**Draft Technical Standards for the Regulation on improving securities settlement in the European Union and on central securities depositories (CSD)**

**CANACCORD GENUITY LIMITED RESPONSE**

**DATED 22ND May 2014**

**Q.13) CSDR provides that the extension period shall be based on asset type and liquidity. How would you propose those to be considered? Notably, what asset types should be taken into consideration?**

Asset types: Preference shares, PIB’s, ECN’s, Debentures, Retail bonds, Investment Trusts, Equities

These all ultimately need to be considered in terms of the ability to source or borrow stock.

In the more liquid equity names (i.e FTSE 100/250) the extension time of ISD+4 is unlikely to be an issue, whilst the cost of stock borrow might go up, buy ins should generally be avoidable.

As you move down into the FTSE Smallcap and further into the Fledgling index, liquidity and borrow becomes increasingly more limited, if it is available at all in many cases.

PIB’s, Prefs, ECN’s, Debentures, Retail bonds and Investment trusts all fall into this category and we would consider the move to ISD+7 (at the very least) a must across the board. These categories of assets need to be considered for the maximum possible extension because liquidity in these is often no better than much of what is to be considered “SME” growth (which is given the ISD+15 dispensation).

We have short positions on our fixed income book that have been there for a number of months and “Retail Bonds” by their very nature are owned predominantly by the retail fraternity, who have neither the ability or inclination to lend as things stand. The impact to liquidity in stocks of this nature across all asset classes is likely to be hugely detrimental to the ongoing functioning of our markets, this is clearly not just an issue for market making, there are far reaching implications which are ultimately negative for both the underlying investor base and corporate entities looking to raise money within these markets.

**Q.14) Do you see the need to specify other minimum requirements for the buy-in mechanism? With regard to the length of the buy-in mechanism, do you have specific suggestions as to timelines and in particular would you find a buy-in execution period of 4 business days acceptable for liquid products?**

Minimum Size requirement - Will there be costs per buy in, should there be a minimum buy in size which could be a function of the EMS/ buy-in amount?

For liquid stocks the execution period is more than enough to source the stock from other market counterparties.

For illiquid stocks the buy in is unlikely to be long enough, if the borrow is unobtainable making a seller of the stock could take some time due to the liquidity of the stock being bought in.

**Q.15) Under what circumstances can a buy-in be considered not possible? Would you consider beneficial if the technical standard envisaged a coordination of multiple buy-ins on the same financial instruments? How should this take place?**

When there is only one market maker/one market maker doing the majority of the business in the name, this would potentially make a buy-in not possible.

Multiple buy-ins would be fine on liquid stocks and only likely to occur with liquid stocks so it would be unlikely to affect those at the lower end of the liquidity spectrum.

If the market knew the time of a co-ordinated buy-in then this would be open for abuse. Each stock would have to have a random timetable of buy-in times that could be set in advance, then all buy ins aggregated until this point and executed at the same time.

**Q.16) In which circumstances would you deem a buy-in to be ineffective?**

A buy-in might not be possible where stock is not readily available. This is more likely where there is a limited number of market makers or where the market is short of stock generally. In the most extreme example, some preference shares and debentures may only have one market maker registered. There are few options for executing a buy back in such issues.

In those instances where there are more market makers registered and the market is long, others may still choose to hoard stock in the hope of selling at a higher price once the buy-in agent makes its intentions public. The method under which the buy-in is executed could have a significant impact on the success and trade price of the buy-in.

**Q.17) Do you agree on the proposed approach (for cash comp)? How would you identify the reference price?**

If the buy-in agent has made it public that it’s attempting a buy-in it’s possible that the market price is driven higher in response. It’s likely that the buy-in itself could trigger a cash compensation payment given that ESMA proposes compensation shall only be available where the last publicly traded price is higher than the trade price.

It is important that the buy-in agent has a good market insight and doesn’t change the market price artificially by making public its intentions to those who have no plan to supply stock and who might be incentivised to change their price in response. It might be more appropriate to use the traded price as the reference price rather than the last traded price on the basis it cannot be manipulated once the buy-in process has been initiated. Alternatively, the execution period could be set to a short period in order that the market price doesn’t move substantially between the buy-in failing and the cash compensation payment being made.

The cash compensation system is also open to abuse by investors. It’s possible that some buyers could target illiquid stocks in the hope of triggering cash compensation payments. Once the compensation payment has been made and any trades cancelled they could use the proceeds to target the same issue again. Prices are likely to move substantially higher until sellers emerge. Increased risk and market volatility are the likely impacts.

**Q.18) Would you agree with ESMA’s approach (re consistent failure to deliver)? Would you indicate further or different conditions to be considered for the suspension of the failing participant?**

Repeated failings in specific instruments may be as a result of issues outside the seller’s control. It seems inappropriate to suspend such participants from trading without a subjective view of why the failings are occurring. For example, some discretion may be appropriate if a market maker continually fails to deliver in an instrument merely because they are fulfilling dealing size obligations.

It’s also not clear if repeated infringement of rules in one instrument would lead to suspension in the issue involved or across the whole market. Any suspension of market makers and dealers would lead to lower liquidity. The impact would be reduced if suspension applied to specific stocks rather than a blanket suspension.

**Q.19) Please indicate your views on the prosed quantitative thresholds (percentages/months).**

It’s unclear whether suspension of participants would help to resolve delivery issues. Buy-ins and cash compensation levies in themselves will act as deterrents to repeated failure to deliver. It might be appropriate to set percentage and monthly thresholds which trigger a subjective process to suspend the participant. This might involve some input from the participant themselves to help explain how systematic failures could be prevented from happening in future.

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