



Post-trade made easy

6 August 2015

**The Operation of the Buy-In Process
Euroclear SA/NV Response**

This response covers the views of all CSDs within the Euroclear Group to ESMA's Consultation Paper published in June 2015.

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 consultation response, with which we are in agreement. Our response should be read as a complement to that of ECSDA.

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PART 1 Introductory Comments and Summary

We welcome ESMA's detailed consultative approach to the complex issue of developing a practical buy-in Regime which is consistent with the constraints of the Level 1 text of CSDR. We believe that, from a CSD perspective, ESMA needs to balance two key issues.

- Comprehensive reporting requirements through EU-based CSDs of buy-ins in a global securities market will be challenging (as recognised by ESMA) because counterparties (and their agents) to the trade will often be located in 3rd countries creating extraterritorial complications for data collection, processing and enforcement. This is a concern which is valid for all three options.
- Buy-in solutions should not expose CSDs to additional risks, or require them to act as intermediary in the buy in processes. Options 2 and 3 however, appear to require CSDs that operate in a cross-border environment to manage buy-ins and to require their participants to provide collateral to manage the risk that a cash compensation is triggered and the trading party does not cover the position. This would appear to run counter to the aims of the CSDR and expose the CSDs to the same (unnecessary) new risks that were identified as part of the original consultation.

Option 1

- The main flaw which ESMA has identified with option 1 is the difficulties of enforcement (and hence Level 1 compatibility). We recognise that extraterritoriality is a factor which applies across many areas of EU legislation. In the CSDR it is largely a consequence of an institutional approach to CSDs, which in many cases operate across global markets, global participants and with global counterparties. Article 7(3) makes buy-ins mandatory for any trading party wherever it is located across the globe if the asset traded is ultimately settled in an EU CSD. But there are actually enforcement issues in all of the options, because of the international context in which many CSDs operate.

Options 2 and 3

- We specifically note that a major drawback of both options 2 and 3 is that they will involve CSDs in the execution and management of buy-ins in a cross-border context. As ESMA is well aware, in cross-border links, the investor CSD is a participant in the issuer CSD, and none of the options have described how a buy-in would work in a cross border context. With the advent of T2S, where cross-border links within the EU are expected to become the norm, both options 2 and 3 expose CSDs to precisely the risks that ESMA has to date been seeking to avoid imposing on CSDs and which were rejected following the previous consultation.
- Managing the buy-in process, even when not involved in the actual execution of the buy-in, is an entirely new business line for CSDs, and one in which they have no expertise. Additionally, this would require them to take collateral in order to mitigate the risks to which the process would expose them, in particular having to manage resulting fail chains and complex pass-through mechanisms. And it imposes new costs on the industry; for the clients of Euroclear Bank alone it could require additional new cross-border collateral requirements of between €2.5bn and €14bn a day (see page 6 below). These costs would need to be built-in to ESMA's cost benefit analysis. We do not believe the imposition of such industry costs was the intention behind either the Level 1 or draft Level 2 texts.

Contractual and Other Issues

- Each of the options will require a strong contractual framework between CSD participants, their underlying clients and related trading parties, because without such a framework new (and we believe unnecessary) exposures will be introduced into the market. In addition, all three options require significant investment in new reporting mechanics. This will require the industry to design and implement new, consistent and global reporting standards, otherwise the standards will be implemented in an uncoordinated manner, which would introduce a new set of costs and risk to the industry.
- Finally, we note the relative disadvantage that European CSDs (and in particular ICSDs) will be facing relative to non-EU based CSDs that are not in scope of the buy-in rules. For securities that can be settled on both EU and non-EU CSDs (such as USD global issues), mandatory buy-ins will cause liquidity to migrate to the non-EU CSD. This will not only drive investment decisions, but could also drive issuance decisions for corporates, emerging markets, and multi-nationals. While we acknowledge that this issue derives from the Level 1 text, we would like to stress that it goes against the objective of making EU capital markets more attractive.

Euroclear's Preference

- Of the options on which ESMA has consulted Euroclear favours Option 1, as the option which exposes CSDs to the least risk (in the form of managing buy-ins and collateralising cash compensation payments cross-border). However, it is clear that European institutions, such as CSDs, cannot practically monitor or ensure compliance with CSDR in 3rd countries. If there is evidence that there is a failure to comply with the buy-in arrangements, this could be included as part of the so-called "working flow"¹ with the top failing participants, and could ultimately be a reason for categorising a CSD participant as a "systemically failing participant". This could trigger remedy actions up to the participant's suspension².

¹ Article 4(3) of the draft RTS

² Article 7(9) of the CSDR

Part 2 Consultation 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.

The current market practice for OTC trades is for buy-ins to be managed by the trading counterparties, who are in possession of all of the relevant facts regarding the trade. Option 1, therefore builds on current market practice and would appear to be the most practical and the least disruptive to settlement processes globally. As ESMA is aware, CSD participants are always informed about failed settlement instructions and can communicate this information to their own clients, who can then relay that information on through the trading chain. Ideally the role of the CSD should be limited to making the relevant reporting available to the related CSD participants (both parties to the settlement instructions) and to the relevant regulatory authority.

Enforcement of the buy-in provisions does not have to be direct. It could also be indirect by asking the participant to monitor and report on what happens at the trading level and enforcing, for example, by restricting the participant from doing settlement business for clients which systematically fail to buy in or provide the required information.

More detailed reporting of the buy-in process through the CSD (from execution to settlement) would require new globally agreed messages and market practices, and would require significant work by the industry and regulators. Even with this effort, the extraterritoriality issues (described above) would mean that the reporting could still be incomplete (and difficult to enforce). CSDs would be entirely dependent on the accuracy of the information provided by others more actively engaged in the buy-in process.

CSDs cannot be held liable for the accuracy of the information provided to regulators or others as a result of article 17(3). When receiving information provided by trading counterparties to their participants, CSDs would not be in a position to cross-check the information and should only be obliged to transmit the information provided. Any inaccuracy in the information transmitted should be the responsibility of the entity having provided this information in the first place.

We also believe that CSDs should only have to report to their participants on those instructions for which a buy-in requirement has been detected. If ESMA expects CSDs (or other entities) to report back to regulators on the execution of buy-ins, this will only be possible if CSDs are systematically informed in a timely and consistent way about the initiation, execution and result of buy-ins, as per article 17(4).

Further reporting however, could be provided by CSDs to regulators on instructions identified as being subject to a buy-in which are still pending in the settlement system after the defined buy-in execution period.

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.

The reconciliation provisions contained within the CSDR (both at Level 1 and Level 2 – e.g. article 23 of the RTS) should be sufficient, if properly implemented, to ensure that the trading party has all the information it requires to apply the buy-in.

Even in the event that an intermediary has, through operational error, a lack of securities (e.g. securities in the wrong account) it should be possible for that intermediary to resolve the problem before the buy-in process kicks-in (through stock lending and realignments etc). The imposition of penalty fines in the intervening period will ensure there is rigour and discipline in the settlement process to ensure such events are minimised. The buy-in requirement should only come into force due to the activity of the trading party.

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.

As noted in the introduction to this consultation response, in cross-border links, CSDs are participants in other CSDs and as such will be subject to the buy-in provisions under option 2 and 3. In a cross border context therefore, CSDs will need to participate in the buy-in process. As noted by respondents to the previous consultation, and as acknowledged by ESMA, such a result would be inconsistent with Level 1 and lead to an increase in the risk profile of CSDs which are active cross-border.

CSDs have no view of the contractual arrangements between CSD participants and their clients. Consequently, a CSD will, at the very least, be required to hold collateral on behalf of its clients to protect itself in the event that a cash compensation is triggered on a cross-border transaction and the trading party does not cover the position.

Domestic CSDs (without banking licences) are not exposed to their clients and consequently do not take collateral from their participants as a risk management tool today. This is a function for banks (both Central and commercial), CCPs and other entities required to perform collateralised risk management activities as part of their core function, and which are regulated accordingly. The CSDR is designed explicitly to ensure that CSDs are limited in their activities and their risk profile. We believe that it is inappropriate from a market perspective, and inconsistent with the general aims of CSDR, to require CSDs in a cross-border environment to be exposed to the sort of risk that can only be mitigated by being required to hold collateral. The economic costs of this suggestion are significant (see below) and could act as a disincentive to cross border settlement.

Requiring CSDs and their participants to effectively guarantee either settlement, buy-in or cash compensation will impose significant collateralisation requirements on the entirety of the non-CCP cleared activity – to manage the risks effectively, CSDs may need to apply the same rigorous risk management techniques as applied by

CCPs, which means that all non-CCP settlement activity will require margin to be held. Given that risk arises at the point of trade (or, in the CSD context, the point of matching), this will bring significant extra cost to the settlement process. The cost will vary by market, depending on the size of the non-CCP cleared activity, but in larger markets the cost will be billions euros.

We have taken the cross-border activity of Euroclear Bank as an example on the specific impact the proposal will have on one market institution in particular. This could be used as a proxy for the settlement activity of any multi-market settlement agent. The impacts on domestic CSDs, which will see an increase in cross-border activity as a result of both T2S and Capital Markets Union, are also likely to be significant in the long term.

The cross-border ICSD example (Euroclear Bank)

A significant proportion of the business of Euroclear Bank operates on a cross border basis. As such, it is a participant in over 46 different CSDs, including most European ones but also a high number of non-European ones. As such, it can be used as a benchmark for assessing the impact of options 2 and 3 in terms of collateral requirements and negative financial impacts of cross border activity worldwide

The cross-border business of Euroclear Bank is complex and extremely high value. The daily value of business transacted across cross-border links (excluding the Bridge) is of the order of €70bn a day. To collateralise the settlement to cover this risk would increase Euroclear bank's credit exposure and require collateral to the value of €14bn³ to be provided by participants.

If only the value of cross border fails on ISD needs to be collateralised, the collateral requirement would still be of the order of €2.5bn. This is a significant extra cost, which would be borne by the market.

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.

Please see the answer to question 3.

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.

Please see the answer to question 3 – from a CSD participant's point of view, there is no quantifiable risk differential between options 2 and 3. We refer to the responses from individual Market Associations for estimates of the costs of options 2 and 3.

³ Which assumes a prudent 20% collateralisation.

Euroclear would also like to concur with the ECSDA analysis that paragraph 28 is not correct. CSDs and their participants are often regulated by different authorities. This is clearly true for Euroclear Bank (which has a global client base). But even in in the UK, whilst EUI is regulated by the Bank of England, members of EUI are typically regulated by the FCA, or by an overseas recognised equivalent. As such, the Bank of England, as NCA for EUI, can only apply penalties on EUI for non-compliance; it cannot do so for each of the members of EUI.

Part 3 Euroclear Comments on the Technical Standards on the operation of the buy-in under the different options

Comments made in ~~strike-through~~ (deletion) and **bold** (addition).

Whereas:

- (1) In order to support an integrated market for securities settlement, the buy-in process should be harmonised and should include some common requirements. Given the importance of incentivising timely actions to address settlement fails, it is important to keep all relevant involved parties informed during the process.
- (2) Regulation (EU) No 909/2014 refers to participants in different infrastructures, CSDs, CCPs and trading venues. It is essential for the correct identification the entity responsible for executing a buy-in that parties and participants are distinguished, where parties are the trading parties in an OTC transaction or in a trading venue or the clearing members in a CCP, and participants are participants to a securities settlement system of a CSD.
- (3) The buy-in process should provide for a way to address settlement fails without jeopardising the risk profile of CSDs, CCPs or trading venues. Buy-in should not imply any unnecessary risk taking by a CSD, a CCP or a trading venue. A CSD or a trading venue should therefore not perform the buy-in as counterparty on its own account **for either domestic or cross-border activity**.
- (4) The settlement of an instruction aims at ensuring the final settlement of a transaction concluded between trading parties. For transactions executed on a trading venue and for transactions cleared by a CCP, the trading venue members and the clearing members respectively are the parties to the transaction and therefore the parties that should perform the buy-in. They have the relevant information to execute it. For transactions not executed on a trading venue nor cleared by a CCP,

Either Option 1 and 2 (trading party)

the buy-in should be performed by the trading parties that concluded that transaction. The original parties are the ones with the relevant information on why the settlement failed and who the relevant counterparty responsible for it is.

~~**Option 3 (Participant)** the CSD participants are the immediate parties to be identified by the CSD as being responsible for not delivering the relevant instruments. Therefore, in order to ensure the efficiency of the buy-in process, the CSD participants should be responsible for the buy-in process affecting these transactions.~~

- (5) Given the different parties involved in a settlement chain, they need to be informed of the status of the buy-in process at key points in time. This information should be formalised by way of notification in

order for the counterparty to be alerted on the status of the actions to settle the transaction and take action as need be.

(6) **Either Option 1 and 2 (trading party)**

The buy-in agent will act upon request from the receiving party, but the cost will be borne by the failing party. It is appropriate to set a framework so that the buy-in agent will act in the interest of the failing party.

or Option 3 (participant)

~~*The buy-in agent will act upon request from the receiving participant, but the cost will be borne by the failing participant. It is appropriate to set a framework so that the buy-in agent will act in the interest of the failing participant.*~~

(7) **Either Option1 and 2 (trading party)**

In order to limit the number of buy-ins and preserve liquidity of the market for the relevant instrument, the failing party should be allowed to deliver the financial instruments to the receiving party up to the moment when it is informed that the buy-in agent is appointed. As from that point in time, in order to prevent a situation where the receiving party would receive twice the financial instruments from the buy-in agent and from the failing party, the failing party should be able to deliver the financial instruments to the buy-in agent or to the entity performing the auction with the approval of that agent or entity.

or Option 3 (participant)

~~*In order to limit the number of buy-ins and preserve liquidity of the market for the relevant instrument, the failing participant should be allowed to deliver the financial instruments to the receiving participant up to the moment when it is informed that the buy-in agent is appointed. As from that point in time, in order to prevent a situation where the receiving participant would receive twice the financial instruments from the buy-in agent and from the failing participant, the failing participant should be able to deliver the financial instruments to the buy-in agent or to the entity performing the auction with the approval of that agent or entity.*~~

- (8) A settlement instruction that is not eligible for partial settlement may fail for the entire amount of financial instruments of that instruction, even if part of the financial instruments is available for delivery to the account of the delivering participant. As the purpose of the buy-in is to address settlement fails, the receiving participant should accept partial settlement from the last business day of the extension period, so that a buy-in will only be performed for the non-delivered financial instruments. Partial settlement should not apply to settlement instructions that have been put on hold by a participant, since this may indicate that the financial instruments in the account do not belong to the client for which the instruction has been entered into the system. For the same reason, the financial instruments received as part of the buy-in process should be delivered to the receiving participant, even if the amount of such instruments allow only settlement of part of the settlement instruction.

(9) With the aim to balance the uncertainty resulting from the buy-in process and the interest of the parties to close the transaction, in case the buy-in fails, in the absence of express communication of the receiving party choice, the buy-in process should be terminated and the cash compensation should be paid.

(10) **Only necessary for Option 2**

~~Contractual arrangements between parties of a settlement chain can only produce their effects if the parties have an economic interest in making sure that the terms of a contract are complied with. Therefore, for the buy-in process to be effectively applied, CSDs participants should be responsible for the cash compensation in case the buy-in process is not applied through the appropriate contractual arrangements.~~

~~In some circumstances, a financial instrument may no longer be available on the market, for instance when a financial instrument has been redeemed or converted, in which case a buy-in is no longer possible. The buy-in process should in that case be accelerated, so that cash compensation could be paid before the end of the buy-in process, thus limiting the period of uncertainty.~~

(11) **Either Option 1 and 2 (trading party)**

*A transaction may in some cases be part of a chain of transactions and instructions. In order to avoid that a buy-in has to be performed for each settlement fail in a chain of transactions a CSD **participants which have suffered a fail** should allow the parties to pass on the buy-in notification to CSD participants, or other parties, to whom they are due to deliver securities. CSD participants who have failed to deliver should, where applicable, pass on the notification to ~~which could be further passed on to~~ other parties involved in the cause of the settlement fail. The CSD should remain informed of the pass-on and of the identity of the party receiving that notification.*

or Option 3 (participant)

A transaction may in some cases be part of a chain of transactions and instructions. In order to avoid that a buy-in has to be performed for each settlement fail in a chain of transactions, a CSD should allow its participants to pass on the buy-in notification, which could be further passed on to other participants involved in the cause of the settlement fail. The CSD should remain informed of the pass-on and of the identity of the participant receiving that notification.

Article XX

Definition

□ 'party' means a party to a transaction including a member of a trading venue and for transactions cleared by a CCP, a clearing member or a CCP.

SECTION 3

Details of operation of the appropriate buy-in process (Point (c)
of Article 7(15) of Regulation (EU) No 909/2014)

Article 12

General

1. The buy-in process shall be initiated at the end of the business day following the elapse of the extension period.
2. The buy-in process shall comprise the following elements:
 - (a) the notifications, as specified in Article 13;
 - (b) the appointment without undue delay of a buy-in agent, where relevant;
 - (c) the execution of the buy-in process through the acquisition of the securities by the buy-in agent or through an auction;

Either Option 1 and 2 (trading party)

- (d) *the completion of the buy-in process through the delivery to the receiving party by the buy-in agent or the entity executing the auction, of all or some of the bought-in securities and the payment of the cash compensation for the non-delivered securities to the receiving party by the failing party.*
- (e) **The bilateral deletion of the original transaction.**

or Option 3 (participant)

- ~~(d) the completion of the buy-in process through the delivery to the receiving participant by the buy-in agent or the entity executing the auction, of all or some of the bought-in securities and the payment of the cash compensation for the non-delivered securities to the receiving participant by the failing participant.~~

Article 13

Notifications

1. The notifications referred to in point (a) of Article 12(2) shall be served upon the following steps and contain the following information:
 - (a) without delay upon the initiation of the buy-in process, a notification specifying the settlement fail it relates to;
 - (b) without delay upon the appointment of the buy-in agent, a notification specifying the date of the appointment and the name of the buy-in agent;

- (c) on the last business day of the buy-in process, a notification specifying the results of the buy-in process;
 - (d) as the case may be, without delay, upon election of a choice made pursuant to Articles 15(1)(b) or (c), 15(2)(b) or (c) and 15(3)(b), a notification of such choice;
 - (e) as the case may be, at the latest upon the last business day of the deferral period, a notification specifying the results of the deferred buy-in process.
2. For transactions executed on a trading venue and not cleared by a CCP, the receiving party shall provide the relevant notifications referred to in paragraph 1 to the failing party and to the trading venue which shall transmit it to the CSD.
 3. For transactions cleared by a CCP, the CCP shall provide the notifications referred to in paragraph 1 to the failing clearing member and to the CSD.
 4. **Either Option 1 and 2 (trading party)**

For transactions not executed on a trading venue nor cleared by a CCP, the receiving party shall provide the notifications referred to in paragraph 1 to the failing party and ensure that the CSD is informed of the initiation, execution and results of the buy-in.

or Option 3 (participant)

~~*For transactions not executed on a trading venue nor cleared by a CCP, the receiving participant shall provide the notifications referred to in paragraph 1 to the CSD, which shall transmit it to the failing participant.*~~

Article 14

Appointment of the buy-in agent and execution

1. For transactions executed on a trading venue and not cleared by a CCP, the rules of a trading venue shall provide that the receiving party shall appoint a buy-in agent. The trading venue shall appoint a buy-in agent where the receiving party does not do so within two business days following the elapse of the extension period.
2. For transactions cleared by a CCP, the rules of a CCP shall provide that the CCP shall appoint a buy-in agent or shall execute a buy-in through an auction.
3. **Either Option 1 and 2 (trading party)**

For transactions not executed on a trading venue nor cleared by a CCP, the receiving party shall be responsible for appointing a buy-in agent and a CSD shall include in its rules that:

- (a) *the participant shall ensure that the receiving party informs it of its choices pursuant to Article 15(3)(b) or (c);*

(b) *the participant shall inform the CSD with respect to the choices it was informed of pursuant to point (a).*

Or Option 3 (participant)

For transactions not executed on a trading venue nor cleared by a CCP, a CSD shall include in its rules that:

- (a) the receiving participant appoints a buy-in agent;*
- (b) its participants inform the CSD about the results of the buy-in and the choice made pursuant to Article 15(3)(b) or (c).*

4. **Either Option 1 and 2 (trading party)**

The buy-in agent shall not have any conflict of interests in the execution of the buy-in process and shall execute the buy-in process on the terms most favourable to the failing party, in accordance with Article 27 of Directive 2014/65/EU.

or Option 3 (participant)

The buy-in agent shall not have any conflict of interests in the execution of the buy-in process and shall execute the buy-in process on the terms most favourable to the failing party or participant, in accordance with Article 27 of Directive 2014/65/EU.

5. **Either Option 1 and 2 (trading party)**

Failing parties shall be allowed to deliver the securities until the receipt of the notification referred to in Article 13(1)(b).

The failing parties shall thereafter be allowed to deliver the securities to the buy-in agent or to the entity that executes the buy-in auction upon agreement of that entity.

or Option 3 (participant)

Failing parties for transactions executed on a trading venue or cleared by a CCP and failing participants for transactions that are not executed on a trading venue nor cleared by a CCP shall be allowed to deliver the securities until the receipt of the notification referred to in Article 13(1)(b).

The failing parties or participants shall thereafter be allowed to deliver the securities to the buy-in agent or to the entity that executes the buy-in auction upon agreement of that entity.

Article 15

Completion of the buy-in process

1. For transactions executed on a trading venue but not cleared by a CCP:

- (a) when the buy-in has been successful, the securities shall be delivered to the receiving party and the failing and receiving parties shall ensure that the settlement instruction is cancelled;
 - (b) where the buy-in failed, the receiving party shall notify without delay to the trading venue and to the failing party whether it prefers to defer the buy-in, or whether it prefers to receive the cash compensation. In the absence of such notification, the failing party shall pay to the receiving party the cash compensation;
 - (c) where the buy-in results in a partial delivery of securities, the receiving party shall accept the bought-in securities. For the non-delivered securities, the receiving party shall notify without delay to the trading venue and to the failing party whether it prefers to defer the execution of the buy-in or to receive cash compensation. In the absence of such notification, the failing party shall pay the cash compensation to the receiving party.
2. For transactions cleared by a CCP:
- (a) where the buy-in has been successful, the securities shall be delivered to the receiving clearing member, and upon completion of the buy-in process, the CCP shall ensure that the settlement instruction is cancelled;
 - (b) where the buy-in failed, the CCP shall notify without delay to the failing clearing member whether it prefers to defer the buy-in, or whether it prefers to receive the cash compensation. In the absence of such notification, the failing clearing member shall pay to the CCP the cash compensation, which the CCP shall pass to the receiving clearing member;
 - (c) where the buy-in results in partial delivery of securities, the receiving clearing member shall accept the bought-in securities. For the non-delivered securities, the receiving clearing member shall notify without delay to the CCP whether it prefers to defer the buy-in process or to receive the cash compensation. In the absence of such notification, the failing clearing member shall pay to the CCP the cash compensation, which the CCP shall pass to the receiving clearing member.
3. **Either Option1 (trading party)**

For transactions not executed on a trading venue nor cleared by a CCP:

- (a) where the buy-in has been successful, the securities shall be delivered to the receiving party and the failing and receiving parties shall ensure that the settlement instruction is cancelled;
- (b) where the buy-in failed, the receiving party shall notify to the failing party without delay whether it prefers to defer the buy-in, or whether it prefers to receive the cash compensation. In the absence of such notification, the failing party shall pay to the receiving party the cash compensation;
- (c) where the buy-in results in a partial delivery of securities, the receiving party shall accept the bought-in securities. For the non-delivered securities, the receiving party shall notify to the failing party without delay whether it prefers to defer the buy-in or to receive the cash

compensation. In the absence of such notification, the failing party shall pay to the receiving party the cash compensation.

or Option 2 (trading party with the participant as a fall back)

For transactions not executed on a trading venue nor cleared by a CCP:

- (a) ~~where the buy-in has been successful, the securities shall be delivered to the receiving party and the failing and receiving parties shall ensure that the settlement instruction is cancelled;~~
- (b) ~~where the buy-in failed, the receiving party shall notify without delay to the failing party whether it prefers to defer the buy-in, or whether it prefers to receive the cash compensation. In the absence of such notification, the failing party shall pay to the receiving party the cash compensation;~~
- (c) ~~where the buy-in results in a partial delivery of securities, the receiving party shall accept the bought-in securities. For the non-delivered securities, the receiving party shall notify to the failing party without delay whether it prefers to defer the buy-in or to receive the cash compensation;~~
- (d) ~~where the CSD does not receive the information referred to in Article 13(3)(c) on the results of the buy-in on the business day following the end of the buy-in process, it shall notify the failing participant of the absence of evidence that the buy-in process was performed;~~
- (e) ~~where the failing participant does not provide to the CSD the evidence that the buy-in process was performed or that the trading party is subject to an insolvency proceeding, within one business day following the notification referred to in the first subparagraph, the failing participant shall pay the cash compensation to the receiving participant. The CSD rules shall provide that the participant shall recover that amount from its client.~~

or Option 3 (participant)

For transactions not executed on a trading venue nor cleared by a CCP:

- (a) ~~where the buy-in has been successful, the securities shall be delivered to the receiving participant and the failing and receiving participants shall ensure that the original settlement instruction is cancelled;~~
- (b) ~~where the buy-in failed, the receiving participant shall notify without delay to the CSD whether it prefers to defer the buy-in, or whether it prefers to receive the cash compensation. In the absence of such notification, the failing participant shall pay to the receiving participant the cash compensation;~~
- (c) ~~where the buy-in results in a partial delivery of securities, the receiving participant shall accept the bought-in securities. For the non-delivered securities, the receiving participant shall notify without delay to the CSD whether it prefers to defer the buy-in or to receive the cash compensation. In the absence of such notification, the failing participant shall pay to the receiving participant the cash compensation.~~

4. The buy-in is deemed to be impossible only when the relevant securities do not exist any longer as a result of the actions taken by the issuer of such securities. In such case, the receiving party or participant shall receive the cash compensation.

For transactions cleared by a CCP, the CCP shall transfer the received cash compensation to the receiving clearing member.

Article 16

Partials

When the relevant securities are available in the account of the delivering participant, partial settlement offered by CSDs in accordance with Article 3(9) **and, where demanded by clients**, shall be applied from the last business day of the extension period, irrespective of any contractual choice made by the participants.

Article 17

Minimising the number of buy-in processes

Either Option 1 and 2 (trading party)

1. *For transactions referred to in Article 15 (3), the failing party that is failing because of a failed receipt of securities can pass-on to the party causing the fail the notification referred to in point (a) of Article 12(2). The latter party in turn can pass on the notification to the party that originally caused the settlement fail. The party who has caused the settlement fail and who receives that notification shall pay to the receiving party identified in the notification the amounts referred to in Article 7(6) and (8) Regulation (EU) No 909/2014 or the cash compensation.*
2. *A receiving party who is also a failing party can pass on the notification referred to in point (a) of Article 12(2) to the party that originally caused the settlement fail. In such case, the former party shall not perform the buy-in as a receiving party.*
3. *A party who has passed on the notification referred to in point (a) of Article 12(2) shall ensure that the CSD is informed that it has passed-on that notification and of the identity of the party receiving that notification.*
4. *A party passing-on a notification referred to in point (a) of Article 12(2) shall notify the party in receipt of that notification and both shall ensure that the CSD is informed of the initiation, execution and results of the buy-in process.*

Or Option 3 (participant)

1. ~~*For transactions referred to in Article 15 (3), the failing participant that is failing because of a failed receipt of securities can pass-on to the participant causing the settlement fail the notification referred to in point (a) of Article 12(2). The latter participant can in turn pass on the notification to the*~~

~~participant that originally caused the settlement fail. The participant who has caused the settlement fail and who receives that notification shall pay to the receiving participant identified in the notification the amounts referred to in Article 7(6) and (8) Regulation (EU) No 909/2014 or the cash compensation.~~

- ~~2. A receiving participant who is also a failing participant can pass on the notification referred to in point (a) of Article 12(2) to the participant that originally caused the settlement fail. In such case, the former participant shall not perform the buy-in as a receiving participant.~~
- ~~3. A participant who has passed on the notification referred to in point (a) of Article 12(2) shall inform the CSD that it has passed on that notification and of the identity of the participant having received that notification.~~
- ~~4. A participant passing on a notification referred to in point (a) of Article 12(2) shall notify the participant in receipt of that notification and inform the CSD about the initiation, execution and results of the buy-in process.~~