

Stockholm, March 2026

## **The SSMA's views regarding the European Commission's market integration and supervision package**

The Swedish Securities Markets Association (SSMA)<sup>1</sup> welcomes the European Commission's proposal on market integration and supervision (MISP) and the opportunity to comment on it. The SSMA supports the Saving and Investment Union (SIU) objectives of integrating capital markets in the European Union, and of enhancing the competitiveness of participants in these markets.

In this paper we present our views regarding the proposals.

### **General comments**

- The SSMA generally welcomes the European Commission's ambition to increase the competitiveness of EU capital markets and to remove barriers to cross border activities between member states. However, the SSMA wants to underline that in order to achieve the end-goal of increasing retail engagements, MISP needs to be combined with other measures, many of which need to be taken at member state level. It is also important to recognise that a well-functioning EU-capital market is dependent on well-functioning local ecosystems, both in the short term and the long term. While we generally support measures to facilitate for infrastructure providers to build scale and engage in cross-border activities it is important to ensure that such measures do not have a negative effect on the competition to the detriment of small and medium-sized enterprises.
- MISP is a very extensive legislative package, the impact of which is still being assessed. At this stage it remains unclear whether the proposals will in fact deliver the desired outcomes for the EU capital market. In our view, more analysis is needed as regards the effects of the proposals and we urge the co-legislators to carefully assess the MISP proposal against the overall EU simplification agenda and how the different parts of the proposal will contribute to EU's competitiveness. Potential benefits (which to our understanding are based on policy considerations and theoretical reasoning) need to be assessed against implementation costs and the creation of additional layers of complexity

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<sup>1</sup> The Swedish Securities Markets Association is a trade association representing the interests of banks and investment firms conducting business on the Swedish securities market.

and risk for the financial system. The number of cross-references between EU-legislative acts as well as the relationship to national legislation, e.g. company and tax laws, need to be part of this analysis. Any unintended consequences of the proposal that would result in a decrease the competitiveness of EU rather than the reverse must be avoided.

## **Centralised supervision**

### *General comments*

Centralised supervision is an inherently complex topic. It is important with equivalent supervision for market actors in different member states, and we would welcome stronger convergence at EU level. In our view, centralised supervision makes sense for larger infrastructure groups with cross-border activities. However, in line with our general comments above, it must be ensured that the shift of supervision from National Supervisory Authorities (NCAs) to ESMA does not have negative consequences for well-functioning local ecosystems or creates an un-level playing field for smaller players. In our view, the division between central and local supervision should be balanced according to the subsidiarity principle and it must be ensured that skills and expertise relating to local markets continue to exist at both local and central level.

The SSMA is concerned with the lack of transitional provisions and would like to see a phased-in approach. It will take time for ESMA to build up the necessary competence and resources that is needed for a transition. Therefore, a staged approach starting with a transition to centralised supervision of significant CCPs, before evaluating a transition for significant trading venues or CSDs may better accommodate an orderly transition from national to EU-level supervision.

If centralised supervision results in increased costs for the supervised entities, then those costs are likely to be partially passed on to their clients and ultimately to end users. If the timeframe for transfer of supervisory powers to ESMA is too short and ESMA does not have the right resources, skills and processes in place, the efficiency gains would not be realised while still resulting in cost increases, which would be detrimental to the competitiveness of the European financial sector. The SSMA therefore suggests avoiding a big bang approach and prefers to have a staged transition to central supervision.

### *Supervision of trading venues*

SSMA members generally consider that the proposals regarding the introduction of PEMOs and significant trading venues make sense. As mentioned above, it is however important to avoid that smaller trading venues, which remain subject to local supervision, are put at a competitive disadvantage. Smaller trading venues will continue to play an important role for local ecosystems, e.g. for listing of SMEs.



It is important to safeguard the integrity and functioning of local markets. We share the view that there are areas (e.g. market abuse, market surveillance, prospectuses and trading halts) that should continue to be handled by National Surveillance Authorities (NSAs) rather than ESMA. We would like to underline the importance of carefully analysing issues related to security, continuity and resilience in this context.

Also, the proposals regarding intra-group arrangements need to be carefully analysed. While we understand the objective to facilitate for bigger players, it is important to ensure effective supervision and to avoid unintended consequences, e.g. in the form of an unlevel playing field and increased operational risks. We agree that it is important to avoid regulatory inconsistencies with other frameworks such as DORA.

Regardless of the division of supervision between ESMA and NCAs, it is very important that all rules are implemented and interpreted in the same way in all Member States.

#### *Supervision of CSDs*

The SSMA acknowledges that centralised supervision of CSDs could lead to pooling of relevant competences, better clarity regarding the competent authority's decisions and that it could bring about a more level playing field in terms of competition between different CSDs. Considering the current low level of competition, where the role of the CSD to a large extent is that of a natural monopoly, we encourage the legislator to keep the fair competition aspect in mind when deciding on the future supervision framework for CSDs.

Our understanding of the proposed changes in articles 10-11b in CSDR is that the practical result would be that most of the CSDs within the EU (at least those that are part of one of the groups of companies that provide financial market infrastructure services in more than one member state) would be considered significant CSDs, and hence be subject to ESMA supervision rather than supervision by an NCA. According to the Commission's Q&A on the market integration and supervision package, 15 CSDs would fall under centralised supervision by ESMA, based on the criteria set in the proposal. In addition, member states may designate ESMA as the competent authority for one or more less significant CSDs established in their territory (article 10(2) in CSDR). If the intention of the EU legislator is to centralise the supervision for the vast majority of CSDs we question the value of the proposed grouping of CSDs into significant and less significant CSDs and the regulatory complexity this entails.

#### *Supervision of CASPs*

For CASPs and trading in listed crypto assets, the Commission has not proposed the same division of competences between ESMA and NCAs as for trading in financial instruments under MiFID II/MiFIR. We understand from the recitals that the main justifications for centralised supervision are that (i) crypto-asset service providers are "a new area of supervision" and that MISP is seen as an opportunity to "ensure supervisory consistency from the beginning", and that (ii) there is a lot of cross-border activities. Although the SSMA does not question these arguments per se, we are not entirely convinced that the benefits with



centralised supervision under MiCA outweigh unintended negative consequences that could arise from having different set-ups for different markets. In our view, the securities market and the crypto market are likely to get more interlinked in the future – both at transaction level (i.e. a transaction can have different legs or steps involving different asset classes) and at market participant level (where many services which today often are provided by separate entities, will be provided by the same entity). It could therefore be a very complex system to have different supervision regimes. While we agree with the proposal not to make any changes as regards supervision of banks, we also see a risk for regulatory arbitrage which could create an un-level playing field. We also consider that the consequences of moving the responsibility for market surveillance and market abuse to ESMA need to be further analysed from a financial stability, risk and resilience perspective. To our understanding, supervision of investor protection issues relating to crypto assets in Member States remain within the remit of local supervision and we recommend that this is clarified in a recital.

## **The master regulation**

### **The ESMA regulation (1095/2010)**

As a starting point, the SSMA would like to underline the importance of a transparent and legally secure supervisory structure where market participants can rely on the information they receive from, and the decisions taken, by their NCAs. It is also important to ensure that the powers granted to ESMA are proportionate and lead to an effective supervision. This requires balancing central and local supervision according to the subsidiarity principle and to ensure that skills and expertise relating to local markets continue to exist at both local and central level. It should be avoided that as a result of the transfer of supervision to ESMA, market players are faced with a substantial increase in costs rather than economies of scale.

Furthermore, if and to the extent powers are shifted from NCAs to ESMA, it will be important to carefully consider the need for transitional provisions and arrangements. It is also important to set up efficient procedures for information sharing and collaboration between NCAs and ESMA. ESMA must ensure that it has a sufficient level of staff with adequate knowledge of local markets. In addition to the customary need for a transitional period, it must be noted that the arrangements will have to take into consideration e.g. changes of staff and the building of capacity.

Lastly, we would like to raise some preliminary concerns regarding the proposed additions to articles 8a, 9a, 17aa and 17aaa of the ESMA regulation.

#### *Duty of cooperation (article 8a)*

The rules set out in article 8a are far-reaching when it comes to giving ESMA a mandate to give instructions to and make use of resources of NCAs. The SSMA finds the proposed rules to be complex and would welcome more clarity on how the different mechanisms would work in

practice. Would it e.g. be possible for ESMA to order an NCA to carry out tasks it does not agree with, and what will happen if the NCA does not agree or does not have resources to fulfil the order?

It is also important to make sure that a new supervisory structure does not lead to duplications when it comes to reporting or other aspects of supervision.

In this context, the SSMA also notes that while we can see benefits in more harmonised rules, there is also a risk that unclear rules and arrangements may lead to a supervisory culture that is more conservative and less open to new products and business models. This can in turn stifle innovation and lead to less competitive capital markets in the EU, contrary to the ambitions behind the SIU.

#### *No-action letters (article 9a)*

The SSMA has supported an extended mandate for the European supervisory authorities to issue so-called no-action letters when necessary. The proposed article 9a widens this ESMA's mandate in this area, which is positive. The SSMA considers that the examples given in the proposed text are relevant. Our experience, not least from the lack of coordination between level 1 and level 2 regulation, suggests that ESMA should be given a broad mandate to issue no-action letters.

In our view the proposals in points (d) and (e) in the article are too restrictive as regards the situations where a no-action letter can be issued. Examples of situations that do not appear to be covered by the proposed wording have recently arisen in relation to EMIR 3.0, inter alia in relation to article 7d, where reporting requirements at level 1 came into effect before there was level 2 regulation specifying what should be reported. Such a lack of coordination between level 1 and level 2 regulations does not appear to meet the requirements of being "urgent or unforeseen". We also question whether the requirements in the second paragraph are relevant in such a situation, i.e. that ESMA's "action" should take the form of "a new legislative proposal or a proposal for a new delegated or implementing act".

Based on the above, we propose that the criteria "urgent or unforeseen" are deleted from article 9a. In order to ensure a more flexible regime, we also recommend to supplement article 9a with a power for the European Commission to temporarily suspend legislative requirements by adopting level 2 acts. (Inspiration can be found in similar powers for the European Commission as regards the derivatives trading obligation under MiFIR.)

#### *Article 17aa*

According to the proposal, in the worst-case scenario, deficiencies in the supervision by an NCA mean that market participants will be prevented from offering services and products in other Member States (through ESMA forcing the NCA to revoke an authorisation decision, or through the host authorities being able to suspend services or products). The SSMA has several concerns with this proposal.

Most importantly, if a national supervisory authority has deficiencies in its supervision, this does not automatically mean a lack of compliance by the market participants subject to supervision, and there is no automatic correlation between deficiencies in supervision and the quality of the products and services offered. It should therefore not be the responsibility of the market and market participants to solve the problem with an NCA's lack of competence or resources. Based on the above, the SSMA recommends that article 17aa is amended so that the requirements of "corrective actions" are directed towards the NCA in question and not the market participants. Possible ways of addressing this issue is via the tools offered in articles 17, 29 and 30 of the ESMA regulation, e.g. by issuing an opinion to the NCA or set out appropriate follow-up measures in a peer review report that could be adopted in the form of guidelines and recommendations.

#### *Suspension of rights (article 17aaa)*

Suspension of services is a powerful tool that can be equated with a temporary withdrawal of authorisation and appears both legally uncertain and disproportionate. A relevant question is why ESMA is given the right to go further than NCAs that impose sanctions (but do not suspend) and what happens to sanctions that have already been imposed. Could there be double punishment, and how can ESMA's decision be appealed? If cases relating to market participants have to be appealed at EU-level, that would likely be more complex and costly than an appeal at national level. Suspension can cause significant damage and therefore feels like an inappropriate tool. The SSMA considers that the article 17 aaa should be deleted.

Regarding both article 17aa and article 17aaa, we also believe that there is some ambiguity regarding the power to make decisions, i.e. who should decide whether the conditions in the provisions are met. Is it the Executive Board? We also note that the thresholds for ESMA to be able to use the powers are set very low ("that could jeopardize the integrity of financial markets, financial stability or investor protection"). Given how intrusive the measures are, the requirements should be higher, cf. "significant investor protection concern."

As a final remark, the relationship between the ESMA-regulation and the sectorial regulations should be considered. For example, there are cross-references to article 17aaa in the sectorial legislation e.g. the UCITS-directive (article 110c), the AIFMD (article 47b) and the cross-border distribution regulation (article 14c) which make little sense considering that those provisions relate to supervisory convergence and measures that should be directed towards NCAs, not market participants. There are also examples of "double regulation", i.e. that ESMA is given supervisory powers in the sectorial legislation when the same powers follow from article 17aaa (see paragraph 3.c in the above-mentioned articles). From the sake of simplification, it is important that such inconsistencies and overlaps are avoided.



## **MiFID II/MiFIR (600/2014)**

### *General comments*

As a general comment, the SSMA questions whether it is not premature to make amendments to the CT and the SI-regime in MiFIR, taking into account that the implementation of MiFID II/MiFIR-review is ongoing and there is a need for regulatory stability.

### *Consolidated tape – pre-trade data*

The question of whether the consolidated tape (CT) for shares should also include pre-trade data was one of the most discussed issues within the framework of the MiFID II/MiFIR review. The SSMA's position is unchanged. As further discussed below, the SSMA considers that if the CT is to include pre-trade data, it is extremely important to ensure that there are no mandatory requirements for investment firms to use the consolidated data (so-called mandatory consumption) and that any links to the rules on best execution are avoided. Otherwise, there is a significant risk that the rules will have unwanted negative effects on the functioning of the securities market, to the detriment of both clients and investment firms.

We would like to emphasise that the SSMA's members are open to the fact that consolidated pre-trade data may be of value from a transparency and valuation perspective for some clients. However, the consolidated data will never be able to replace the primary data that investment firms need for the execution of customer orders, and which is purchased directly from the source, i.e. the trading venues. The changes that the EU Commission has now proposed do not change this fact. It therefore makes us very concerned to read in the background material that the stated purpose of the proposal is to ensure that the data is taken into account by investment firms for the execution of orders.<sup>2</sup>

The basic problem is the time delay that is inevitably associated with consolidated data (so-called latency). Since the consolidated data is compiled, it will always be published with a certain delay. In simple terms, this means that the data will be “too old” for an investment firm to be able to use it as a basis for deciding where an order should be executed. Today, trading can take place as quickly as 100 transactions per millisecond in a single share. With an average delay of 10–20 milliseconds, this means that over 1000 transactions can be made

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<sup>2</sup> See the Commission's Q&A, question 15 paragraphs 2 and 3 (“usage as a best execution tool”, and “we expect brokers to refine their execution policies”)



while you wait! The latency creates arbitrage opportunities for so-called high-frequency trading, which leads to worse prices for end clients.

The introduction of granular time stamps will not change the fact that CT data will come with a delay, and it is impossible to use to prove best execution. It does not help that the data have a very granular timestamp, because our members will receive this timestamped data with a delay. Our members make execution decisions in real time in sub milliseconds in their trading systems with primary data directly from the sources. It is impossible to wait for delayed CT data in these set ups. Clients will get worse executions if it were to be enforced that CT data should be used for best execution evaluation.

It is also important to note that the primary data that the trading venues/SIs are to send to the consolidated market data provider (CTP), and of which the consolidated data consists, is also purchased directly by the investment firms. A requirement that the investment firms must use the consolidated data would therefore mean that the institutions cannot use the (faster) primary data but have to wait to execute clients' orders until the consolidated data is available. Such a requirement is, in our opinion, completely unreasonable and not in the best interest of clients. Furthermore, the time delay means that the primary data has time to change in the meantime, making it impossible to trade on the consolidated price as it is no longer valid. Poor data quality and delay will likely lead to poor quality of the consolidated data. We also see risks that the Commission's proposal open for arbitrage.

In summary, the SSMA sees a number of risks with the Commission's proposal that need to be further analysed. It is important to avoid that the Commission's proposal creates complexity, practical problems and extremely high costs for market data that will have a negative effect on both market participants and customers. The most important thing is to ensure that the basic principle of MiFID II/MiFIR remains unchanged, i.e. investment firms should not be forced to purchase the delayed consolidated data – the use must be voluntary: there should not be any explicit requirement that institutions must use the CT data for best order execution and firms should be able to continue to use primary sources. One suggestion is to clarify this in a recital.<sup>3</sup>

#### *SI-reporting, including data quality concerns*

Systematic internalisers (SIs) fulfils an important function as liquidity providers for the markets. Having said this, the SSMA is of the opinion that it is important to ensure that SIs operate as they were intended to, which means only bilateral trading at risk should be allowed. There should be no internalisation or orderbook like activities taking place on an SI

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<sup>3</sup> Cf. the clear statement on non-mandatory consumption in recital 17 in delegated regulation (EU) 2024/791 and the ESMA draft RTS specifying the criteria for establishing and assessing the effectiveness of investment firms' order execution policies, recital 3.



since this constitutes multilateral trading. In our view, there is no need for more rules in this area – the focus should be on enforcement.

The SSMA questions the proposal to require SIs to provide 5 best bids and offers to the CT. The reason for this is that an SI that is truly bilateral in nature will only have one quote – their bid and offer. Thus, SIs should only be able to quote and trade on EBBO or better, so no order depth is needed.

The SSMA has for a long time stressed the problems with latency and poor data quality on the CT. This will in our view become even worse if pre-trade is introduced on the tape (see above). Since all providers of data will have different latency to the CTP there is large risk that there will be poor data and crossing prices i.e. bids are higher than offers and vice versa because pre-trade data quotes and order data are arriving at different times. To require that SIs publish their trades could also have a negative effect on their willingness to provide liquidity through their book since they will expose their risk.

#### *Closing auction*

The closing auction linked to the official closing price is what creates the exchanges' monopoly on market data pricing since there is no alternative source for this data. While the SSMA understands the rationale for the proposal, we do not consider this to be the right way to do it. No one will be interested in this price if it is not always the same price as the official closing price. It would probably be better to instead use the rules for most relevant market for the official closing price. In our opinion, the proposal should therefore be deleted from the MISP.

#### *Cost of market data*

Cost of market data is a major concern for SSMA members, and it is therefore very important that this issue is properly addressed by the regulators. The SSMA would like to see more concrete proposals to enforce the cost base approach and links to reasonable commercial basis.

### **CSDR (909/2014)**

#### *Measures to prevent settlement fails*

In the proposed amendments to article 6, Measures to prevent settlement fails, there are inter alia requirements for CSDs – and for participants – to have fully automated processing of settlement instructions. We appreciate the benefits of automation generally but would like to recommend caution when it comes to detailed requirements for automation, especially in relation to the client facing parts of the institutions. Banks and investment firms should be able to have dialogues through non-automated channels with their clients, both from a client



relation perspective and because some situations are handled more efficiently that way. The need for non-automated communication applies to both professional and retail clients.

Introducing requirements of automatic processes between financial institutions and their clients would lead to higher barriers to entry or remain on the market for smaller, professional clients such as smaller asset managers. This could hamper the development towards a broader investor base, without any real improvement in the quality of the information and communication. In our view, introducing detailed and far-reaching requirements on automation would not be in line with the overarching purpose of the SIU to increase cross-border investments within the EU, to improve the attractiveness of the EU as an investment destination and to encourage investments in securities issued by companies within the EU. We would like to highlight the importance of striking a balance between requirements for automatisations and applying efficient manual processes, in order to avoid creating barriers that impede the market development.

Regarding the proposed mandate for ESMA to develop technical standards in article 6(5), we would welcome more background information about the need for technical standards regarding settlement mismatch. We understand the definition of settlement mismatch message in article 2(1) point (52) as describing what is referred to as a settlement allegation message, informing a party that another party has sent an instruction “against” it. These messages are already used in a standardised manner (either as ISO 15022 messages, where the message is MT 578, Settlement Allegement, or ISO 20022 messages, where the message type is sese.028, Securities Settlement Transaction Allegement Notification), which should be taken into account if technical standards are developed. The settlement allegation messages are also sent in conjunction with settlement instruction status messages, informing the sender of an instruction of the status of it – in this case that its instruction has not been matched. These messages are standardised (ISO 15022 MT 578 Settlement Allegement), which should be taken into account if technical standards are developed.

As regards potential technical standards on power of attorney requirements, we would like to point out that there is a difference between having a general power of attorney requirement and requiring that the party that is given the power of attorney should send instructions directly into the CSD’s system on behalf of another participant – or, even stricter, that the instructions sent should be already matched (where the latter is very far-reaching and would entail even more system development). We understand the proposed mandate to be linked to recommendation ST-03.9 – POA Functionality in the EU T+1 High Level Roadmap.<sup>4</sup>

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<sup>4</sup> [High-level Roadmap to T 1 Securities Settlement in the EU.pdf](#)

### *Internalised settlement*

Some of the proposed new elements in article 9, Settlement internalisers, seem to already be regulated in the level 2 technical standards in force. We would welcome more information about the purpose of moving some of the elements to the level 1 regulation and note that the effect of the proposed amendments will depend on the combination of the level 1 and level 2 provisions.

We understand that the Commission has used the result from a TVR report as part of the underlying material for the proposal.<sup>5</sup> We are however not sure that the data presented in the report gives a fair representation of the market, the reasons behind internalised settlement and the difference in nature between CSD settlement and internalised settlement. We would like to encourage the EU legislator and ESMA to seek further clarifications regarding these matters before the review of the technical standards. One argument in favour of CSD settlement that we sometimes hear is that such settlement is made using central bank money. That argument is however not relevant for settlement of securities between clients of a CSD participant, since the cash used in the CSD system is central bank money and hence both the debit and credit entries are made in an account belonging to the CSD participant (or its cash management provider). It is only for transactions between different CSD participants with their own central bank accounts that the cash leg of a transaction is settled in central bank money; the cash debits and credits for clients of CSD participants are always recorded on the client's bank account. This is true whether the transaction is settled in the CSD system or in the participant's custody account system.

According to the proposed new paragraph 9 in article 34 settlement internalisers would be required to disclose the prices and fees associated with the services they provide to their clients and differentiate between the prices pertaining to settlement in and outside a securities settlement system. The SSMA does not support this new requirement and questions whether such requirements could be regulated in CSDR at all. What information our members should give their clients regarding prices and fees is already regulated in the legal acts that govern the organisation and conduct of banks and investment firms. CSDR, on the other hand, applies primarily to the activities of CSDs and hence lays down requirements on the organisation and conduct of CSDs, not banks and investment firms. Moreover, we think that there is a limited value for clients in differentiating the pricing structure as proposed, since internalised settlement is an integrated component of a broader custody offering rather than a stand-alone service. The requirement would increase the operational complexity without providing meaningful transparency to clients.

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<sup>5</sup> [ESMA50-1949966494-3846 Report on Trends, Risks and Vulnerabilities No. 2, 2025](#)

### *Protection of securities of participants and those of their clients*

As regards the protection of securities of participants and those of their clients, a participant shall offer its clients at least the choice between omnibus client segregation and individual client segregation and a CSD shall keep records and accounts that enable both types of segregation (article 38). In the Commission's proposal, the definition of "omnibus client segregation" is moved from article 38 to the list of definitions in article 2, while the definition of "individual client segregation" is kept in article 38. We have not seen an explanation in the proposal for this differentiation between the definitions of the two types of segregation, and it might be unintentional. Since the CSDR provides for both types of client segregation (recital 42 in CSDR states that the one that is believed to be appropriate to the clients' needs should be chosen) and to avoid any confusion, we think that both definitions should either be included in the list of definitions in article 2 or be kept in article 38.

### *Cash settlement*

Regarding the proposed article 40, Cash and e-money token settlement, the Commission's Questions and Answers on the market integration package (specifically questions 17 and 25) now appear to indicate a mandatory requirement for all CSDs settling in a T2S-supported currency to connect to the T2S platform and provide their participants with the option to settle in T2S. This represents a significant shift from previous communications, which portrayed connection to T2S as voluntary. For instance, any EEA CSD performing settlement in EUR and DKK without a current connection to T2S would now be required to establish such a connection. It is crucial to highlight that connecting to T2S is a complex process, demanding substantial time and analysis from all involved parties, and that implementation processes will inevitably vary across different member states.

### *Freedom to issue in a CSD in the union and CSD links*

The SSMA understands the intention of the proposed amendments in article 49 CSDR, as well as the proposed amendment in article 1(4) and the new article 34c in MiFIR, to be an increased freedom for issuers and trading venue members to designate any CSD established in the union and a decreased possibility for CSDs to refuse to provide the requested services, essentially limiting the possibility to refuse a request to situation where the CSD does not provide the requested services or where the risks are considered to be too high. On a principal level, we are not opposed to increasing the possibility for issuers to designate a CSD of their choice, but in practice we think that the choice will continue to be limited.

We note that the current wording that "the corporate or similar law of the Member State under which the securities are constituted shall continue to apply" is deleted in the proposal. Nonetheless, the relevant national legislation, e.g. corporate law, tax law and national



legislation on book-entry securities complementing the CSDR, will continue to apply, whether this is highlighted in the article or not. The issuers and other relevant market actors will still have to be compliant with such national legislation, which, in practice, limits the choice to those CSDs that have systems and processes adapted to the national legal requirements in place. Other factors, such as language, culture and knowledge of the local market, also influence the choice of CSD, and are likely to continue to do so. As far as we understand, the proposal does not prohibit the member states from having national legislation in the areas exemplified above. We would welcome more information clarifying the possibility for member states to maintain such national legislation, despite the Commission's intention to reduce the barriers to freely designate a CSD in the union.

We understand the proposed amendments regarding freedom for the issuer to designate a CSD and the proposed amendments and new provisions about CSD links (articles 48-48b and 50-53) as pulling in different directions and being contradictory. We would therefore welcome further discussions on the intention behind the proposed provisions regarding CSD links. If the issuer is given the possibility to freely designate a CSD, there should not be a need for the proposed provisions regarding CSD links until other barriers for CSDs to compete on investor CSD services, irrespectively of issuer CSD, are solved. Already today, the issuers pick the geographical market where they see the best market opportunities and where there are potential investors. Furthermore, our experience is that the CSDs take action to establish links to other CSDs where this would benefit the market and where there is a demand. The proposed provision would lead to costly development for the market actors, including the issuers, and we question the value of the proposed regulatory requirements in this area. Moreover, the proposed time schedule in article 48b will be difficult to keep for CSDs that are not (yet) connected to T2S.

#### *The proposed mandates for level 2 acts*

Several of the proposed amendments in CSDR would lead to either a review of existing level 2 acts or drafting of new level 2 acts. For all mandates for new or revised level 2 acts it is important that ESMA and the other authorities are given enough time for their drafting or review before the new or revised rules are to be applied. When the dates of application are set in the level 1 regulation, the legislator should also consider the total extent of the level 2 acts that will be drafted, and the priority between the different level 2 acts. The market participants should be given sufficient time to adapt their systems and processes after the finalised level 2 acts are available before they should be applied.

### **The DLT pilot regime regulation (2022/858)**

The SSMA supports an extension of the DLT pilot regime and welcomes amendments to make the pilot regime more attractive, such as less strict market value limitations and expanding the scope of securities that are allowed to be issued under the pilot regime.

The proposal includes a mandate for ESMA to present a report on various aspects of DLT market infrastructures by March 2030 (article 14). Based on that report, the Commission shall assess whether the pilot regime should be integrated into other sectoral legislation and submit, where appropriate, a legislative proposal. The Commission has however proposed some amendments to include DLT language in the sectoral legislations such as CSDR and the proposed settlement finality regulation already at this point, which we support. In our opinion, it would be good to continue to integrate DLT into the sectoral legislations and strive for them to be technology neutral. From an EU competitiveness point of view, it would be preferable to do this earlier than the proposed timing of the ESMA report and the Commission's subsequent assessment.

We are also in favour of the Commission's proposed amendments to the limitations on the financial instruments admitted to trading or recorded on DLT market infrastructure in article 3, increasing the caps for aggregate market value to EUR 100 billion. In our view, the current, relatively low, caps are likely to have been construed as a practical obstacle, disincentivising potential issuers to issue securities under the pilot regime.

### **The settlement finality regulation and the financial collateral directive (2002/47/EC)**

The SSMA welcomes a review and modernisation of the settlement finality provisions, which are currently found in the settlement finality directive (98/26/EG) (SFD), to make sure that they are future proof. In our view, the provisions of the existing directive, as well as the legislation transposing them into Swedish law, have worked well, but we have no objections to the directive being replaced by a regulation, as proposed by the Commission. It is quite a few years since the SFD came into force and given the ongoing technological development, it is appropriate to review the legislation to make sure it is still fit for purpose and to, as far as possible, make it technology neutral and e.g. ensure that it works well for DLT infrastructures.

The Commission has only proposed a few, minor amendments in the financial collateral directive (FCD). The SSMA would welcome a review of additional provisions in the FCD in the ongoing legislative process, e.g. the conflict of laws provisions, which should be clarified in coordination with the conflict of laws rules in the settlement finality regulation (SFR) (see further comments below). Regarding the scope of the directive, the legislator should consider also including natural persons in the list of collateral takers and providers in article 1(2). In

practice there are natural persons that enter into agreements regarding financial collateral arrangements and not including them in the scope of the directive makes it more difficult to get the necessary legal opinions and lower capital requirement under the capital requirement regulation (575/20132/EU). As a consequence, credits and transaction based financial services, including an exposure, come with a higher capital cost, which leads to higher fees/rates than necessary for natural persons (consumers).

### *Third country systems*

The SSMA supports a harmonisation of the requirements for registration of third-country systems. From a Swedish perspective, we have good experience with registration of third country systems, with the Swedish legislator being forward-looking and introducing the necessary legislation at quite an early stage.<sup>6</sup> From the market participants' point of view, this has also worked well in practice.<sup>7</sup> Some aspects of the proposed provisions regarding third country systems do however merit further discussions.

According to the proposed article 1(2), the insolvency protections in the specified articles should only apply in relation to transfer orders entered into a registered third-country system. With this limitation, registered third-country systems would have more limited protection against the insolvency of their EU participants than the SFR (or the existing SFD) confers on designated (EU) systems in relation to their EU participants. As the current Swedish legislation works well, we would like to see the same level of protection being upheld. The SSMA would therefore like to encourage the legislator to make sure that the wording of the provisions in the regulation gives the same level of protection as under existing national regimes that extend the protection of SFD to third-country systems.

Moreover, the wording of the second subparagraph in article 1(2) and in article 12 limits the protection to cases where the third-country system's EU participants are credit institutions, investment firms, public authorities, publicly guaranteed undertakings, payment institutions or electronic money institutions. The legislator should consider including other types of potential participants as well in the scope of the provisions (cf. the list of participants in article 2(1), point (15)), to avoid unnecessary restrictions on the type of actors that are allowed as participants in third country systems.

In article 12 it should also be clarified that a third country system can be registered where that system *has admitted or intends to admit* a member established in that Member State, to allow for a registration before a member is admitted, since the registration is likely to be a pre-condition for the admittance.

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<sup>6</sup> See for example the descriptions of the Swedish market in the report on the review of settlement finality in payment and securities settlement systems including its application to domestic institutions participating in third-country systems and of financial collateral arrangements under Directives 98/26/EC and 202/47/EC, [REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL](#)

<sup>7</sup> The rules were e.g. applied in the process of registration of some British systems post Brexit (Swedish news source): [FI beslutar om likställande av avvecklingssystem | Finansinspektionen](#)

We support including transitional provisions that allow for systems designated under the SFD to be considered as designated under the SFR as well (article 28). We would however like to suggest a re-wording of the article in order to allow already designated systems to continue to benefit from the protections conferred by the SFR where the application for designation is made before the end of the five-year transitional period, even if the re-designation is not finalised by the end of that period, to make allowances for unforeseen delays.

#### *Irrevocability of transfer orders and settlement finality*

Regarding article 20, The moment of irrevocability of transfer orders, our experience is that the corresponding provision in the SFD has worked well with respect to the existing technology for clearing and settlement of securities. In view of the technological advancement, we agree that it is appropriate to review the provision, to ensure it is fit for purpose in relation to e.g. DLT infrastructures as well.

Concerning the provision on final settlement in article 21, we note that there are descriptions in the memo indicating that problems have been identified with regards to the corresponding provision in the SFD. The description of the stated problems is however not very detailed, and we would welcome more information about the perceived problems, as well as the purpose of the proposed amendments. Our view is that the wording of the current provision in the SFD works well, and that the proposed amended wording would not lead to any material changes regarding settlement finality.

#### *Collateral security and conflict of laws provisions*

The SSMA believes that it is of importance that provisions regarding applicable law and conflict of laws are clear. As regards the provision on applicable law in article 25, Collateral security, it should be clarified what is meant by the collateral security being legally recorded on a register, account or centralised deposit system. The meaning of the wording in article 9(2) in the SFD, which is similar to the proposed wording in article 25(2), has been subject to a lot of discussions. In 2018 the Commission published a communication on the applicable law to the proprietary effects of transactions in securities, in which the topic was addressed.<sup>8</sup> Despite the communication there are still uncertainties regarding when and where the collateral security is considered to be legally recorded and what is meant by the word account in this context. Does “account” include custody accounts provided by banks and investment firms or only security accounts at CSD level? Neither the definition of account in article 2(1)(26), nor the provision in article 25 clarifies this. A bank or investment firm might have branches in other countries than its home member state and provide its clients with custody or security accounts from the branch, which is the applicable law in that scenario? Are securities kept as collateral considered to be legally recorded even when they are not in scope of the relevant national legislation regarding book-entry securities? For example, the

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<sup>8</sup> Communication COM(2018) 89 on the applicable law to the proprietary effects of transactions in securities, [EUR-Lex - 52018DC0089 - EN - EUR-Lex](#)

provisions on the effects of legal recording in the Swedish Central Securities Depositories and Financial Instruments Accounts Act (1998:1479) do not cover securities registered in CSDs outside of Sweden, nor units in non-exchange traded funds that are held at a client's custody account. Furthermore, for securities held at custody accounts, the requirements in rem, i.e. the action that is required for protection against creditors, under Swedish law is a notice of assignment of claim, rather than the recording that is done in the bank's or investment firm's custody account system. Are these still considered to be legally recorded and covered by the protection given by the article?

Moreover, we note that the Commission has not proposed any amendment to clarify the conflict of laws provisions in the FCD, article 9(1) and (2) even though the meaning of the wording in those provisions have also been subject to discussions and the Commission's communication from 2018. The SSMA thinks that this is unfortunate and would welcome a coordinated review of the conflict of laws rules in both the FCD and the proposed SFR. It is essential that the rights to collateral security is protected – for all types of financial instruments, held either at a CSD securities account or at a custody account – and that the provisions on how to determine the applicable law in all of the relevant directives and regulations are clear. There are still questions outstanding regarding the meaning of the wording of the provisions in the legal acts currently in force, and we believe that the legislator should strive to clarify any uncertainties in the ongoing legislative process.

Additionally, the structure and wording of article 25 is not very transparent and accessible and would in our opinion benefit from a rephrasing. We would also welcome further description of the background to the proposed provision and a clarification as to whether the proposed wording is intended as an adaptation to better include DLT infrastructure, or if there are other reasons behind the chosen structure.

THE SWEDISH SECURITIES MARKETS ASSOCIATION