

Milan, 6 August 2015

Prot. 52/15

MFE/gc

**ESMA**  
CS 60747  
103 rue de Grenelle  
75345 Paris Cedex 07  
France

**Re: ASSOSIM contribution to ESMA Consultation paper “Regulatory Technical Standards on the CSD Regulation – The Operation of the Buy-in Process”**

## **Preliminary remarks**

Assosim<sup>1</sup> welcomes the opportunity to comment on the ESMA consultation document in subject and is pleased to provide the following observations.

Please note that the present document was drafted in cooperation with the Italian Banking Association (ABI).

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***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.***

As it regards the options proposed, we are in favor of “*Option 1 - Trading level execution*” as we believe that the trading parties have all the information needed for carrying out the buy-in procedure. Moreover, in our opinion this approach would contribute to limit the execution of multiple buy-ins. All options proposed equally require implementations on contractual and reporting flows but we deem that, among all the three options presented in the Consultation

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<sup>1</sup> ASSOSIM (*Associazione Italiana Intermediari Mobiliari*) is the Italian Association of Financial Intermediaries, which represents the majority of financial intermediaries acting in the Italian Markets. ASSOSIM has nearly 80 members represented by banks, investment firms, branches of foreign brokerage houses, active in the investment services industry, mostly in primary and secondary markets of equities, bonds and derivatives, for some 82% of the Italian total trading volume.

# ASSOSIM

Paper, the aforementioned option 1 is the one with the potential to guarantee a consistent approach also for OTC trades and keeps at “reasonable” level the increase in cost descending by this implementation.

We are aware of the fact that the CSDR (art. 7/8) provides a reimbursement obligation for the failing Participant. Nevertheless, we think that, should ESMA’s Technical Standards clearly state the Trading Member responsibility, then the Participant should be considered as materially responsible only for instructing the System to restore the *in bonis* Participant, while the ultimate liability related to the buy-in losses and expenses would be on the failing Trading Member.

The implementation of Option 1 requires the introduction of additional contractual provisions, applicable to the cascade of the involved entities, in order to ensure:

- the structuring of new and effective information flows throughout the chain of intermediaries;
- the enforcement of buy-in provisions also in case of non-supervised entities;
- that the payment flows are properly managed and instructed throughout the intermediaries chain.


The aforementioned contractual provisions should be set out by ESMA in order to achieve a standardization and a full application of the regime to all entities (intermediaries, Participants and CSDs – also acting as investor CSDs) involved in the buy-in, thus avoiding any conflict of laws in case of cross border activity and keeping safe the role of each entity.

Finally, we would ask ESMA to provide in its Technical Standards the main characteristics to be possessed by an entity in order to be potentially appointed as buy-in agent. Indeed, we believe that such an *ex ante* provision would help to identify, in a timely manner, the most appropriate entity to play such role, with consequent immediate benefits in terms of efficient and prompt completion of the entire buy-in process.

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We remain at your disposal for any further information or clarification.

Yours faithfully,

  
Gianluigi Gugliotta  
Secretary General