

Response of BÖAG Börsen AG (Hamburg Stock Exchange & Hannover Stock Exchange) to ESMA Consultation on Draft Regulatory Technical Standards on the CSD Regulation

The BÖAG Börsen AG (Hamburg Stock Exchange & Hannover Stock Exchange) welcomes the opportunity to comment on ESMA's Consultation Paper on Regulatory Technical Standards on the CSD Regulation – The Operation of the Buy-in Process of June 30th 2015.

Annex 1 - Summary of Questions

Q1: Please provide evidence of how placing the responsibility for the buy-in on the trading party will ensure the buy-in requirements are effectively applied.

Please provide quantitative cost-benefit elements to sustain your arguments.

Q2: Please indicate whether the assumption that the trading party has all the information required to apply the buy in would be correct, in particular in cases where the fail does not originate from the trading party, but would rather be due to a lack of securities held by one of the intermediaries within the chain.

For transactions executed on a trading venue and not cleared by a CCP, Art. 14 (1) 2 of the draft RTS imposes on trading venues the obligation to appoint a buy-in agent. This obligation leads to several legal issues and challenges for trading venues.

First and foremost, Börse Hamburg and Börse Hannover as trading venues do not know whether a transaction has settled or failed and therefore they also do not know if a buy-in should be or could be initiated. Thus, there may be a substantial lack of information for a trading venue regarding the necessity to initiate the buy-in process.

Secondly, in many cases the trading members of Börse Hamburg and Börse Hannover are not identical to the settlement intermediaries so that any internal rules of the trading venues regarding the buy-in process do not apply to the settlement intermediaries.

Thirdly, considering Section 2, No. 12 of the Consultation Paper (page 8), CSDR requires the failing participant to reimburse the entity that executes the buy-in. This may lead to the legal assumption that the failing participant will be legally liable to the buy in-agent for the payment. If, however, the failing participant itself falls out or fails to reimburse the buy-in agent eventually, the trading venue might be exposed to additional legal risks under national civil law as the buy-in agent might now try to get compensated by the trading venue as the principal of the buy-in process according to Art. 14 (1) 2 of the draft RTS. This may possibly lead to a legal compulsion for the trading venues to establish e.g. an additional system of collaterals in order to secure themselves against any possible reimbursements of expenses / compensation for damages by the buy-in agent after the executed buy-in.

Furthermore we would like to stress that Art. 13 (2) of the draft RTS imposes without any legal cause an unjust obligation upon trading venues to transmit the relevant notifications of the receiving party

under Art. 13 (1) to the CSD. It is not clear why a trading venue should operate as a notification intermediary between the receiving party and the CSD, especially since there are currently no IT networks or IT systems established between Börse Hamburg or Börse Hannover and the CSD. In our view it is appropriate if the receiving party transmits the notifications directly to the CSD without the trading venue as an intermediary.

Finally, in our view there is no need for notifications to a trading venue mandated by Art. 15 (1) (b) and (c) of the draft RTS. As we have explained before, Börse Hamburg and Börse Hannover as trading venues do not know in the first place whether a transaction has failed or not and therefore sending notifications about completely or partially failed buy-ins is an unnecessary inconvenience for the trading venues and leads to useless data aggregation.

We would like to emphasize that the current terms and conditions of Börse Hamburg and Börse Hannover provide for a just and approved procedure for failed transactions. If one participant fails to deliver eventually, the receiving party is obligated to initiate a forced execution of the trade. This forced execution is performed in general at Börse Hamburg or Börse Hannover itself and under certain circumstances on another trading venue. The terms and conditions of Börse Hamburg and Börse Hannover grant that the settlement procedure as well as its details is arranged bilaterally between the failing party and the receiving party so there is no need to interfere with this system by establishing a buy-in agent under RTS on the CSDR.

Q3: Should you believe that the collateralisation costs attached to this option are significant, please provide detailed quantitative data to estimate the exact costs and please explain why a participant would need to collateralise its settlement instructions under this option.

Q4: If you believe that option 1 (trading party executes the buy-in) can ensure the applicability of the buy-in provisions are effectively applied, please explain why and what are the disadvantages of the proposed option 2 (trading party executes the buy-in with participant as fall back) compared to option 1, or please evidence the higher costs that option 2 would incur. Please provide details of these costs.

Q5: Please provide detailed quantitative evidence of the costs associated with the participant being fully responsible for the buy in process and on the methodology used to estimate these costs.