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| 18 December 2014 |

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| Reply form for the Guidelines on the Access to a CCP or a Trading Venue by a CSD |
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| Date: 18 December 2014 |

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the ESMA Consultation Paper - Guidelines on the Access to a CCP or a Trading Venue by a CSD, published on the ESMA website.

***Instructions***

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, please follow the instructions described below:

1. use this form and send your responses in Word format;
2. do not remove the tags of type <ESMA\_QUESTION\_GUID\_CSDR\_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
3. if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses are most helpful:

1. if they respond to the question stated;
2. contain a clear rationale, including on any related costs and benefits; and
3. describe any alternatives that ESMA should consider

**Naming protocol:**

In order to facilitate the handling of stakeholders responses please save your document using the following format:

ESMA\_GUID\_CSDR\_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

E.g. if the respondent were ESMA, the name of the reply form would be ESMA\_GUID\_CSDR \_ESMA\_REPLYFORM or ESMA\_GUID\_CSDR\_ESMA\_ANNEX1

To help you navigate this document more easily, bookmarks are available in “Navigation Pane” for Word 2010 and in “Document Map” for Word 2007.

Responses must reach us by **19 February 2015**.

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input/Consultations’.

***Publication of responses***

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that a confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

***Data protection***

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Disclaimer’.

# General information about respondent

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| Are you representing an association? | Yes |
| Activity: | Other |
| Country/Region | Belgium |

Q1: What are your views on the proposed Guidelines?

<ESMA\_QUESTION\_ GUID\_CSDR\_1>

The paper focuses on the guidelines that CCPs and trade venues (TVs) should apply when they receive an access request from a CSD.  I have two broad points to make here;

1. First, if a CSD wishes to become a member of a TV or CCP they should be subject to the standard entry criteria and rules of the TV or CCP.  I find it difficult to understand what additional risk assessments the TVs and CCPs would need to conduct over and above their standard procedures when assessing any new application for a member.  A CSD who is admitted as a member of a TV or CCP should be treated as any other member and therefore I do not understand the need for a specific set of guidelines when assessing such an application.  If ESMA thinks it can apply criteria set out for interoperating CCP access requests it is wrong, this is a completely different scenario.
2. However fundamentally we need to question the rationale of a CSD becoming a member of a TV or CCP.  It is reasonable to suggest that a TV or CCP may wish to become a member of a CSD as the TV/CCP has a requirement to settle transactions, either directly via their own CSD memberships or via an intermediary such as a custodian bank or other CSDP.  However why would a CCP need to become a member of a TV or CCP? Why do they need to trade or clear transactions when the primary purpose of a CSD is to act as issuer, registrar and depository of assets?

It may be argued that CSDs would not become members in the sense of being a trading counterparty/clearing member but rather would obtain access to transaction feeds of CCPs/TVs only (i.e. it is not a full membership but rather it would permit CSDs access to the information it would need to provide/compete to provide settlement services to other CCPs/TVs or rather CCPs/TVs could not refuse to provide the information unless there were particular risk issues or overprice the information so as to favour an incumbent CSD). However this would need to be clarified.

1. It may be argued that a CSD possessing a banking licence may wish to expand services into trading or clearing, however the point here is that this fundamentally changes the risk profile of that CSD significantly.  CSDs generally act in a type of agency capacity, actioning instructions received from members to move securities and cash.  They do not generally give credit (although some do) and therefore are generally low risk.  When a CSD becomes a member of a CCP they do so on a principal basis and are immediately exposed to the default of all other CCP members.  This fundamentally changes the risk profile and increases the risk that they will become exposed to losses that in turn threatens the safety and soundness of the CSD.

Therefore the obvious gap in this paper are guidelines requiring the CSD itself to perform a full risk assessment on the implications of becoming a member of a TV or CCP.  Moreover there needs to be a clear obligation on CSDs to disclosure to its members the risks of becoming a member of a TV or CCP so its members can perform its own analysis of the risks of becoming a member of that CSD.

Para 14 also suggests that ESMA considers CSD access of CCPs/TVs to be similar to CCP access to TVs (‘…refuse access to its transaction feed to a CSD’).  It is unclear what relevance this has in this scenario.

It seems that the type of access being granted by CCPs/TVs is not adequately spelled out in the guidelines (i.e. that it is being formulated for the purposes of Article 53.3 which in turn relates to access of CSDs to transaction feeds of CCPs/TVs).  The guidelines may also be inadequate insofar as they do not make clear that the access provided is limited in this way (i.e. it is not a general clearing membership/trading membership).

<ESMA\_QUESTION\_ GUID\_CSDR\_1>