QUOTED COMPANIES ALLIANCE

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The European Securities and Markets Authority (ESMA)
CS 60747
103 rue de Grenelle
75345 Paris Cedex 07
France

6 August 2015

Dear Sirs,

Regulatory Technical Standards on the CSD Regulation – The operation of the Buy-in Process

Introduction

We are the Quoted Companies Alliance, the independent membership organisation that champions the interests of small to mid-size quoted companies. Their individual market capitalisations tend to be below £500m.

The Quoted Companies Alliance is a founder member of European**Issuers**, which represents over 9,000 quoted companies in fourteen European countries.

The Quoted Companies Alliance Secondary Markets Expert Group has examined your proposals and advised on this response. A list of members of the Expert Group is at Appendix A.

Response

We welcome the opportunity to respond to this consultation. We have consistently noted in our previous responses to ESMA's Discussion Paper on the Draft Technical Standards for the Regulation on improving securities settlement in the EU and on CSD (May 2014) and ESMA's Consultation Paper on Technical Standards under the CSD Regulation (February 2015) that there needs to be flexibility in the settlement discipline for both shares on a SME Growth Market and also those equally less liquid shares on regulated markets.

While we have no response to the particular questions posed by ESMA in this consultation, we believe that there is one aspect of the draft Regulatory Technical Standards on the CSD Regulation worth highlighting as a potential issue from the perspective of our members, small and mid-size quoted companies.

Article 15, 4 of the draft Regulatory Technical Standards on the CSD Regulation states that "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."

We believe that this article does not reflect the reality of the market and should therefore be amended to prevent unintended consequences.

The Quoted Companies Alliance is the independent membership organisation that
champions the interests of small to mid-size quoted companies.

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Registration Number: 4025281

As had been accurately pointed out by ESMA in its Discussion Paper (ESMA/2014/299), there can be various other occasions where the buy-in fails or is not possible: "there may be instances where the CCP, trading venue operator or CSD know in advance that the buy-in cannot be executed by the relevant term because the securities to be bought-in are illiquid and, as a consequence, objectively unavailable", in which case ESMA supported that "the receiving participant can choose to be paid a cash compensation or to defer the execution of the buy-in to an appropriate later date ('deferral period')".

Therefore, we believe that the ESMA's current proposed wording in the draft Regulatory Technical Standards would be disproportionately harmful for small and mid-size quoted companies and the overall market for smaller issuers and less liquid securities.

As said above, initiating the process in one of the multiple occasions where the buy-in is known to be impossible by all parties would, besides creating an unnecessary administrative burden, translate into cost and trading impact. This cost would be reflected upon the markets in securities for small and mid-size issuers; furthermore, this proposed wording could enhance the potential for market abuse for trading in less liquid securities, thus undermining the market for smaller issuers.

Abusive conduct may occur where parties purchase very illiquid stock and then create the false impression of market demand. The resulting perceived imbalance of supply and demand would force prices up as liquidity providers would seek to close their short positions in order to cut losses. The abuser would then receive cash compensation on a trade following an expensive failed buy-in that was known not to be possible. The fees associated with this buy-in act as an accelerant to the share ramping scheme in this circumstance. Ultimately, this would be undermining to issuers, particularly small and mid-size quoted companies with less liquid shares, as price volatility, reduced liquidity and wider bid off spreads in the secondary market would deter investors from the primary market.

We believe that this would be contrary to the spirit of MiFID II as well as the Capital Markets Union initiative in trying to preserve and enhance market conditions for small and mid-size companies, enabling better access to capital/fund raising as well as trading in capital markets in the European Union.

Therefore, we would urge ESMA to amend Article 15, 4 of the draft Regulatory Technical Standards on the CSD Regulation to allow other possible scenarios where the buy-in is not possible to be accounted for and allow the receiving party or participant to decide whether to receive cash compensation or opt for deferral with the consent of the delivering party.

If you would like to discuss our response in more detail, we would be happy to attend a meeting.

Yours faithfully,

Tim Ward
Chief Executive

APPENDIX A

Quoted Companies Alliance Secondary Markets Expert Group

Simon Rafferty (Chairman)	**Winterflood Securities Ltd**
Jon Gerty (Deputy Chairman)	Shore Capital Group Ltd
Julien Kasparian	BNP Paribas Securities Services
David Cooper	Cenkos Securities PLC
Paul Arathoon Andrew Collins William Garner	Charles Russell Speechlys LLP
Jessica Reed	Farrer & Co
Mark Tubby	finnCap
Nick Anderson Clare Forster Shreena Travis	Henderson Global Investors
Fraser Elms Katie Potts	Herald Investment Management Ltd
William Lynne Claire Noyce	Hybridan LLP
Peter Swabey	ICSA
Jeremy Phillips	Nabarro LLP
Ian Wright	Numis Securities Ltd
Sunil Dhall Andrew Palmer	Peel Hunt LLP
Dalia Joseph	Stifel
James Stapleton	Winterflood Securities Ltd