated credit institution to the CSD and any evidence that demonstrates compliance with the outsourcing requirements set out in Article 3****0***~~***1***~~ *of Regulation (EU) No 909/2014;*

- Art 51(5): it is not reasonable to require the applicant CSD to provide information in more than one language. This goes counter to the objective of facilitating cross CSD business in an internal market.

B. CSD requirements

As a general comment, we would like to highlight that ***definitions*** are not coherently used across this and other RTS.

Art 1 (a): definition of ***issuer CSD***. First, we are unclear why the RTS needs such a definition when CSDR Level 1 did not provide for it. Secondly, a definition of issuer CSD would need to include "central maintenance". Indeed, a CSD can be an Issuer CSD without being a notary. Moreover, the language used in CSDR is "requesting" and "receiving" CSD.

Art 1 (c): the definition of ***double-entry accounting*** is too narrow: the definition only refers to "securities accounts": CSDs perform double-entry accounting but such accounting does not always involve two securities accounts. For example, for cross-border settlement, the CSD will make an internal technical record that is mirroring the entry made by the third party in its own books. This distinction is very important in view of Art 14 to 16 on reconciliation.

Suggested amendments:

Article 1 – Definitions

For the purposes of this Regulation, the following definitions shall apply:

~~(a) 'issuer CSD' means a CSD which provides the core service referred to in point 1 of Section A of the Annex to Regulation (EU) No 909/2014 for a securities issue.~~

[no changes to (b)]

*(c) 'double-entry accounting' means that for each credit entry made on a**n** **~~securities~~** account maintained by the CSD, there is a corresponding debit entry on another **~~securities~~** account maintained by the CSD.*

Q21: What are your views on the proposed draft RTS on CSD participations (Chapter II of Annex III)?

We are unclear on how ESMA considers nominee and trustee companies (as used by Euroclear UK & Ireland and Euroclear Bank) fit in this picture. Clearly, the nominee and trustee companies are established with a view to facilitate asset protection, i.e. supporting services listed in Section A or B of the CSDR Annex. Nominee and trustee companies are important systemic mechanisms to reduce risks for CSDs and their participants. Yet, it is not clear if ESMA (or the competent authority) would indeed consider that these companies "provide services listed in Section A or B of the CSDR Annex". If not, then the criteria for participation as included in Art 2 are too stringent as both EUI and EB provide (unlimited) guarantees to such companies. It would therefore jeopardise the nominee structure used in certain markets (which is not in line with CSDR Level 1). We would appreciate receiving clarity on this important point.

- Art 2 (1) (b) (iii): recovery and resolution situations have significant elements of uncertainty and discretion; we suggest adding "***to the extent known or reasonably foreseeable***".

- Art 2 (1) (c) should be aligned with CSDR Level 1. "*The entity in which the CSD holds a participation is providing complementary services related to the core or ancillary services offered by* ***a*** ~~***the***~~ *CSD…".* Indeed, a CSD could have a participation that serves several CSDs, not only the CSD that has the participation.

Suggested amendments:

Article 2 - Criteria for the participations of a CSD

1. A CSD may have a new or keep an existing participation only in a legal person other than those providing the services listed in Sections A and B of the Annex of Regulation (EU) No 909/2014 if each of the following conditions is fulfilled:

[..] (b) the CSD fully capitalises, through financial resources that fulfil the criteria as set under Article 46 of Regulation (EU) No 909/2014, the risks resulting from any:

[…] (iii) loss sharing agreements or recovery or resolution mechanism of the legal person in which a CSD intends to participate ***to the extent known or reasonably foreseeable****.*

(c) the entity in which the CSD holds a participation is providing complementary services related to the core or ancillary services offered by ~~***the***~~ ***a*** *CSD, including services offered by: […]*

Q22: What are your views on the proposed draft RTS on CSD risk monitoring tools (Chapter III of Annex III)?

General comment

The term "***internal control function***" is used inconsistently and creates confusion: sometimes it means all three control functions, sometimes it is part of Risk Management, sometimes it appears to be a separate function but without defined mandate. The text should be consistent with other financial service regulation and therefore use "internal control function" as a general reference to any or all of Audit, Risk or Compliance.

Detailed comments

- Art 3 (1): We suggest ESMA to <u>delete</u> the words ***"and other relevant public interest considerations"*** as this is much too nebulous a concept and could be incompatible with the general legal responsibilities of directors.
- Art 3(4): We have different concerns about this paragraph.

  First, while we agree with ESMA's view that it is important for a CSD to have a senior person responsible for information technology matters, we believe the chief technology officer should be deleted from Art 3(4). This person does not perform a control function in the generally accepted three lines of defence model. Therefore, s/he should not be subject to requirements regarding independence from other business functions which are justified only for a true control function.

  Secondly, the requirement that the chief risk officer and the chief compliance officer must be different individuals (with no exemption possible) could lead to an organisational structure which is not always in the best interest of the CSD. We are aware that CCPs are subject to a similar restriction. However, we think ESMA should take into account that risk management in CSDs is very different from risk

management in CCPs. CSDs primarily focus on operational risk. Compliance risk is part of the operational risk universe so some CSDs might find that it reinforces the standing of the compliance function and improves their overall approach to risk management to combine the responsibilities for the two.

To address this, we propose to remove "***A CSD shall ensure that the functions of chief risk officer...... that may arise"*** and replace it with "***A CSD shall put in place measures to ensure the independence of the internal audit, risk and compliance functions including appropriate arrangements to mitigate the over-reliance on individuals and arrangements to identify and manage any kind of conflict of interest that might arise.***"

Suggested amendments:

Article 3 - Governance arrangements

4. A CSD shall establish lines of responsibility which are clear, consistent and well-documented. ***A CSD shall put in place measures to ensure the independence of the internal audit, risk and compliance functions including appropriate arrangements to mitigate the over-reliance on individuals and arrangements to identify and manage any kind of conflict of interest that might arise.*** ~~***A CSD shall ensure that the functions of the chief risk officer, chief compliance officer and chief technology officer are carried out by different individuals, who shall be employees of the CSD or an entity within the same group.. A single individual shall have the responsibility for each of these functions, without prejudice of the appropriate arrangements to mitigate over-reliance on individual employees. These individuals may undertake other duties outside the scope of the risk, compliance or technology functions provided that these do not have an operational or commercial nature and specific procedures are adopted in the governance arrangements to identify and manage any kind of conflict of interest that may arise.***~~

- Art 4 (1): we are concerned about the text "*in establishing risk management policies, procedures and systems, a CSD shall structure them in such a way as to ensure that participants, and where relevant,* ***their clients*** *properly manage and contain the risk they pose to the CSD*." While we appreciate this topic is not new (and already appears in CPMI/IOSCO principle 19), we stress that CSDs do not incur risks from the clients of their participants and have no way of exercising any control over these clients. We are particularly worried to find this in a legal text which puts unreasonable regulatory expectations on CSDs for which the CSDs could be sanctioned. We propose to drop the reference to "where relevant, their clients".
- Art 4 (2): a CSD cannot be made legally responsible for assessing the risks it poses to other entities. The suggested wording inverses the roles and gives the responsibility to the CSD for which it does not have the necessary information, nor the required tools and enforcement capabilities.
- Art 4 (9): it is unreasonable to require a CSD to make all of its procedures and contracts available to participants and their underlying clients based on the vague criterion that the procedures or contracts "affect" participants' rights and obligations. This goes far beyond transparency for CSD's rules and ignores the fact that CSDs operate in a competitive environment. Moreover, providing participant contracts to their underlying clients raises serious data protection and contractual commitment concerns.

Suggested amendments:

Article 4 - Risk management and internal control mechanisms

1. A CSD shall have a sound framework for the comprehensive management of all relevant risks to which it is or may be exposed. A CSD shall establish documented policies, procedures and systems that identify, measure, monitor and manage such risks. In establishing risk-management policies, procedures and systems, a CSD shall structure them in such a way as to ensure that participants ***~~and, where relevant, their clients~~*** *properly manage and contain the risks they pose to the CSD.*

2. A CSD shall take an integrated and comprehensive view of all relevant risks. These shall include the risks it bears from ***~~and poses to~~*** *any other entities, including its participants and, to the extent practicable, their clients, as well as linked CSDs and central counterparties, trading venues, payment systems, settlement banks, liquidity providers and investors.*

(…)

9. The rules, procedures and contractual arrangements of the CSD shall be recorded in writing or on a durable medium. These rules, procedures, and contractual arrangements and any accompanying material shall be accurate, up-to-date and readily available to the competent authority, participants, if affecting participants' rights and obligations ***~~and, where known by the CSD and where affecting clients' rights and obligations, their clients.~~***

- Art 5 (4): To avoid any confusion about the reporting lines within the CSD to the senior management, we propose to clarify in the last line that "The chief risk officer, chief compliance officer and chief internal audit officer shall each ***have direct access to*** the management body***, where relevant via the Audit or Risk Committees***."
- Art 5 (5): in the third line, we suggest to delete "a recognised" experience and replace it with "relevant" experience.

Suggested amendments:

Article 5 - Organisational structure

(…)

4. A CSD shall have clear and direct reporting lines between its members of the management body and senior management in order to ensure that the senior management is accountable for its performance. The reporting lines for risk management, compliance and internal control and audit shall be clear and separate from those for the other operations of the CSD. The chief risk officer, the chief compliance officer and the internal control and audit function shall each ***have direct access*** ***~~report directly~~*** *to the management body****, where relevant via the Audit or Risk Committees****.*

[…] 5. A CSD shall establish a risk committee that shall be responsible for advising the management body on the CSD's overall current and future risk tolerance and strategy. It shall be chaired by a person with ***relevant*** ***~~a recognised~~*** *experience on risk management and that is independent of the CSD's executive management. It shall be composed of a majority of non-executive members, where there are management body members sitting as members of the risk committee. It shall have a clear and public mandate and procedures and access to external expert advice where it may find fit.*

- Art 6(1): is there a reason why this applies to “larger” groups only and when is a group considered “larger”? Art 26 (7) of CSDR refers to a CSD part of a group (not of a “larger” group)
- Art 6 (1): We suggest to delete "chief technology officer" as this is not a control function – see previous comment.
- Art 6 (3) (a): It is not clear what is meant by “personal interest” and “significant influence”.
- Art 6 (3)(a) To avoid difficulties in interpreting what “any person directly or indirectly linked to them” means, we suggest to add a new paragraph
- Art 6(3) (b): We understand that “connected person”, which is not otherwise defined, refers to circumstances where CSDs are user-governed, and hence a member of the management body of the CSD might at the same time have links with some users of the CSD. We believe that this case is covered under subsection (a) (viii). Therefore, we suggest to delete the subsection (b), and to amend the wording of subsection (a) to include in its scope management body members and senior management.
- Art 6 (4): We believe there is a drafting error in article 6(4) which, in order to be aligned with the last part of the sentence and with the otherwise identical provision in EMIR, should only refer to the use confidential information. It would be odd to restrict the use of non-confidential information (sometimes even publicly available) such as static securities and issuer data, or use of data in aggregated form. ESMA should also take into account that CSDs do not have a relationship with Participants' underlying clients, nor do they always have a relationship with issuer. This means that, while the CSD must of course protect their confidential information, it would not have the means contractually to organise the necessary authorisations for use of other, non-confidential information.
- Article 12 of RTS II should also be amended accordingly (see comments on RTS II).

Suggested amendments:

Article 6 - Conflicts of interest

[…] 1. Where a CSD is part of a ~~***larger***~~ *group, it shall place particular emphasis on the clarity of its governance arrangements, […]*

[…] 3. Such circumstances of potential conflicts of interest may include the following:

(a) where the CSD, ***the members of its management body, senior management,*** *any member of staff of the CSD, or any person directly or indirectly linked to them:*

Any person directly or indirectly linked to them means:

- when referring to a legal person: directly or indirectly linked to the legal person by control;

- when referring to a natural person: the immediate family, being understood as the spouse or legal partner, family members in direct ascending or descending line up to the second degree and their spouses or legal partners, the siblings and their spouse or legal partners, and any person living under the same roof as the employees, managers or members of the management body

[…] ~~*(b) where the members of the management body or senior management of the CSD have an indirect conflict with other connected persons.*~~

[…] 4. A CSD shall take all reasonable steps to prevent any misuse of the information held in its systems and shall prevent the use of that information for other business activities. A natural person who has an access to information recorded in a CSD or a legal person within the group that the CSD may be a part of

*shall not use **confidential** information recorded in that CSD for any commercial purposes without the prior written consent of the participant to whom such confidential information refers to.*

- Art 7 (2): the reporting of independent audit function to the management body is in addition to a reporting to the senior management (see comment on Art 5.4 above). The audit plan should be approved by the Audit Committee.
- Art 7 (7): this requirement seems unreasonably rigid: does this mean an external independent assessment should be conducted every two years. Or, would IASE3402 exercise suffice?
- Art 7(8): the RTS should limit the circumstances under which audit reports are shared with the user committee to matters that impact the governance and set up of the user committees (for example ISAE 3402 reports or equivalent). For all other matters we risk creating a conflict of interest that could put the safety and resilience of the CSD at risk.

Article 7 - Internal auditing

(…)

*8. A CSD shall **share with the user groups the results of independent external party assessments of CSD's internal control system and the effectiveness of key controls impacting client services** ~~**share audit findings with the user committee as provided for under Article 28 of Regulation (EU) No 909/2014, where:**~~*

~~***(a) such findings relate to the mandate of the user committee, in particular on key arrangements that impact the users of the CSD, including the criteria for accepting issuers or participants to their respective securities settlement systems;***~~

~~***(b) findings may impact the level of provision of services by a CSD, including ensuring business continuity.***~~

~~***Members of the user committee that are settlement internalisers shall not be provided with information that could place them in a competitive advantage or that otherwise may constitute a conflict of interests with the CSD.***~~

Q23: 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)?

Recordkeeping is NOT Record creating and NOT Record harmonisation

We still have serious remaining concerns, mainly on the very prescriptive lists of data to be kept, and the assumed and requested level of format harmonisation. As mentioned before, ***the standards on recordkeeping should not by themselves include new requirements on the way CSDs operate and interact with participants and other market players.***

The general rule should be that CSDs keep the records they need for the provision of their authorised core and ancillary services (including settlement discipline). ESMA should respect that CSDR Level 1 allows a broad range of CSD business models and services to be authorised by the national competent authority and does not mandate harmonisation. In the RTS, the requirements for recordkeeping should therefore be

aligned with the spirit of Level 1 and allow the national competent authority to authorise the details of records to be kept, as part of the authorisation file.

As an illustration, the Art 10 requires CSDs to capture and record the issuer's country of incorporation and the issuer's settlement bank for all securities maintained by the CSD. This is information CSDs do not always need to maintain for the provision of their services. This requirement entails a totally new flow of information, including the use of new data sources and vendors.

We urge ESMA to review the standards on Recordkeeping and to bring them to a more reasonable scope and in line with CSDR Level 1, i.e.:

- Allow CSDs to only keep those records that are resulting from their provision of CSD core, ancillary and banking ancillary services;
- Allow CSDs to only keep their records in current formats;
- Allow the CSDs' national competent authorities to agree on precise recordkeeping requirements depending on the CSDs' authorisation file.

Should ESMA keep the requirements as in the proposed RTS, CSDs will need substantially more time to implement the recordkeeping requirements than the additional 12 months ESMA currently proposes.

Despite our comments, Euroclear understands that ESMA may wish to construct a better view on the EU securities markets and the related post-trade activities. We do not believe that the data kept by CSDs as part of the recordkeeping can or should be used with this aim. We would therefore suggest ESMA to reflect on the data/figures/statistics ESMA would like to collect on CSD activities (starting from the data available through the BIS Blue Book). We are committed to work with ESMA to find an acceptable methodology to gradually build more refined statistical data. As such an approach would be much less resource intensive for CSDs, the first results could be available quickly. Such effort should ideally take place outside of the frame of the CSDR.

LEIs, IBANs and other prescribed formats

For some records, ESMA requires records to be kept in a certain format for regulatory reporting purposes (LEI, IBAN, transaction types, etc. in ITS Art 1 + Annex) whereas such standardisation of records is not requested by the CSDR Level 1. This requirement continues to pose serious concerns for CSDs. Standardising record formats is very costly for CSDs as they will need to:

- collect information from external parties (LEI codes, additional BIC codes, IBAN codes, specific data on issuers, account types, etc.),
- adapt the content of the communication messages and screens to capture the relevant data items from the clients, the central counterparties and the linked CSDs, as they cannot be derived centrally by a receiving CSD (e.g. transaction type, participant's underlying client, etc.),
- develop post-facto conversions from internal proprietary formats to external normalised formats for reporting purpose, and
- rewrite the IT processes running the long-term offline archiving (which is done today with internal proprietary formats and in a structure that does not easily enable post-facto conversions to normalised formats).

We could agree with ESMA that CSDs could consider keeping LEIs for participants for regulatory reporting purposes only (i.e. CSDs could maintain an internal "conversion" table which allows them to map their proprietary or BIC codes to a LEI).

However, such a solution remains problematic for the direct holding markets. A requirement for all legal persons which hold accounts to have a LEI or a BIC would in Sweden and Finland include at least 100,000 account holders. The vast majority of these account holders are not financial institutions and therefore not eligible for a BIC. The wording of the text would suggest that these account holders would have to obtain a LEI. A similar requirement does not exist for other account providers so this is a rule which would discriminate against the direct holding model. The cost for account holders simply to obtain such a LEI would exceed €15 million for Finland and Sweden alone, with related administrative costs being a multiple of this cost. This seems to be acknowledged by ESMA in the consultation paper (page 63 and 64), but the requirement remains in the text. Such a requirement can be relevant for participants, but for other legal entities it should be sufficient to require the use of a relevant national identifier.

Along the same lines, CSDR recordkeeping rules cannot and should not be used by ESMA to enforce CSDs to keep LEIs for issuers, IBANs for cash accounts or other standardisations of formats:

- While we can certainly see value for regulators to have a unique identifier for issuers, we do not believe this rule should be enforced through CSDR Recordkeeping but rather in the frame of specific law applicable to issuers (i.e. Transparency or Prospectus Directive, AIFMD or UCITS directive). We hereby refer to the recent ESMA consultation paper on the European Electronic Access Point (on access at EU level of regulated information as per Transparency Directive). In this consultation, there is an ESMA reflection on the need to have a unique identifier for each issuer.
- If the LEI for issuers is not a regulatory requirement at global level, it will be detrimental for EU CSDs servicing non-EU issuers to be subject to the requirement on LEIs as some issuers may see this as an additional hurdle for having securities issued and/or settled in EU CSDs
- The cost for collecting and maintaining issuer LEI will be much bigger for CSDs as they will typically have many more issuers they serve than participants. For example, EB has securities from over 30,000 global issuers and "only" around 1,500 participants. In Euroclear Sweden only 4 to 5% of issuers may have a LEI.
- CSDs are often not in direct contact with issuers so they are not in a position to "impose" issuers to request and maintain a LEI, and certainly not at a global level.
- SSSs (which settle in Commercial Bank Money) and large value payment systems like Target2 (which provides the CeBM money accounts for settlement in a large number of EU CSDs) are currently not part of SEPA which imposes the use of IBANs for the retail payments. Therefore, we cannot see the relevance or benefit of using IBANs for CSDR recordkeeping purposes.
- For dedicated liquidity central bank money settlement models with settlement banks and tiered participants, CSD cash (memorandum) accounts do not, and cannot have, IBANs.

Compatibility with global ISO standards

We are also concerned that some of the codes being proposed by ESMA are not compatible with current ISO standards, going against the spirit of article 35 of the CSDR and potentially hampering ongoing and future efforts at harmonising global market and messaging standards on transaction types. CSDs and their participants operate in global financial markets and compatibility with open and internationally-recognised standards must be ensured when creating new transaction and status codes, even these are only to be used in Europe on a mandatory basis in a first stage.

Discussions with other market participants, messaging providers and regulators have revealed that the following ESMA proposals are currently not aligned with ISO standards:

Consultation Paper	***Codes not aligned with ISO***
Transaction types: - Draft RTS: Art.9(2)(c) - Draft ITS: Table 1, row 2	TRAO (OTC purchase or sale of securities)
	COLL (collateral management)
	CUST (custody related operations)
	CCPC (CCP-cleared transactions related to late settlement penalties)
Status types: - Draft RTS: Art.9(2)(v) - Draft ITS: Table 1, row 21	MATY (matched settlement instructions that are not settled)
	MATN (settlement instructions that are not matched)
	HOLD (settlement instructions on hold)
	PART (partially settled settlement instructions)
	FAIL (failed settlement instructions)
	RECL (recycled settlement instructions)
	DELL (cancelled settlement instructions)
	SETL (settled settlement instructions
Information on buy-ins: - Draft RTS: Art.9(2)(w) - Draft ITS: Table 1, row 22	Buy-in initiated: Y/N
	Length of extension period: 2 digits
	Length of deferral period: 2 digits
	Length of the buy-in period: 2 digits
	Buy-in successful: Y/N
	Payment of cash compensation: Y/N

New codes can only been introduced following discussions with international standard-setters with a view to ensure that the new European standards are fully compatible with global market practice going forward.

Timing of implementation for recordkeeping requirements

Despite important and very welcome improvements compared to the recordkeeping requirements initially suggested in the Discussion Paper of March 2014, the proposed scope of records and record harmonisation required cannot realistically be implemented by the time CSDs obtain their authorisation, i.e. towards the of end 2016.

As a result, and given that many records are related to compliance with the settlement discipline rules of the CSD Regulation, Euroclear strongly recommends 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.

Detailed comments:

- Art 8 (1) makes reference to recordkeeping "***for business continuity purposes***" (BCP). We believe that commingling recordkeeping requirements with a view to demonstrate compliance with the CSDR (Art 29) with records to be kept for BCP is confusing and not helpful.
- Art 8 (3) (d): not all data is confidential. Point (d) should be amended as follows "measures are in place to ensure the security and, if the information is confidential, the confidentiality of the data recorded;"
- Art 8 (8) requires a CSD to provide a direct data feed to transactions, settlement instructions and position records "***when requested by the competent authority***". This requirement is not in line with CSDR Level 1 as not needed to demonstrate the CSD's compliance with CSDR (and the potential costs and complexity of implanting a dedicated new type of system access would be disproportionate). Indeed, recurrent information provided to an NCA today generally only relates to the supervisory and oversight duties of that NCA towards its CSD and CSDR does not suggest that this situation should change. To ensure confidentiality of individual legal entities, data in regulatory reports are aggregated (across participants, ISINs, type of service, etc.). Requests for information about an individual legal entity occur in exceptional (and usually crisis) situations and would not require a data feed.

Suggested amendments:

Article 8 - General Requirements

1. A CSD shall maintain full and accurate records of all its activities. Such records shall be readily accessible~~, including for business continuity purposes,~~ and shall include the records specified in this Regulation.

(…)

~~8. A CSD shall provide the competent authority with a direct data feed to transactions, settlement instructions, and position records, when requested by the competent authority, provided that the CSD is given sufficient time to implement the necessary facility to respond to such a request~~.

- Art 9 (1) makes reference to the need for a CSD to keep records of all transactions, settlement instructions (…) to ensure that its records include ***all information necessary to conduct a comprehensive and accurate reconstruction of each operation***. **This is an unreasonable requirement**. CSDs will never - even at significant cost - be able to keep such records for a period of 10 years and still be able to reconstruct each operation. Such requirement is not needed for the CSD to demonstrate compliance with CSDR. We assume ESMA has included this requirement from the perspective of BCP which is not the objective of recordkeeping. A more reasonable requirement would be "its record include all information necessary to reconstitute the ***key*** stages of the processing" (as used in 8(3))
- Art 9 (2) is far too prescriptive. The CSD should just keep the information it has received in the instruction and relevant timestamps. Why should every item be listed when the text clearly mentions "where applicable"? It should be the competent authority that can agree with the CSD on the detailed list of records to be kept. Point (c) transaction type is often not a specific field in settlement instructions and in some cases will not be known by the CSD; Points (p) and q): The criterion is not whether the

client is "known" to the CSD but whether this information was part of the settlement instruction in which case it has to be kept.

- Art 9 (2) (w) requires CSDs to maintain, as part of their records, information regarding buy-ins. This topic forms part of the overall requirements on buy-ins (both in content and implementation timing and is covered elsewhere in this response).

Suggested amendments:

Article 9 - Transaction/Settlement Instruction (Flow) Records

1. A CSD shall keep records of all transactions, settlement instructions and settlement restriction orders it processes, and shall ensure that its records include all information necessary to conduct a comprehensive and accurate reconstruction ***of key stages of the processing*** *of each operation.*

2. In relation to every settlement instruction and settlement restriction order received, a CSD shall, immediately upon receiving the relevant information, make and keep updated a record of ***~~at least~~*** *the following details, where applicable:*

(…)

- Art 10 (2) is far too prescriptive. The CSD should just keep the information it needs for the provision of its services. Every item does not need to be listed when the text clearly mentions "where applicable". In Point (d) ESMA should not assume that references used by the clients are unique, only the reference set by the CSD is unique. It should be the competent authority that agrees with the CSD on the detailed list of records to be kept.
- Article 10(2) (a), (f), (g), (h), (i), these paragraphs should be modified or made '"***when applicable***" to take into account the fact that issuers are not always clients of the CSD and therefore may not have identifiers, securities accounts, cash accounts etc. Sometimes, an issuer is not aware that its securities have been admitted to a CSD. Sometimes, the client is an issuer agent and not the issuer itself.
- Art 10(3) (b): this should be deleted as not all CSDs can distinguish between own, omnibus, individual or other accounts. In many CSDs, it is the use which Participants make of the accounts that determines the category (and the CSD may not be aware of that decision).

Suggested amendment:

Article 10 - Position (Stock) Records

(…)

2. In connection to the core services referred to in Section A of the Annex to Regulation (EU) No 909/2014, a CSD shall keep records of ***~~at least~~*** *the following details, where applicable: (…)*

3. At the end of each business day a CSD shall make a record in relation to each position including the following details, to the extent they are relevant for the position:

(a) identifiers of participants and of other account holders;

~~(b) type of securities accounts (i.e. if it is an own account, omnibus account, individual account, other);~~ *(…)*

Art 12 should allow for some flexibility in the business records to be kept.

Suggested amendments:

Article 12 - Business Records

(…)

*2. The records referred to in paragraph 1 shall be made each time a material change in the relevant documents occurs and shall include ~~**at least**~~ **where applicable**: (…)*

Comments on ITS (Annex VII)

Suggested amendments:

Article 1 - Format of records

1. *A CSD shall retain the records specified in Article 9 of Regulation (EU) No… [RTS on CSD requirements], adopted pursuant to Article 29(3) of Regulation (EU) No 909/2014, for, **where available,** all transactions, settlement instructions and settlement restriction orders it processes in the format set out in Table 1 in the Annex.*
2. *A CSD shall retain the records specified in Article 10 of Regulation (EU) No… [RTS on CSD requirements], adopted pursuant to Article 29(3) of Regulation (EU) No 909/2014, for**, where available,** the positions corresponding to all the securities accounts it maintains in the format set out in Table 2 in the Annex.*
3. *A CSD shall retain the records specified in Article 11 Regulation (EU) No… [RTS on CSD requirements], adopted pursuant to Article 29(3) of Regulation (EU) No 909/2014, for**, where available,** the ancillary services it provides in the format set out in Table 3 in the Annex.*
4. *A CSD shall retain the records specified in Article 12 of Regulation (EU) No… [RTS on CSD requirements], adopted pursuant to Article 29(3) of Regulation (EU) No 909/2014, for **, where available**, activities related to its business and internal organisation, in the format set out in Table 4 in the Annex.*
5. ***For Participant data**, **in the records specified in Article 9 and 10 of Regulation (EU) No … [RTS on CSD Requirements],** a CSD may use a proprietary format only if this format can be converted without undue delay into an open format for reporting purposes to authorities in accordance with Regulation (EU) No 909/2014.*

Table 2 Position (Stock) Records (p. 314)), with equivalent changes needed for Transaction/Settlement Instruction (Flow) Records item 15 and 16 (p 310):

17	*Identifiers of participants and of other securities account holders*	*ISO 17442 Legal Entity Identifier (LEI) 20 alphanumerical character code, or Bank Identifier Code (BIC) for **legal persons** ~~**participants**~~(with the obligation to convert to LEI for reporting purposes to authorities)* *Available national identifier for natural **<u>or legal</u>** persons **<u>other than participants</u>** (50 alphanumerical digits) which allows the unique identification of the **natural** person at a national level*

Q24: 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

Art 11 states that the CSD shall **at least** keep records specified in the Annex. We have many concerns on the list of ancillary services records provided by ESMA in Annex as much of the requested information is simply not available/required for the requested service or the reference is unclear. We list below a non-exhaustive list of examples:

- Services 1 and 2 – organising a securities lending mechanism/providing collateral management services (…): the types of records include "purpose of each operation", "types of collateral, "collateral valuation": this is information that is either not available to the CSD (i.e. CSDs are not aware and have not way of determining the 'purpose' of an operation) or that is not relevant to the SLB/collateral service
- Service 8 – establishing CSD links (…): records on relevant information under articles3/4 of the present Regulation. It is unclear what records should be kept.
- Service 9 – providing general collateral management services as agent (…): records include "purpose of collateral use": this information is not available to the CSD as only the counterparties to a collateral transaction will know the purpose of the transaction.

Maintaining prescriptive and mandatory technical and implementation standards for the ancillary services will force each CSD to review the business processes and the processing supporting these services with, as a consequence, significant impacts and adaptations to the IT systems in charge of recording and archiving data for such services. Given that non-compliance by a CSD with regard to these articles may give rise to sanctions, ESMA should not impose minimum requirements on CSDs for information they do not have, or that are only vaguely described. Art 11 and related Annex should therefore be much less prescriptive on the types of records that need to be kept. As it is the national competent authority that will authorise the provision of ancillary services, it should also be allowed to authorise the related recordkeeping requirements. As mentioned before, the CSD services themselves are not harmonised so it is not possible/needed to harmonise recordkeeping requirements at detailed level.

Suggested amendments:

Article 11 - Ancillary Services Records

1. *A CSD shall, **where applicable**, keep ~~**at least**~~ the* types of *records specified under the Annex, depending on ~~**each of the**~~ ancillary services provided by a CSD in accordance with Section B and C of the Annex to Regulation (EU) No 909/2014.*
2. *If a CSD provides ancillary services other than those explicitly mentioned under Section B or C of the Annex to Regulation (EU) No 909/2014, it shall keep adequate records related to these services.*

Q25: What are your views on the proposed draft RTS on reconciliation measures included in Chapter V of Annex III?

Some aspects of the draft RTS could lead to unintended consequences: suspension of settlement in case of reconciliation problems, and the rule to impose daily reconciliation, specifically in case of international investment funds for which CSDs do not perform the notary function and for which they are not in a position to impose such reconciliation frequency on transfer agents.

General reconciliation measures (Article 14 RTS, p. 219)

As mentioned in our response to Question 16, the use of the term "maintained" throughout the RTS is not always clear. Given that reconciliation via CSD links is covered separately under Article 48(6) of the CSD and under the draft RTS on access and links, we recommends using the term "centrally maintained" in article 14(1), for consistency purposes (see also our response to Q26). It is only the entity (or entities, e.g. in case of eurobonds) that performs the notary and/or central maintenance services that can be responsible for the integrity of the issue as per CSD art 37.

In relation to the requirement for a CSD to compare the previous end-of-day balance with all the settlements made during the day and the current end-of-day balance for each securities issue maintained by the CSD, it should be recognised that some CSDs go further and reconcile in such a fashion multiple times a day. This should still be permissible under the CSDR. So this requirement should be a minimum requirement.

Article 14(2) – reference to double entry accounting is unclear in meaning and requirements. Double entry processing is not appropriate or possible in all circumstances. For example, there are no double entries on securities issuance or redemption for some CSDs as there is no appropriate account to make the double entry. There will not be double entries in a number of circumstances, such as cross border delivery, delivery out of escrow balances or stock withdrawals (for countries with paper interfaces).

We propose to address this by adding the following text to Article 14(2) "A CSD shall use double-entry accounting ***when possible and relevant***".

Suggested amendments:

Article 14 – General reconciliation measures

1. A CSD shall perform the verification measures referred to in Article 37(1) of Regulation (EU) No 909/2014 for each securities issue ***centrally*** *maintained by the CSD.*

The CSD shall also compare the previous end-of-day balance with all the settlements made during the day and the current end-of-day balance for each securities issue maintained by the CSD.

2. A CSD shall use double-entry accounting, ***where possible and relevant****.*

Reconciliation problems and suspension of settlement (art.17 p.221)

Suspension of settlement should not be automatically triggered in case of minor reconciliation discrepancies, e.g. when a small amount of securities appears to have be unduly "created" or "deleted".

Article 17(2) of the draft RTS (p.221 of the Consultation Paper) states that: "Where the reconciliation process reveals an undue creation or deletion of securities, the CSD shall suspend the securities issue for settlement until the undue creation or deletion of securities has been remedied." We believe that this particular paragraph could have negative consequences for financial stability and should be redrafted to avoid creating unnecessary systemic risk. Indeed, whereas a suspension of settlement might be appropriate to reduce risk in cases of major reconciliation problems (i.e. a large discrepancy lasting for several days), suspending all settlement in a security just because of a minor discrepancy in relation to a corporate action, for example a rights issue, might be excessive and counterproductive if the discrepancy only represented a very small fraction of a total issue and only affected very few investors. We list below some examples of cases which could give rise to systemic risk in case of suspension of settlement:

- a CCP which does not receive the relevant security as collateral
- a bank using the security to receive central bank liquidity which does not have access to the liquidity when required
- trading in the securities continues, resulting in a backlog of settlement obligations

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 (as more parties are involved) and, in such a scenario, the damage caused by the suspension of the settlement in a whole securities issue could be greater than the reconciliation issue itself.

In addition, as indicated above, suspension of settlement should only be applicable in case the CSD performs the notary and/or central maintenance service.

Suggested amendments:

Article 17 - Problems related to reconciliation

[…]

2. *Where the reconciliation process reveals an undue creation or deletion of securities, the CSD* ***performing the notary and/or central maintenance service for the securities issue ~~shall~~ might*** *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.

Q26: 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.

Reconciliation with other entities (art.16 RTS, p. 220-221)

We are concerned that Article 16 of the draft RTS will be impossible to implement unless its scope is adjusted. 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 by 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 when transactions take place on trading venue (but article 3 does not require that "initial" recording or notary function to take place in CSD). In this case, the notary service is performed by another entity but there is a "close relationship" with 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 keeps 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 and, in some rare cases, Scenario 1 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, Art 16 of the draft RTS does not apply. In cases of, for example, partial dematerialisation of an issue, one might consider that the notary function is shared between the CSD and an external party like a registrar.

Scenario 2, like Scenario 1, is covered under Art 37 of the CSDR. However, because the notary service is not provided by the CSD by an external party, Art 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 Art 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 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 in the draft RTS is 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 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 providing 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.

Requiring daily reconciliation in such case would require Euroclear Bank to remove several thousands of investment funds from its FundSettle service. Indeed, in case of international funds, the "notary" service is provided by Transfer Agents. In other words, for those funds, there is no CSD performing the notary or central maintenance service. Euroclear Bank holds a portion of the fund securities to facilitate the processing and settlement of fund transactions by routing orders between fund promoters and their agents and fund distributors. Euroclear Bank is not in a position to impose automated daily reconciliation processes on the transfer agents who are not necessarily automated today, and who are not covered by the CSDR. This is a problem of general market infrastructure for funds. If authorities would like to address these concerns, this requires amendments to existing UCITS or AIFMD rules.

Detailed comments

- Article 16(4) - requiring CSD participants to reconcile their records with "the information received from the CSD on a daily basis" is entirely unclear and should be deleted. Applying new conduct of business requirements to CSD participants is beyond the mandate of the CSDR as this is not within the scope of reconciling a securities issue.

- Art 16 (5): Certain direct holding markets see severe difficulties with the rules that require information to be provided to "other holders of securities accounts" on a daily basis. The 4.5 million owner account holders at Euroclear Finland and Sweden naturally do not have connections to the CSD system and as such would have to receive such information through the post. The information would also be of little value as the vast majority of owner accounts are held by retail clients and the accounts have no movements on a daily or even monthly basis. It should also be noted that there is no similar requirement in MiFID for other account providers (article 43 of MiFID only requires an annual statement to be sent). Most importantly there is no need for such clients to receive information for reconciliation purposes. This is reflected under article 37.2 of CSDR, where owner account holders are not one of the persons named as involved in the reconciliation process. Instead it is according to article 37.1 the CSD which should take appropriate reconciliation measures for the owner accounts. It should therefore be sufficient that only Participants be entitled to such information.

Suggested amendments:

Article 16 - Other entities involved in the reconciliation process

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

~~4. The participants of a CSD shall reconcile their records with the information received from the CSD on a daily basis.~~

5. The participants ***~~and other holders of securities accounts~~*** *maintained by 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.~~

Q27: 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?

Reconciliation measures for corporate actions (art.15 RTS, p.219-220)

This article should be brought in line with the provisions of the Market Standards on Corporate Action Processing and the provisions of the T2S Corporate Actions Standards, and is also compatible with the target of optimizing settlement efficiency on T2S.

Specific concerns are:

- Art 15 (1), could be interpreted as requiring that corporate actions bookings be effected only at the end of a T2S settlement day, thereby prohibiting booking at the start of a settlement day; and
- Art 15 (2) may have the effect of delaying the start of settlement in a security that is subject to a corporate action.

Suggested amendments:

Article 15 - Reconciliation measures for corporate actions that would change the balance of securities accounts maintained by the CSD

1. A CSD shall not ***~~initiate the~~*** *process****~~ing of~~*** *a corporate action that would change the balance of securities accounts* ***provided*** ***~~maintained~~*** *by the CSD until the reconciliation measures specified under Article 14 and, where applicable, under points a) and b) of Article 16(1) are completed****~~ at the end of settlement on the respective business day.~~***

2. When a corporate action has been processed, a CSD shall ***~~perform an additional reconciliation ensuring~~*** ***ensure*** *that all securities accounts* ***provided*** ***~~maintained~~*** *by the CSD are updated correctly.*

Q28: What are your views on the proposed draft RTS on CSD operational risks included in Chapter VI of Annex III?

Euroclear is generally in agreement with the majority of the proposed technical standards and has very few comments.

Detailed comments

- Art 18 (2) should end at "operations", and the remaining provisions relating to operational risks should be moved to a more logical place in Art 22.

- Art 20 (3): We agree that CSD should seek to require competent authority approval before the critical service provider can itself outsource material elements of the service provided to the CSD. For some providers (e.g. utilities), it would be unworkable for us to have approval for outsourcing of any material elements. For example, where one of the network providers uses a third party to provide communications lines, that contract is between them, whereas the SLA sits between the CSD and the NP. The responsibility MUST sit with the contracted party and not with any further contractors.
- Art 20 (5) is also unclear as to the requirements on the CSD for reviewing utilities or service providers. It will be difficult for a CSD to require all utilities and service providers to provide information to the authorities.

Suggested amendments

Article 20 - Operational risks that may be posed by utilities and service providers

(…)

3. Where possible, a ~~A~~ *CSD shall ensure that its contractual arrangements with any 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.* ***However, such requirement shall not apply to the contract between CSDs and utilities service providers.***

4. (…)

5\. *A CSD shall inform its competent authority about any dependencies on utilities and service providers and* ***shall, where possible,*** *take measures to ensure that authorities may obtain information about the performance of such providers, either directly or through the CSD.*

- Art 21 (2) – these requirements are too severe. Requiring a CSD to require any linked CSD or other market infrastructure to disclose critical services providers is unnecessary where these are CSDR authorised and regulated CSDs. Requiring a CSD to require any linked CSD or other market infrastructure to constrain its governance and change management processes by reference to another party introduces inter-dependencies, and is too vague and appears unworkable.

- Art 28 (3) – The ESMA requirement is absolute and it cannot be reasonably expected that a CSD is subject to such strict legal requirements in all circumstances (e.g. cyber-attacks).

Suggested amendments

Article 28 - Strategy and policy

(…)

3\. *A CSD shall ensure that settlement is completed by the end of day and that the status of all transactions and positions at the time of disruption shall be identified with certainty in a timely manner.* ***In exceptional circumstances, where this not possible, a CSD should demonstrate that it has made arrangements for the resumption of settlement on a different business day, incorporating the requirements of key service partners****.*

Q29: What are your views on the proposed draft RTS on CSD investment policy (Chapter VII of Annex III)?

This article is of specific importance to Euroclear Bank and the way its capital is invested. ESMA is well aware that CSDR Art 54 and the related EBA/ESMA RTS will also contain rules on capital and the management of credit and liquidity risk.

We fail to see ESMA's rationale on needing to use EMIR and the CCP requirements as a basis for these conditions. ESMA hereby seems to assume that there is a market failure in the way CSDs invest their capital which needs curing. We would like to see more evidence from ESMA other than "the rules have to reflect EMIR" as CSDs clearly have a different risk profile than CCPs. Some of the proposed conditions will mean that Euroclear Bank's capital would erode by the interest rate conditions in the euro-zone and the impossibility to use IR derivatives to hedge the related risk. We fail to understand why ESMA can agree on rules that may decrease the capital of a market infrastructure.

The following elements of the RTS cause concern to Euroclear Bank:

- Art 34 (1) (c) which requires the investment portfolio to have an average time to maturity that does not exceed two years. In the present low rate environment for euro, this means that Euroclear Bank would have to invest in instruments with a negative yield. Its capital could therefore be eroded. In order to be able to cope with such exceptional market circumstances, we suggest the CSD advises its competent authority of the exception and the reason thereof.
- Art 34 (2) does not allow CSDs to use interest rate derivatives to hedge interest rate risk. Again, we fail to see the economic rationale. This forces the CSD to incur interest rate risk on its investment book.

Article 34 - Highly liquid instruments with minimal market and credit risk

1. Financial instruments can be considered highly liquid financial instruments, bearing minimal credit and market risk under Article 46 of Regulation (EU) No 909/2014 if they are debt instruments meeting each of the following conditions:

(…)

(c) ***as a rule****, the average time-to-maturity of the CSD's portfolio does not exceed two years.* ***Any exceptions should be reported to the national competent authority.***

(…)

*2. Derivative contracts can also be considered highly liquid financial investments, bearing minimal credit and market risk if they are entered into for the purpose of hedging currency risk arising from the settlement in more than one currency in the securities settlement system operated by the CSD****, or for the purpose of hedging interest rate risk arising from investments in accordance with paragraph 1.***

3. Where derivative contracts are used in accordance with paragraph 2, their use shall be limited to derivative contracts in respect of which reliable price data is published on a regular basis and to the period of time necessary to reduce the currency risk to which the CSD is exposed, and not for other purposes, notably realisation of profits.

C. Access and Links

Q30: What are your views on the proposed draft RTS on access (Chapters I-III of Annex IV) and draft ITS on access (Annex VIII)?

Article 1 - definitions

The proposed definitions of "issuer CSD" and "investor CSD" in article 1 (c) and (d) of the draft RTS (p.242) are not necessary and actually create some potential overlaps and confusion with the notions of "maintenance" and "central maintenance" used in many instances throughout the RTS. It is not coherent with the terminology of "requesting" and "receiving" CSD that has been used in Level 1 and ESMA RTS.

We also believe that the distinction between "issuer" and "investor" CSD was deliberately not introduced in the Level 1 text by the EU legislator as it is not a legal notion and presents some practical problems. The EU legislator, instead, introduced the term of "central maintenance", which it defined as *"providing and maintaining securities accounts at the top tier level"*. For consistency purposes and for ensuring clarity in implementation, Euroclear recommends that the draft RTS rely on the notion of "central maintenance" introduced by the Level 1 text and do not introduce a different concept which could cause interpretation issues.

Article 2 on risks to be taken into account before establishing a link

By covering CSD participants and linked financial market infrastructures at the same time, Art 2 creates some apparent inconsistencies. For instance, Art2 (6) seems to have been drafted mostly with CSD participants in mind, and it is difficult to imagine how the requirement can be applied to a trading venue with which a CSD has a link (trade feed), since a trading venue will not be a CSD participant and thus might not have any financial obligations towards the CSD. We assume that in such cases, the CSD can simply indicate in its risk assessment that the item is not relevant.

Admission of participants – application of the RTS in case of access refusal only

We welcome the clarifications in ESMA's explanatory comments about when and how the criteria in the RTS are to be applied. To make sure we have understood the implications for the CSD's admission process, as well as the degree of discretion given to the CSD to manage its specific risks, we have summarised our understanding below which is based on CSDR Art 33, and ESMA's comments in paragraph 266 (on page 77 of the CP):

1. The CSD establishes (maintains) its own admission criteria according to CSDR Art 33(1). Those standard admission criteria must be transparent, objective, and non-discriminatory, have due regard to financial stability and the orderliness of the market, and criteria that restrict access are only permitted to the extent the restriction is to justifiably control a specified risk for the CSD. The criteria may or may not be those in the RTS of Annex IV, as long as they comply with Art. 33(1).
2. The CSD decides on the admission:
    - The CSD decides to accept a participant which meets the standard admission criteria. The RTS in Annex IV do not apply

- The CSD decides to deny access to a participant which does not meet the standard admission criteria: the RTS in Annex IV do not apply
- If the CSD decides to refuse access to a participant which meets the standard admission criteria (typically because it has doubts related to the risk profile of the applicant), the CSD must first conduct a documented risk assessment using, as a minimum, the criteria listed in Art 2 (2) (6) (10).

3. The CSD conducts the comprehensive risk assessment
   - The RTS in Annex IV sets out relevant criteria for the CSD to consider, but the list is not exhaustive. To be compatible with CSDR article 33, any additional criteria applied by the CSD must however have as an objective to control a risk for the CSD.
   - There is no <u>obligation</u> on the CSD to refuse an applicant who does not meet one or more of the criteria, rather the criteria are reasons which may justify a refusal if the outcome of the risk assessment is not satisfactory to the CSD.

A similar process would be in place for access by issuers, requesting CSDs, CCPs and trading venues.

We believe it would be very helpful to reflect the key elements of points 2 and 3 in the recitals to the RTS as the current recital (21) could give the impression that the RTS sets out harmonised minimum access/admission criteria.

CSDs should also be able to refuse a participant if this participant cannot demonstrate to have adequate risk management expertise e.g. does not have an internal audit function. We suggest adding this explicitly in the criteria for refusal.

Finally, we would be grateful for engaging further with ESMA if the intended application of the text is <u>not</u> as set out above. Some of the criteria would cause great concern if they were applied in the context of a differently structured process. For example, CSDs with a banking license automatically fall within the scope of the AML directives (and some CSDs are subject to national AML rules) and must have a discretionary possibility to refuse access based on AML requirements. Also, if failure to meet a criteria were to lead to an automatic refusal of access in all cases, the result of Art 2 (2) (b) – enforceability of finality rules - would be to preclude most non-EU participants from joining European CSD's.

Suggested amendments:

Article 2 - Risks to be taken into account by CSDs and competent authorities *1. Where, in accordance with Article 33(3), Article 49(3), Article 52(2) or Article 53(3) of Regulation (EU) No 909/2014, a* ***CSD wants to deny access and therefore*** *carries out a comprehensive risk assessment following a request for access by a requesting participant, an issuer, a requesting CSD, a CCP or a trading venue, as well as when a competent authority assesses the reasons for refusal to provide services by the CSD, they shall take into account the following risks resulting from such a provision of services:* *(a)the legal risks;* *(b) the financial risks;* *(c) the operational risks.*

(…)
10. When assessing the operational risks following a request for access by a requesting participant, a CSD and its competent authority shall take into account at least the following criteria:
(a) (…)
(b) The requesting party is not able to demonstrate that it can adhere to and comply with the existing risk management rules of the receiving CSD or it lacks ***~~expertise the necessary~~ appropriate risk management*** *expertise* ***~~in that regard~~****;*

Article 3 (10) – 3 month time limit must still be subject to the applicant meeting admission criteria, such as execution of contracts, provision of legal opinions, testing etc. 8 months may not be possible to achieve if a complex IT delivery is required.

Q31: What are your views on the proposed draft RTS on CSD links as included in Chapter IV of Annex IV?

First, with regard to Euroclear Bank links with non-EU CSDs, ESMA will be well aware that we provide rigorous legal opinions and undertake thorough due diligence to ensure adequate asset protection is provided to Euroclear Bank participants. Even if the applicable legal regimes in non-EU jurisdictions are different from those in the EU, we believe that these links can be seen as having a level of asset protection that has “comparable effects” to the EU asset protection regimes.

Second, the current wording of article 4(1)(f) would de facto seems to restrict all links of CSDs without banking license to CSDs with a banking licence to FoP links, removing all the efficiencies related to DvP settlement in foreign currencies. We are unsure if this requirement also means that a CSD without a banking licence would not be allowed to open a cash account with a CSD with a banking licence. We believe that the mere opening of a cash account does not expose the CSD without a banking licence to banking risks and that there are possibilities to avoid any banking risk to occur (e.g. prefunding)***. As this clause could potentially lead to changes in the current market structure of CSD links, we would appreciate receiving some more clarity about ESMA’s concerns and intentions.***

Third, the “emergency plan” for links mentioned by ESMA in art.4 (1)(h) should not be a standalone document and should form an integral part of the business continuity policies of the respective CSDs.

Fourth, we recommend amending art.4 (1) (d) to exclude those elements of the link arrangement that are commercial (e.g. prices and fees, specific customisation elements that could be subject to “business intelligence”) from the "terms and conditions" to be communicated to CSD participants.

Finally, as regards CSDs established in the EU and non-EU CSDs recognised by ESMA to provide services within the EU, we would like ESMA to confirm that art.4 (1)(b) should allow a requesting CSD to rely on the receiving CSD’s regulatory authorisation under the CSDR without being obliged to conduct a full risk assessment on the receiving CSD’s financial soundness, governance arrangements, processing capacity, operational reliability and reliance on a critical service provider, and take measures to monitor and manage

these risks. With regard to links between EU CSDs, the approach taken in the frame of T2S is already to rely on the CSD regulatory authorisation.

Detailed comments

- Art 4 (1) (b) and (c): For links with EU CSDs and non EU CSDs recognised by ESMA to provide services in the EU, the requesting CSD should be able to rely on the receiving CSD's regulatory authorisation under CSDR.
- Art 4 (1) (d) requests that the terms and conditions of the link arrangements be available to participants to enable them to assess the risks involved. This should not be the case for those elements of the link arrangements that are commercial (e.g. prices and fees). The requirements should focus on disclosure of elements related to asset protection.
- Art 4(1) (f) as indicated above, this article seems to prevent DvP links in commercial bank money. This could have substantial market restructuring impact. We believe ESMA should clarify its concerns and intentions.

Suggested amendments

Article 4 - Conditions for the adequate protection of linked CSDs and of their participants

1. A CSD link shall be established and maintained under the following conditions:

[…]

*(d) The requesting CSD shall make the terms and conditions of the link arrangement **related to elements of asset protection** available to its participants to enable the participants to assess and manage the risks involved.*

(e) (…)

~~***(f) A requesting CSD that is not authorised to provide banking-type ancillary services in accordance with Article 53 of Regulation (EU) No 909/2014 shall not receive banking-type of ancillary services from a receiving CSD authorised to provide banking-type ancillary services in accordance with Article 53 of Regulation (EU) No 909/2014, in relation to the settlement of the cash leg to be processed through the link***~~

[No changes to (g)]

*(h) The requesting CSD shall be responsible for having conducted end-to-end tests with the receiving CSD before the link becomes operational. An emergency plan shall be established **as part of the business continuity plans of the respective CSDs** before the link becomes operational, covering at least the situation where the securities settlement systems of the linked CSDs malfunction or break down and the remedial actions in such events.*

CSD links via intermediaries (art.5 RTS, p.249-251)

We are worried about the impact of the ESMA RTS on indirect CSD links. The proposed conditions could - at worst - mean that Euroclear Bank would need to abandon most of its indirect links, and more specifically those with non-EU CSDs. While we can understand the preference for direct CSD links, it is not always allowed (under local law) or practical (as a CSD may not have sufficient domestic market expertise) to establish direct CSD links. We cannot believe it is ESMA's intention to have such a negative impact. We

would therefore suggest amending this article to ensure more realistic conditions respecting the different legal framework in which third country intermediaries and CSDs operate.

ESMA should take into account that CSD indirect links are a safe alternative to accessing other CSDs. Placing more burden (costs) on indirect CSD links mean less activity through CSD links. This is not necessarily a better option for the safety of cross-border settlement in, and outside of, the EU.

Moreover, we do not understand the approach taken by ESMA in Art 5(1) which seems to treat direct operated CSD links the same way as indirect links. Both the Level 1 text of the CSDR and current oversight practices within the ESCB clearly distinguish between direct and indirect CSD links. Operated links are a subset of direct CSD links, and are treated as direct links for supervisory purposes. The role of the "operator" in managing the CSD's account at another CSD is not comparable to the role of the subcustodian holding securities on behalf of a CSD at another CSD, and the risk implications are different. As a result, and in line with the spirit of the Level 1 text of the CSDR, we believe that Art 5 of the draft RTS should cover indirect links only, and not direct operated links.

Detailed comments

- We understand that many of the requirements in Art 4 will also apply in case of indirect links.
- Art 5 (1) (a) (ii) requires any third country intermediary to be subject to rules at least as stringent as the EU Regulation on prudential requirements for credit institutions and investment firms. We believe the standards should rather make reference to entities that are subject to a comparable level of supervision.
- Art 5 (1) (c) requires the intermediary to comply with the confidentiality rules of the home country of the CSD. This is problematic for indirect links with third countries.
- Art 5(1) (h) makes individual segregated accounts compulsory for indirect CSD links. This will create problems for many indirect links. Indeed, many CSDs establish indirect links because of legal or practical restrictions preventing them from having an own account at the issuer CSD (e.g. in Australia), and so it is likely that these restrictions will also apply in the case of a "segregated account" maintained on behalf of a CSD by an intermediary. It is well recognised that account segregation is not the only manner to obtain adequate asset protection in global and EU securities markets. We therefore believe that the measures in Art 4 (1) (e) which require due diligence and legal opinions should be sufficient to ensure an adequate level of asset protection.

Suggested amendments

Article 5 - Risk monitoring and management when using indirect links ~~or an intermediary to operate a CSD link~~

*1. Where a requesting CSD uses an indirect link **~~or an intermediary to operate the link~~**, it shall ensure that: The intermediary is one of the following:*

(i) (…)

*(ii) a third country financial institution that is subject to and complies with prudential rules considered by the relevant competent authorities to be **of comparable supervision ~~at least as stringent as those laid down in Regulation (EU) No~~***

*~~**575/2013**~~ and which has robust accounting practices, safekeeping procedures, and internal controls and that ensures the full segregation and protection of those securities, enables the requesting CSD's prompt access to the securities when required and that the requesting CSD can demonstrate to have low credit risk based upon an internal assessment by the requesting CSD. In performing such an assessment, the requesting CSD shall employ a defined and objective methodology that shall not fully rely on external opinions.*

(a) The intermediary complies with the rules and requirements of the requesting CSD, based on the information provided by the intermediary, including on the legal opinions or any relevant legal arrangements that demonstrate the ability of the intermediary to meet its obligations towards the requesting CSD.

*(b) The intermediary is able to ensure~~**, in accordance with the rules applicable in the home Member State of the requesting CSD,**~~ the confidentiality of information provided through the intermediary in connection to the link. The requesting CSD shall perform the assessment based on the information provided by the intermediary, including on any legal opinions or any relevant legal arrangements.*

(c) (…)

~~*(h)* ***At least an individually segregated account at the receiving CSD is used for the operations of the link. The requesting CSD shall ensure that it can access the securities held in the individually segregated account at any point in time, including in the event of a change or insolvency of the intermediary.***~~

(i) If applicable, the condition in point e) of Article 4(1) is fulfilled.

(j) It has a good knowledge of the continuity arrangements between the intermediary and the receiving CSD in the case of indirect links.

(k) The proceeds from settlement are promptly transferred to the requesting CSD.

~~***2) In the case of an intermediary which operates a CSD link, the relevant accounts that the requesting CSD has in the receiving CSD operated by the intermediary shall be opened in name of the requesting CSD.***~~

3) *A requesting CSD referred to in paragraph 1 shall perform a yearly due diligence to monitor that the conditions referred to in paragraph 1 are fulfilled.*

Article 6 (p.251-252) on reconciliation of links

In line with the above comments, the proposed RTS are problematic for links with non-EU CSDs and for indirect links. They may have material negative impact on such links and lead to market restructuring which was not the intention of CSDR Level 1.

Detailed comments

- Art 6 (1) (a) requires daily statements of opening and closing balances, as well as movements. Again, this can be problematic for third country CSDs which may be unable to provide this
- Art 6 (1) (b): the wording for indirect links is not clear: it seems to indicate reconciliation with balances provided by the intermediary; in the second sentence, it seems to mix indirect link and operated link – requiring the statements to be provided through the intermediary.

- Art 6 (2) makes reference to Common Depositaries: we believe this is a case that is covered under Art 16 of Annex III (i.e. this is reconciliation related to integrity of the issue and not related to a CSD interoperable link)
- Art 6 (3). As noted above on Article 17 in Annex III, if ever settlement would be suspended due to undue deletion or creation of securities, it is only the Receiving ("issuer") CSD that can decide on the suspension. The Requesting ("Investor") CSD is cannot be treated differently from any other participant of the Receiving CSD: if settlement is suspended at the Receiving CSD this is for all its participants, including any Requesting CSDS. There is no need for a specific rule for CSD links.
- On Art 6 (4) we believe that the current text needs revision with respect to the following matters:
    1. the text does not suitably distinguish between corporate actions on stocks (settled balances) and corporate actions on flows (pending transactions); the implied requirement for blocking settlement (i.e. settlement by the former CSD in the relevant securities issues shall not commence until the corporate action has been fully processed) relates to full processing of corporate actions on stocks, but does not relate to corporate actions on flows;
    2. the requirement for blocking of settlement in a particular investor CSD should be lifted once the corporate action on stocks has been fully processed in the investor CSD's account provider; it is possible to read the current text as requiring that settlement should be blocked until all CSDs (issuer CSD and all investor CSDs) have finished processing the corporate action on stocks;
    3. the requirement for blocking of settlement in a particular investor CSD is unnecessarily broad; in the event of a securities distribution, and if the outcome security has the same ISIN as the parent security (e.g. a scrip dividend), there may well be no need, and no risk management benefit, for settlement in the parent securities to be blocked; this is on the basis that the entitlement to the outcome securities is fixed on record date, and that settlement in the outcome securities is possible only after the investor CSD has booked the securities to the account of its participant. Where a corporate action results in an outturn of a different ISIN (e.g. a stock split), then the parent security is typically disabled anyway as it's no longer a valid security;
    4. the text referring to "enabling the coordination of their actions with regard to the adequate reflection of the corporate actions ……" is unnecessary, and is potentially misleading. The distribution of information on corporate actions, and the processing of corporate actions on stocks, follows the principle of "cascade processing" (i.e. one action in the Issuer CSD and a subsequent action in the investor CSDs); it is difficult to reconcile this principle with the idea of "coordination" of actions.
    5. The text of Art 6 (4) should be revised so that it allows for full compliance with both CAJWG Market Standards on Corporate Actions, and the T2S Corporate Actions Sub Group (CASG) Standards. The definition of the relevant corporate action terms should be consistent with the glossary of the EU market standards (CAJWG standards).

Suggested amendments:

Article 6 Reconciliation Methods for Linked CSDs

1. The reconciliation methods referred to in Article 48(6) of Regulation (EU) No 909/2014 shall include at least the following measures:

(a) The receiving CSD shall, ***where possible,*** *transmit to the requesting CSD daily statements of information specifying the following, per account number and per securities issue:*

- *(i) The aggregated opening balance;*
- *(ii) The individual movements during the day;*
- *(iii) The aggregated closing balance.*

(b) The requesting CSD shall conduct a daily comparison of the opening balance and the closing balance communicated to it by the receiving CSD or by the intermediary with the records maintained by the requesting CSD itself.

~~In the case of an indirect link, the daily statements referred to in point a) of the first subparagraph shall be transmitted through the intermediary that operates the link.~~

2. ***~~If a common depository or any other relevant entity is used by the~~ For*** *CSDs in an interoperable link, the CSDs shall reconcile their positions among themselves* ***~~and with that other entity~~*** *on a daily basis* ***as in (1)****.*

~~3. Where the reconciliation process reveals an undue creation or deletion of securities, the linked CSDs shall suspend the securities issue for settlement until the undue creation or deletion of securities has been remedied.~~

~~The linked CSDs shall analyse the impact and, where considered necessary, shall harmonize any restrictions regarding the respective securities issue, involving also the intermediary in the case of indirect link.~~

~~4.~~ In the case of a corporate action that would change the balance of securities accounts held by a CSD with another CSD, ***and in respect of booked positions ("corporate actions on stocks"), the bookings of the corporate action movements*** ***~~settlement in the relevant securities issues~~*** *in the books of the former CSD shall* ***not be finalised*** ***~~commence~~*** *until after the corporate action movements relating to booked positions ("corporate actions on stocks") of the relevant securities issues have been fully processed in the latter CSD.*

The issuer CSD shall ensure the transmission to all its participants that are CSDs, or that are acting on behalf of CSDs, of timely information on corporate actions processing; all investor CSDs involved in the holding chain for a specific securities issue, shall likewise ensure the transmission of timely information to all their participants that are CSDs, or that are acting on behalf of CSDs. ***~~enabling the coordination of their actions with regard to the adequate reflection of the corporate actions in the securities settlement systems operated by the respective investor CSDs."~~***

Responses to the ESMA consultation questions (Technical Advice)

We have serious reservations on the proposed standards for the following reasons:

- The text of CSDR level 1 as published in the Official Journal is not the text that was formally approved in the Trilogue discussions early 2014. According to the officially approved version, the definition of substantial importance was only relevant when the activities of a CSD ***that has established a branch*** have become of substantial importance in that host Member State. The part of the text "***that has established a branch"*** has been omitted – probably during the revision by the linguists – representing a substantive change versus the text officially approved. The officially approved text reduces the scope of the definition of substantial importance significantly compared to the one considered by ESMA and brings the required supervisory cooperation to more practical and reasonable levels.
- Moreover, as already pointed out by ECSDA in October 2014, we believe that the Commission mandate to ESMA on the definition of systemic importance is not coherent with the definitions of home/host regulation as defined in Art 23. Home/host arrangements are only applicable in relation to notary and central maintenance services, not in relation to settlement or any other CSD service. The document assumes that as soon as a CSD offers services to parties located, or incorporated in another country, there is a home/host authority relationship. This is inconsistent with the need to make an assessment under Art. 23 of where the service is performed. Euroclear CSDs have no intention to exercise their passport merely because they have participants from other jurisdictions.
- Linking the central maintenance service with participants' location is, in our view not consistent with the approach in CSDR that central maintenance and other account maintenance are different services. The distinguishing factor between central maintenance and other account operation is in our view that the involvement of the issuer or the issuer's agent is required before a CSD can provide securities accounts at the top tier level. The relevance of this service should therefore be linked to the issuer's jurisdiction or the jurisdiction of the governing law of the issue. Otherwise, central maintenance and other account maintenance are not distinct services.

We therefore believe ESMA and the European Commission have to review substantially the technical advice and bring it in line with the intentions and texts of the co-legislators, and with the agreed scope of home/host arrangements as included in CSDR Article 23.

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?

See general comments above.

Q6: What are your views on the proposed indicators?

See general comments above.

Q7: What are your views on the proposed thresholds?

See general comments above.

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.

See general comments above.

Responses to the ESMA consultation questions (Guidelines on CCP Access)

Q1: What are your views on the proposed Guidelines?

We welcome ESMA's diligence in having spotted the potential gap in regulatory treatment of the request of a transaction feed by a CSD to a trading venue or CCP.

The provision of a transaction feed by a trading venue or CCP to a CSD means that the trading venue or CCP provides a technical feed of transactions/instructions to the CSD for settlement. The CSD will – as a result - be able to provide its participants with settlement possibilities in other instruments. Opening access to such transaction feeds is therefore a crucial element in the competitive environment of CSD.

The provision of a transaction feed however does not expose the trading venue or CCP to the same risk as becoming a participant in a CSD. The reasons for refusal of a transaction feed by a trading venue or CCP will very likely not be the result of concerns about legal, financial or operational risk, but rather be about competitive issues. For this reason, CSDR specifies in Article 53 (3) that the party receiving a demand for a transaction feed "shall not deny a request on the grounds of loss of market share".

Therefore, we would like ESMA to confirm that these guidelines provide the ONLY reasons for refusal of access to a transaction feed that trading venues or CCPs can use (i.e. they can only refuse based on reasons of legal, financial or operational risk and not for other, competitive reasons).

Annex 1