

FESE Response to ESMA Consultation on Draft Regulatory Technical Standards on the CSD Regulation

The Federation of European Securities Exchanges (FESE) represents 36 exchanges in equities, bonds, derivatives and commodities through 19 Full Members from 30 countries, as well as 1 Affiliate Member and 1 Observer Member. FESE is a keen defender of the Internal Market and many of its members have become multi-jurisdictional exchanges, providing market access across multiple investor communities. FESE represents public Regulated Markets. Regulated Markets provide both institutional and retail investors with transparent and neutral price-formation. Securities admitted to trading on our markets have to comply with stringent initial and ongoing disclosure requirements and accounting and auditing standards imposed by EU laws.

At the end of 2014, FESE members had up to 9,051 companies listed on their markets, of which 7% are foreign companies contributing towards the European integration and providing broad and liquid access to Europe's capital markets. Many of our members also organise specialised markets that allow small and medium sized companies across Europe to access the capital markets; 1,442 companies were listed in these specialised markets/segments in equity, increasing choice for investors and issuers. Through their RM and MTF operations, FESE members are keen to support the European Commission's objective of creating a single market in capital markets.

FESE members are pleased to have the opportunity to contribute to this ESMA consultation paper.

FESE response to consultation report

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. Please provide quantitative cost-benefit elements to sustain your arguments.

FESE believes trading counterparties are best placed to provide this analysis.

Q2: Please indicate whether the assumption that the trading party has all the information required to apply the buy in would be correct, in particular in cases where the fail does not originate from the trading party, but would rather be due to a lack of securities held by one of the intermediaries within the chain.

FESE supports the views expressed by ICMA on this issue¹. For transactions executed on a trading venue, the draft RTS attempt to address the first issue by providing that where the receiving counterparty does not initiate the buy-in, the trading venue will.

¹ <http://www.icmagroup.org/News/news-in-brief/buy-ins-how-they-work-and-the-challenge-of-csdr-an-icma-briefing-note/>

The draft RTS Article 14(1) does not explain how the trading venue will know that the buy-in needs to take place. As has been discussed widely in previous consultations, in many markets (in particular fixed income) the trading venue is not in a position to know whether any transaction it processes has settled or failed, or that a buy-in can or should be initiated. This is exacerbated by the fact that the settlement intermediaries may or not be the same entities who are also trading members of a venue and therefore are not subject to the rules of the venue.

Moreover, we also wish to alert ESMA to the legal risk a trading venue might be exposed to and that any duty within the notification chain will require a dedicated IT infrastructure and may lead to implementation of monitoring processes. Any new liability risks occur if a trading venue has to appoint a Buy-In agent and in addition there is no contractual relationship with any Buy-In Agent which might lead to legal risks.

This results in an obvious challenge for the trading venue to initiate any buy-in automatically.

Q3: Should you believe that the collateralisation costs attached to this option are significant, please provide detailed quantitative data to estimate the exact costs and please explain why a participant would need to collateralise its settlement instructions under this option.

FESE believes trading counterparties are best placed to provide this analysis. However, requiring collateralization for failed settlement will add significant complexity and cost to the process which is not present nor is there any effective mechanism to achieve this today.

Q4: If you believe that option 1 (trading party executes the buy-in) can ensure the applicability of the buy-in provisions are effectively applied, please explain why and what are the disadvantages of the proposed option 2 (trading party executes the buy-in with participant as fall back) compared to option 1, or please evidence the higher costs that option 2 would incur. Please provide details of these costs.

FESE believes trading counterparties and CSD participants are best placed to provide this analysis.

Q5: Please provide detailed quantitative evidence of the costs associated with the participant being fully responsible for the buy in process and on the methodology used to estimate these costs.

FESE believes trading counterparties are best placed to provide this analysis.