State Street Corporation

20 Churchill Place
Canary Wharf
London E14 5HJ

T +44 20 3395 7000
F +44 20 3395 6350

www.statestreet.com

19 February 2015

Via electronic submission: www.esma.europa.eu

European Securities and Markets Authority
103 Rue de Grenelle
75007 Paris
France

Consultation Paper – Technical Standards under the CSD Regulation

Dear Sir/Madam,

State Street Corporation ("State Street")[1] appreciates the opportunity to comment on the Consultation Paper ("CP") on Technical Standards under the Central Securities Depositories ("CSD") Regulation issued by the European Securities and Markets Authority ("ESMA")

State Street (NYSE: STT) is one of the world's leading providers of financial services to institutional investors including investment servicing, investment management and investment research and trading. With USD 28.19 trillion in assets under custody and administration and USD 2.45 trillion in assets under management, State Street operates in more than 100 geographic markets worldwide, including in the US, Canada, Europe, the Middle East and Asia.[2] For more information, visit State Street's web site at www.statestreet.com.

As a leading global custodian that works extensively with financial market intermediaries and infrastructure utilities across the EU, State Street is deeply committed to enhancing the cross-border investment processes for our institutional investor clients. We are therefore grateful for the opportunity to engage in prospective industry and regulatory developments aimed at enhancing operational safety and market efficiency. Please find our responses below to specific questions raised in ESMA's CP. In addition, we have also contributed to a number of industry association responses as well.

[1] Our European Commission Interest Representatives Register identification number is 2428270908-83.
[2] As of 31 December 2014.

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?

State Street welcomes the development of harmonised settlement processes in the EU, including the recent implementation of the T+2 settlement framework and the anticipated application of common approaches to address settlement fails. In our view, the key objectives must be an efficient standardised settlement process and a settlement discipline regime that creates appropriate incentives to instruct and settle trades in a timely manner. Further to this, the mechanisms introduced to address settlement fails should be simple to administer, with emphasis given to assessing and leveraging existing practices in the European markets. The resulting approach should also avoid creating new risks, substantial administrative costs and inefficiencies for CSDs and local/global custodians when applying the settlement discipline measures and addressing penalties to the appropriate party in the chain.

We are concerned that the introduction of certain elements of the buy-in process, as envisaged in the draft technical standards, inappropriately changes the role of CSDs and their participants, including that of global and local custodian intermediaries. In particular, the requirements proposed by ESMA relating to buy-ins for over-the-counter ("OTC") transactions would significantly alter the risk profile of CSD participants, as well as raise complex legal questions over the rights of parties beyond the trading counterparties to exercise buy-ins. Buy-ins are recognized as contractual rights between trading counterparties at the trading level whilst CSD participants are generally acting in an intermediary capacity through a chain of custodians on behalf of underlying investors and in these circumstances would not be the trading counterparties with rights to effect a buy in. In addition, any obligations on CSD participants to impose buy-ins would transfer unreasonable counterparty risks from the trading level to the settlement level, leading to greater CSD participant exposure to reimbursement risks and potential buy-in disputes between the trading parties.

The consequences of this new risk profile for CSD participants are significant as they are in effect taking on the role of guaranteeing the commitments of an underlying trading party, similar to the role of a CCP. This risk profile alteration for intermediaries carries significant ramifications, including the need for increased regulatory/supervisory scrutiny of such unusual arrangements and measures to protect against relevant risks, such as the increased tie up of collateral resources that would further impact market efficiencies.

In addition, we believe consideration needs to be given to the valuable role securities lending plays in providing liquidity to markets which enable firms to act as market makers and support trading opportunities. Securities lending services are carried out to ensure the settlement of another transaction and play an important role in ensuring high rates of settlement efficiency. We therefore urge ESMA to be mindful of the potential negative impact the buy-in process and especially the proposed settlement penalties could have on deterring investors from lending. We strongly believe that the proposed penalties for settlement fails are too high, particularly for equities, and therefore would like to highlight our support for the International Securities Lending Association's ("ISLA") position that they should be reduced to lessen the risk that investors decide to stop the lending of securities.

Further to the above, State Street believes that the current proposals for the buy-in process need clarification as to whether the opening leg of an open lending or repo trade is exempt from the buy-in process. We believe that such transactions should be exempt and that this is consistent with ESMA's thinking in proposing to exempt operations composed of several transactions where the timeframe is sufficiently short and renders a buy-in ineffective.

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

We welcome ESMA's proposal that the decision to suspend a participant should not be automatic. There are a wide range of factors that could lead to a settlement fail that are out of the control of the CSD participant. The cause of a delayed settlement instruction or a settlement failure is not necessarily the fault of the direct CSD participant since they are usually acting as a settlement facilitator for underlying investors and other intermediaries. It is important to recognise that there is a long chain of contributors to the settlement process that involves many different system applications and an error in the process may occur anywhere along this chain resulting in the delayed delivery of instructions or settlement failure.

State Street considers ESMA's proposed basic test for a systematically failing participant to be reasonable (i.e. a settlement efficiency percentage that is 10% below the average settlement efficiency percentage of all securities settlement system ("SSS") participants, on more than 10% of the settlement days during the year). However, we would urge ESMA to further review the text in article 16 to ensure the calculation methodology is clear. The daily calculation should compare the settlement efficiency of the participant for that day with the settlement efficiency of the SSS for the exact same day.

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.

State Street welcomes ESMA's recognition that an appropriate phase-in period is needed for market actors to implement the settlement discipline measures.

The forthcoming implementation of TARGET2-Securities (T2S), through the planned CSD migration waves until February 2017, requires large scale system changes and project resources from European infrastructure and market participants. It is critical that the T2S implementation is allowed to be completed without the added potential complications of new technical requirements and concurrent development and testing needs for the settlement discipline measures.

Once the integration of the T2S platform is finalised CSDs should be given an appropriate amount of time to consult with CCPs, trading venues and participants, and then to design and implement the necessary systems and process changes to accommodate the settlement discipline measures.

In turn, CSD participants and the chain of intermediaries that facilitate settlement for underlying investors will need to address the complexities of adapting and coordinating multiple systems and communication flows to ensure effective application of the discipline measures to the party responsible for the settlement failure.

We would therefore urge ESMA to consider a longer time frame than the proposed 18 months. We believe that at a minimum the phased in approach for the settlement discipline measures should allow for compliance to be deferred until at least a year following the successful completion of the T2S migration waves.

Q32: What are your views on the proposed draft RTS on internalised settlement (Annex V) and draft ITS on internalised settlement (Annex IX)?

We have a number of concerns with the current draft RTS, and particularly with ESMA's interpretation of the level 1 requirements.

The CSD Regulation level 1 text highlights that reporting requirements for settlement internalisers are necessary to assess material and systemic risks posed by such activity. However, settlement internalisation may not occur within global custodian intermediaries to any substantial degree. In order to ensure reporting obligations align with the intent of the level 1 text and do not impose unnecessary additional burdens on market participants we believe the requirements in the RTS should focus on the collection of only the highest, aggregated levels of volume and value. Specifically we believe the requirements should not include categorisation by type of securities, client or other criteria at this time. If the data reported suggests there are significant levels of internalisation taking place at a given institution then further development of reporting granularity and risk assessment can be addressed between the institution and its competent authority.

In line with a more proportionate approach it is also important to consider setting thresholds for the reporting requirements that ensure the benefits of setting up reporting systems are not outweighed by the costs of doing so in circumstances where there is little, if any, volume at an institution that would be considered settlement internalisation. Further to this, it is worthwhile to bear in mind that any attempt at expansive reporting requirements could increase instances of duplicated reporting among intermediary chains, thereby reducing the meaningfulness of such reporting.

In our view, the CSDR level 1 text mandates reporting requirements only for settlement of securities transactions, in other words, securities purchases and sales. We believe that any further requirements would go beyond the meaning of the level 1 text. We urge ESMA not to bring into scope a significantly wider set of investment types and other activities, such as collateral management, securities lending and borrowing, repurchase transactions, corporate actions and other account support functions global custodians may provide under customer instruction.

The draft RTS indicate that reporting should cover transactions in all financial instruments that are settled by settlement internalisers established in the EU, including by third country branches as well as by branches of third country entities operating in the EU. We believe that these proposals exert an undue extraterritoriality aspect and goes beyond what is required by level 1. State Street suggests that the reporting requirements for settlement internalisers should be linked to activity in EU markets subject to CSDR, for securities which are eligible in a European CSD and which have a European issuer CSD. Further to this, we believe that any reporting requirements should be relevant to the specific supervisory duties of the competent authority of the reporting institution.

Lastly, we also feel that it is unrealistic that market participants should be expected to comply with reporting requirements within twenty days of the final RTS being published in the Official Journal. We would advocate a reasonable phase-in period to accommodate development of reporting tools that likely do not currently exist.

Thank you once again for the opportunity to comment on the important matters raised within this CP. Please feel free to contact me should you wish to discuss State Street's submission in greater detail.

Sincerely,

Dr. Sven S. Kasper

Senior Vice President & Director EMEA
Regulatory, Industry & Government Affairs