

European Securities and Markets Authority  
103 rue de Grenelle  
75007 Paris, France

6<sup>th</sup> August 2015,

Dear Sirs

This letter provides the response of LCH.Clearnet Group Limited ("LCH.Clearnet") to the ESMA consultation on the draft Regulatory Technical Standards (RTS) on the operation of the buy-in process under the CSD Regulation, which was issued in June 2015.

LCH.Clearnet<sup>1</sup> is a leading multi-asset class and multi-national clearing house, serving major international exchanges and platforms as well as a range of OTC markets. It clears a broad range of asset classes including securities, exchange-traded derivatives, commodities, energy, freight, foreign exchange derivatives, interest rate swaps, credit default swaps and euro and sterling denominated bonds and repos. LCH.Clearnet works closely with market participants and exchanges to continually identify and develop innovative clearing services for new asset classes. LCH.Clearnet is majority owned by the London Stock Exchange Group, a diversified international exchange group that sits at the heart of the world's financial community.

LCH.Clearnet's response focuses on the parts of the draft rules in Annex 2 affecting transactions cleared by a CCP. These comments largely reflect those already made in the response to the previous ESMA consultation issued in December 2014<sup>2</sup>. LCH.Clearnet considers that it is vitally important that the comments below as well as those stated in our previous response are taken into account in order to maintain integrity in post trade processes, including settlement operations.

#### General comments:

- LCH.Clearnet is keen to ensure that the final RTS does not preclude the continuation of the established and effective buy-in models used by LCH.Clearnet and other CCPs.

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<sup>1</sup> LCH.Clearnet Group Limited consists of three operating entities: LCH.Clearnet Limited, the UK entity, LCH.Clearnet SA, the Continental European entity, and LCH.Clearnet LLC, the US entity. Link to Legal and Regulatory Structure of the Group: [http://www.lchclearnet.com/about\\_us/corporate\\_governance/legal\\_and\\_regulatory\\_structure.asp](http://www.lchclearnet.com/about_us/corporate_governance/legal_and_regulatory_structure.asp)

<sup>2</sup> LCH.Clearnet Group Limited response to ESMA Consultation on draft RTS on CSD Regulation (Settlement Discipline) [http://www.lchclearnet.com/documents/731485/762522/esma\\_ts\\_csr\\_lchclearnetgrouplimited\\_replyform.pdf/0c3ac89d-baa3-4fc9-a331-b846ae4e846a](http://www.lchclearnet.com/documents/731485/762522/esma_ts_csr_lchclearnetgrouplimited_replyform.pdf/0c3ac89d-baa3-4fc9-a331-b846ae4e846a)

- It is fundamental that the final RTS recognises that CCPs operate settlement netting models, which have the significant advantage of reducing the number and volumes of payments and deliveries required to take place; the proposed buy-in rules should reflect such models.
- The final RTS should fully recognise that the CCP, as the executing party of the buy-in for cleared transactions, needs to be in control of all the steps of the buy-in process, including the choice to defer the buy-in or perform the cash compensation, in all cases.

#### Specific comments to Annex 2 – Draft Technical Standards:

- **Recital 4:** the current wording states that clearing members should perform the buy-in. We believe that it is not the intention of ESMA to suggest that clearing members execute the buy-in for cleared trades as this is in contrast with current requirements in place for cleared instruments under the Short Selling Regulation and market practices and, indeed, the CSD Regulation. We propose that recital 4 is changed as follows:

'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 cleared by a CCP, clearing members are the parties to the transaction and therefore the parties that should be subject to the buy-in performed by the CCP.***'

- **Article 12(2)** - we would like to confirm that options 1-2-3 only cover trades which are non-cleared/non-traded on trading venue.

**Article 13(3)** - this article requires CCPs to send the notifications listed in paragraph 1 to both CSD and the failing clearing members. We do not believe that the CCP should be required to send such notifications to the CSD. As noted in the response to the previous consultation, the usefulness of this information in this case is questionable and LCH.Clearnet recommends that, where possible, the RTS minimise the need for CSDs and CCPs to exchange bespoke information. Indeed, the CCP is the executing party of the buy-ins for cleared trades, information related to the appointment of the buy-in agent and the results of the buy-in process or the deferred buy-in process are only relevant to the CCP and its members. In addition, given CCPs hold accounts at the relevant CSD like any other CSD's participants, the CSD already holds all the information necessary in respect to CCPs' settlements and will therefore know if and when a settlement instruction has settled or not; if the latter, the CSD will continue to apply the penalties for failed settlement.

- **Article 15(2)** - we would like to propose the following amendments to this article:

#### 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~~ ***made available to fulfil outstanding deliveries***, and upon completion of the buy-in process, the CCP shall ensure that the settlement instruction is ~~cancelled~~ ***closed through settlement or cancellation***;

Explanation: The current proposal is too prescriptive and does not take into account the existence of different buy-in models used by CCPs, which work effectively. The wording we are proposing aims to maintain the objective of the rule, which is to ensure that, as a result of a buy-in, securities fulfil outstanding deliveries of those participants expecting them. Overly prescribed rules may preclude the use of existing or future buy-in models, which we do not believe is the intention, nor a requirement, of the CSD Regulation.

(b) where the buy-in failed, the CCP shall notify without delay to the failing clearing member whether it the CCP 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;~~

Explanation: the CCP will always notify the failing clearing member when it is required to pay the cash compensation to the CCP or when the CCP prefers to defer the buy-in. Therefore the failing clearing member will always pay cash compensation if required to do so by the CCP. We do not envisage a situation where the CCP does not take any action following the failure of a buy-in.

(c) where the buy-in results in partial delivery of securities, ~~the receiving clearing member shall accept the bought-in securities~~ **the securities shall be made available to partially settle the delivery as for a full buy-in.** For the non-delivered securities, ~~the receiving clearing member shall notify without delay to the CCP~~ **shall determine** 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.~~

Explanation: similarly as in sub-paragraph a), the current proposal is too prescriptive and does not take into account the existence of different buy-in models used by CCPs, which work effectively. The wording we are proposing aims to maintain the objective of the rule, which is to ensure that, as a result of a buy-in, securities fulfil outstanding deliveries of those participants expecting them. Overly prescribed rules may preclude the use of existing buy-in models, which we do not believe is the intention, nor a requirement, of the CSD Regulation.

In addition, the CCP will always notify the failing clearing member when it is required to pay the cash compensation to the CCP or when the CCP prefers to defer the buy-in. Therefore the failing clearing member will always pay cash compensation if required to do so by the CCP. We do not envisage a situation where the CCP does not take any action following a partial delivery of securities.

- **Article 17** – we would like to confirm that this only applies to trades which are non-cleared/non-traded on TV.

We hope that this response will assist ESMA in the development of the final RTS on the operation of the buy-ins. We would be happy to discuss this response, and other issues concerning settlement discipline, in detail with ESMA, should you find this useful. If you have questions you may contact me at [Corentine.Poilvet-Clediere@lchclearnet.com](mailto:Corentine.Poilvet-Clediere@lchclearnet.com) or [Valentina.Cirigliano@lchclearnet.com](mailto:Valentina.Cirigliano@lchclearnet.com).

Yours sincerely,



**Corentine Poilvet-Clediere**  
Head of Post Trade Regulatory Strategy

