Svensk Värdepappersmarknad
Swedish Securities Markets Association

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The Swedish Securities Markets Association's comments on the review of the Central Securities Depositaries Regulation (CSDR)

SSMA's comments focus on CSDR article 7 and the delegated regulation (EU) 2018/1229 (the RTS).

We are of the opinion that penalties is a better tool for addressing settlement fails than mandatory buy-ins (MBI) and would therefore recommend a removal of the overall MBI provisions. Prescribing a mandatory obligation for a buyer to make buy-ins is a radical intervention in the contractual law and the relationship between contractual parties, in particular as the pre-defined mandatory obligation to remedy the failure is placed on the non-failing party. A better solution would be to adjust the penalty rates for market segments where the settlement ratio is unsatisfactory. If a full removal of MBIs is not deemed possible, we support the idea of a two-step approach, but some clarifications of the intended process is needed.

In general, SSMA urges the Commission to be very conscious of ensuring legal clarity and consistency between the level 1 regulation, level 2 delegated acts/RTS and level 3 guidelines. As concerns SDR, most of the issues that have arisen are in relation to the provisions in the RTS, rather than the level 1 text. We see a risk that that could also be true for the parts where the Commission would get new mandates for level 2 regulation.

There is still uncertainty as regards the scope of CSDR. Several obligations are placed on a "trading party", defined as a party acting as principal in a securities transaction, but a principal is not defined and the term is used inconsistently. In any case, "Trading party" should be clearly defined as to not include retail investors; in the Swedish market, settlement of transactions to some extent involves i.a. retail clients with securities accounts at the CSD level.

We would welcome a removal of the mandatory need for appointing a buy-in agent, as indicated in recital 11, and think that it should be made clear that there is no obligation to use an agent to carry out a buy-in.

The meaning of "settlement fails are caused by factors not attributable to the participants to the transaction or for operations that do not involve two trading parties" in the proposed article 7.2 is unclear and we would welcome a clarification in the level 1 text.

Any decision by the Commission according to article 7.2a should be limited to only the relevant subcategories of a national market, to avoid unnecessary distortions.
Also, it is not sure that the criteria in article 7.2a (b) are appropriate to make a well-founded decision. Few markets are comparable and deep knowledge about the local markets' specificities and practices is needed to make such a decision.

We support the attempt to develop a real pass on mechanism but there is a need to clarify the responsibilities in the delivery chain.

Regarding the proposed article 7.13a, it is important that any suspension decisions be taken promptly, and if needed, with retroactive effect to avoid threats to financial stability or the orderly functioning of the market.

With regards to the proposed passporting changes we are concerned that the removal of the possibility for the host supervisor to refuse the passport may result in additional risks to investors, as CSDs need to be able to support issuance in according with the issuer's national laws (primarily in relation to company law and tax law). As these are not harmonised across the EU, the home supervisor cannot assess the CSD's ability to comply with the host country's requirements.

With regards to the proposed changes to the requirements on CSDs providing banking-type ancillary services. We believe that the CSDs' critical role as central market infrastructures for core functions should remain adequately protected from any additional risks, such as banking risks, credit risks or market risks, that are normally associated with the provision of banking services.