

**Communication of the Association of Global Custodians' European Focus Committee
Subject to Supplemental Commentary**

6th August 2015

European Securities and Markets Authority
103 rue de Grenelle
75345 Paris
France

Submitted online: www.esma.europa.eu

Re: Consultation Paper on Regulatory Technical Standards on the CSD Regulation ("draft RTS"); The Operation of the Buy-In Process, 30 June 2015 (the "Consultation Paper")

Dear Sir/Madam:

The members of the Association of Global Custodians' (the "**AGC**") European Focus Committee (the "**Committee**")¹ are grateful for the opportunity to provide comments in response to the above-captioned Consultation Paper issued by the European Securities and Markets Authority ("**ESMA**").

The question of how the buy-in process will operate under CSDR is of critical importance to custodian banks, as well as to all participants in securities markets, which is why the AGC and its member banks are actively involved in industry discussions.

The Committee responded to the previous ESMA consultation paper on this topic, namely the ESMA on CSDR Technical Standards that was issued on 18 December 2014.

With relation to the current Consultation Paper, member banks of the AGC have also contributed significantly to responses by other industry associations, including those of AFME and the European Banking Federation, which the Committee supports. As a result, rather than restate points and resubmit figures already made and submitted in these other submissions, the Committee's submission below focuses on a small number of critical issues that are of particular importance both to custodians and to non-European investors that invest in European securities.

Key AGC concerns

1/ Choice of options

The Committee believes that Option 1 is the only practical option.

¹ The members of the Association of Global Custodians are: BNY Mellon; Brown Brothers Harriman & Co; Citibank, N.A.; Deutsche Bank; HSBC Securities Services; JP Morgan; Northern Trust; RBC Investor & Treasury Services; Skandinaviska Enskilda Banken; Standard Chartered Bank; and State Street Bank and Trust Company.

In the Consultation Paper, ESMA identified a number of issues with respect to Option 3. The Committee believes that these issues also apply to Option 2.

Specifically, Option 2 would also impose significant additional risk on CSD participants, which would need to be collateralized at a cost which will ultimately be borne by end-investors. Option 2 also creates legal risk and uncertainty: among other relevant considerations, Option 2 as presented does not dis-apply the CSD participant's buy-in responsibility where the intermediary with whom it contracts enters into insolvency proceedings.

On page 12 of our response to the December 2014 consultation paper, we suggested that a change in risk profile as a result of implementing what is now called Option 3 would have a number of major supervisory and system risk implications. As the risk profile of an intermediary under Option 2 is very similar to the risk profile of an intermediary under Option 3, we believe that these implications are equally relevant to Option 2.

2/ Reporting on buy-in process and execution

The Committee believes that all three Options would result in very heavy reporting burdens.

With respect to Options 1 and 2, the current text of the draft RTS would require that extensive information on the buy-in process, covering buy-in initiation, execution and results, be sent to the CSD.

The Committee notes that, currently, and as a matter of standard market practice, such information is not sent in an automated way through the custody chain. In order to comply with such an obligation, investors, and intermediaries in the custody chain, would have to develop appropriate reporting capabilities.

The Committee urges ESMA to review very carefully the information requirements, and the regulatory rationale for such reporting.

Under Option 1, and very largely under Option 2, information that would be collected would not be used by CSDs for operational processing, but would be made available to supervisory authorities.

The Committee believes that in practice the information that would be collected by the CSDs would be both complex and would give only a very partial picture of the actual operation of the buy-in. This is for a number of reasons, including the use of investor CSDs, the specific mode of operation of the TARGET2-Securities settlement platform, the fact that settlement chains are dynamic and so may change during the course of a buy-in process, and the fact that settlement chains may be made up of securities transfers that may or may not fall under European buy-in rules, and may or may not fall under other buy-in rules, etc.

In the same way that placing a buy-in obligation at the settlement level is flawed (as a buy-in is a process relating to trading), placing an obligation to collect buy-in information at the settlement level is also flawed (as buy-in information is trading information and should be collected at the trading level).

With respect to Option 3, there would have to be time-sensitive trading-related reporting flows between all parties on the trading and settlement layers. This is because the settlement parties would be conducting buy-in-related trading activities that would need to be reported to the original trading parties; for example, the seller would need to be advised of the evolution of the buy-in (timing, price, costs) so that the seller can close its open trade position.

Given the magnitude and associated risk of these reporting flows, the Committee suggests that the industry be closely involved in the detailed design of the reporting process.

3/ Compatibility of buy-in process with the Market Standards for Corporate Actions Processing

The Committee notes that in Recital 10 of the draft RTS ESMA suggests that a buy-in process could be accelerated in the event a security has been redeemed or converted. The Committee urges ESMA to ensure that there is full compatibility between the buy-in process and the Market Standards for Corporate Actions Processing, which specifically set out processes for transformations and for buyer protection in the event of a redemption or other reorganization.

4/ Accessibility of European securities market to non-European investors

The Committee believes that European specificities with relation to the buy-in process that create operational and/or legal risks and burdens for non-European investors will act as a disincentive for such investors to invest in European securities. For this reason, the Committee urges ESMA to minimize such specificities and to apply international best practice wherever possible.

Conclusion

The members of the Committee are grateful for the opportunity to provide these comments, and would welcome any possibility to discuss these matters with ESMA in a bilateral meeting.

Sincerely,



John Siena
Chair, European Focus Committee
Association of Global Custodians