

EU Market Integration and Supervision Package (MISP)

The SSMA's drafting comments regarding the Master regulation

The Swedish Securities Markets Association ("SSMA") is a trade association representing the interests of investment firms and credit institutions conducting securities business on the Swedish market. In this document we present the SSMA's drafting comments and suggestions regarding the following sections of the MISP Master regulation:

- Article 1: amendments in the ESMA regulation, Regulation (EU) No 1095/2010
- Article 3: amendments in MiFIR, Regulation (EU) No 600/2014
- Article 4: amendments in CSDR, Regulation (EU) No 909/2014

The comments include the Commission's proposal and, where relevant, the European Parliament's Rapporteur's draft report.

Article 1: ESMA Regulation, Regulation (EU) No 1095/2010

Article 1 – paragraph 1 – point 1 – point b – point 1

[Article 1 – paragraph 5 – subparagraph 1 – point a ESMA-regulation]

Text proposed by the Commission

SSMA's proposed amendments

(a) improving the functioning of the internal market, including in particular a sound, effective and consistent level of regulation, supervision and enforcement

(a) improving the functioning of the internal market, including in particular a sound, effective, **efficient, proportionate** and consistent level of regulation, supervision and enforcement

Justification

The SSMA supports proposal in EP Draft Report (AM 49) that efficient rules and proportionality should be explicitly mentioned in the ESMA-regulation in order to guide and frame ESMA's work.

Article 1 – paragraph 1 – point 1 – point b a (new)

[Article 1 – paragraph 5 a (new) ESMA-regulation]

Text proposed by the Commission

SSMA's proposed amendments

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5a. Subject to the primacy of the objectives set out in paragraph 5, the



Authority shall, in the process of drafting technical standards, guidelines, questions and answers as well as other supervisory convergency tools, under this Regulation and the legislative acts referred to in paragraph 2, have particular regard to the competitiveness and international attractiveness of Union capital markets and to the impact of its actions on the ability of Union financial market participants to compete with counterparts established in third countries.

Justification

The SSMA supports proposal in EP Draft Report (AM 50) that it should be explicitly stated in the ESMA-regulation that ESMA should have particular regard to the competitiveness and international attractiveness of Union capital markets. However, we believe that this secondary objective makes most sense in relation to the development of technical standards, guidelines and questions and answers, i.e. not when exercising direct supervision against financial actors. (See also proposal for amendment of Articles 10.1 and 15.1 below.)

Article 1 – paragraph 1 – point 8 – point a – point 1

[Article 9a – paragraph 1 – introductory part ESMA-regulation]

Text proposed by the Commission

The Authority shall take the measures referred to in paragraph 2 of this Article ***only in urgent and unforeseen circumstances*** when it considers that the application of one of the legislative acts referred to in Article 1(2), or of any delegated or implementing acts based on those legislative acts, is liable to raise significant issues, for one of the following reasons:

SSMA's proposed amendments

The Authority shall take the measures referred to in paragraph 2 of this Article when it considers that the application of one of the legislative acts referred to in Article 1(2), or of any delegated or implementing acts based on those legislative acts, is liable to raise significant issues, for one of the following reasons;;

Justification

The SSMA supports the proposal in EP Draft Report (AM 53) that the “urgent and unforeseen” threshold is excessively restrictive. Implementation difficulties are often not foreseeable yet acute. It is important to ensure that ESMA should be able to act whenever significant issues arise for market participants, not only in exceptional emergencies.

Article 1 – paragraph 1 – point 8 – point b

[Article 9a, paragraph 2, subparagraph 2 ESMA-regulation]

Text proposed by the Commission

In the cases referred to in paragraph 1, points (a), (b), (d) and (e), the Authority shall provide the Commission with an opinion on any action it considers appropriate, ***in the form of a new legislative proposal or a proposal for a new delegated or implementing act***, and on the urgency that, in the Authority’s judgment, is attached to the issue. The Authority shall make its opinion public.’;

SSMA’s proposed amendments

In the cases referred to in paragraph 1, points (a), (b), (d) and (e), the Authority shall provide the Commission with an opinion on any action it considers appropriate and on the urgency that, in the Authority’s judgment, is attached to the issue. The Authority shall make its opinion public. ***Based on the Authority’s opinion or on its own initiative, the Commission may suspend the application of Level 1 provisions.***

Justification

The SSMA questions why an opinion should always result in a new legislative proposal, delegated act, etc. It may also for instance be the case ESMA needs to issue a ‘no-action letter’ stating that no supervisory measures should be prioritized in a certain area due to specific circumstances. It is important not to limit ESMA’s mandate and ability to issue relief in acute circumstances.

The SSMA welcomes the new proposals under Articles 10 and 15 of the ESMA Regulation that empower the Commission to suspend the application of RTS/ITS on its own initiative via a Delegated Act or an Implementing Act. However, these amendments address the application of Level 2 rules, but they do not address the underlying obligations stemming from the Level 1 legislative text. To remedy this, we propose including a possibility for the Commission so suspend the application of Level 1 in Article 9a.

Article 1 – paragraph 1 – point 9 – point -a (new)

[Article 10 paragraph 1 subparagraph 3 ESMA-regulation]



Text proposed by the Commission

Before submitting them to the Commission, the Authority shall conduct open public consultations on draft regulatory technical standards and shall analyse the potential related costs and benefits, unless such consultations and analyses are highly disproportionate in relation to the scope and impact of the draft regulatory technical standards concerned or in relation to the particular urgency of the matter. The Authority shall also request the advice of the Securities and Markets Stakeholder Group referred to in Article 37.

SSMA's proposed amendments

Before submitting them to the Commission, the Authority shall conduct open public consultations on draft regulatory technical standards and shall analyse the potential related costs and benefits, ***including the impact on the international competitiveness of Union market participants and Union capital markets, taking into account equivalent or comparable regulatory requirements in relevant third-country jurisdictions***, unless such consultations and analyses are highly disproportionate in relation to the scope and impact of the draft regulatory technical standards concerned or in relation to the particular urgency of the matter. The Authority shall also request the advice of the Securities and Markets Stakeholder Group referred to in Article 37. ***The Authority shall publish the results of the competitiveness assessment as part of its consultation documentation.***

Justification

The SSMA supports proposals in EP Draft Report (AM 56 and AM 59) to introduce competitiveness assessment as a mandatory part of the cost-benefit analysis when drafting regulatory and implementing technical standards and that this analysis should be made public.

Article 1 – paragraph 1 – point 10 – point -a (new)

[Article 15 – paragraph 1 – subparagraph 2 ESMA-regulation]

Text proposed by the Commission

Before submitting draft implementing technical standards to the Commission, the Authority shall conduct open public consultations and shall analyse the potential related costs and benefits, unless such consultations and analyses are ***highly***

SSMA's proposed amendments

Before submitting draft implementing technical standards to the Commission, the Authority shall conduct open public consultations and shall analyse the potential related costs and benefits, ***including the impact on the international***

disproportionate in relation to the scope and impact of the draft implementing technical standards concerned or in relation to the particular urgency of the matter. The Authority shall also request the **advice** of the Securities and Markets Stakeholder Group referred to in Article 37.

competitiveness of Union market participants and Union capital markets, taking into account equivalent or comparable regulatory requirements in relevant third-country jurisdictions, unless such consultations and analyses are disproportionate in relation to the scope and impact of the draft implementing technical standards concerned or in relation to the particular urgency of the matter. The Authority shall also request the ***opinion*** of the Securities and Markets Stakeholder Group referred to in Article 37. ***The Authority shall publish the results of the competitiveness assessment as part of its consultation documentation.***

Justification

The SSMA supports proposals in EP Draft Report (AM 56 and AM 59) to introduce competitiveness assessment as a mandatory part of the cost-benefit analysis when drafting regulatory and implementing technical standards and that this analysis should be made public.

Article 16b ESMA-regulation

Text proposed by the Commission

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SSMA's proposed amendments

1. Without prejudice to paragraph 5 of this Article, questions relating to the practical application or implementation of the provisions of legislative acts referred to in Article 1(2), associated delegated and implementing acts, and guidelines and recommendations, adopted pursuant to those legislative acts, may be submitted by any natural or legal person, including competent authorities and Union institutions and bodies, to the Authority in any official language of the Union. Before submitting a question to the Authority, financial market participants shall consider whether to address the question in the first place to their competent authority. Before

publishing answers to admissible questions, the Authority may seek further clarification on questions asked by the natural or legal person referred to in this paragraph.

2. Answers by the Authority to questions as referred to in paragraph 1 shall be non-binding. Answers shall be made available at least in the language in which the question was submitted.

3. The Authority shall establish and maintain a web-based tool available on its website for the submission of questions and the timely publication of all questions received as well as all answers to all admissible questions pursuant to paragraph 1, unless such publication is in conflict with the legitimate interest of those persons or would involve risks to the stability of the financial system. The Authority may reject questions it does not intend to answer. Rejected questions shall be published by the Authority on its website for a period of two months.

4. Three voting members of the Board of Supervisors may request the Board of Supervisors to decide pursuant to Article 44 whether to address the issue of the admissible question referred to in paragraph 1 of this Article in guidelines pursuant to Article 16, to request advice from the Stakeholder Group referred to in Article 37, to review questions and answers at appropriate intervals, to conduct open public consultations or to analyse potential related costs and benefits. Such consultations and analyses shall be proportionate in relation to the scope, nature and impact of the draft questions and answers concerned or in relation to the particular urgency of the matter. When involving the Stakeholder Group referred



to in Article 37, a duty of confidentiality shall apply.

5. The Authority shall forward questions that require the interpretation of Union law to the Commission. The Authority shall publish any answers provided by the Commission.

Justification

The Commission's removal of the legal basis (Article 16b of the ESMA Regulation) for ESMA to issue Q&As without an explanation in MISP raises several concerns. It would deprive ESMA of a structured mechanism to issue Q&As that have proven to be a key tool for ESMA to provide clarifications on practical industry questions of application and interpretation of Level 2 requirements. Without a Q&A mechanism, or a similar tool, both market participants and NCAs risk losing a critical tool for supervisory convergence and direct engagement with ESMA, thereby undermining regulatory harmonization and legal certainty, mostly on technical and operational matters.

Article 1 – paragraph 1 – point 13

[Article 17aa – paragraph 1 – subparagraph 1 ESMA-regulation]

Text proposed by the Commission

Where a peer review or an inquiry under Article 22(4) reveals that a competent authority ***may be*** failing to effectively supervise market participants in the sector subject to the peer review or inquiry, and that such supervisory failure ***could jeopardize*** the integrity of financial markets, financial stability or investor protection, the Authority may require a competent authority to seek its opinion before granting approval to financial products, services, activities or entities in that sector.

SSMA's proposed amendments

Where a peer review or an inquiry under Article 22(4) reveals that a competent authority ***is*** failing to effectively supervise market participants in the sector subject to the peer review or inquiry, and that such supervisory failure ***poses a serious and demonstrable risk to*** the integrity of financial markets, financial stability or investor protection, the Authority may require a competent authority to seek its opinion before granting approval to financial products, services, activities or entities in that sector.

or

Deletion

Justification

The SSMA supports the proposals in EP Draft Report (AM 64) which conditions the power on the finding of a “serious and demonstrable risk” to market integrity, financial stability or investor protection. These amendments are important for legal certainty and necessary for a proportionate application. (Instead of “demonstrable” it could be considered to use the term “objectively justifiable”).

However, in our view, EPs proposal does not address the fundamental problem with article 17 aa which is that if an NCA is found to have supervisory deficiencies, NCA actions or omissions are beyond the control of market participants. Deficiencies in supervision do not automatically mean lack of compliance by market participants subject to NCA supervision, and there is no correlation between deficiencies in supervision and the quality of the products and services offered. Against this background, the SSMA recommends protecting and safeguarding market participants, so that they are not unduly impacted by circumstances relating to the supervisor, which are outside their control. Our preferred solution would therefore be to delete Article 17 aa and to address this issue via the tools offered in articles 17, 29 and 30 of the ESMA Regulation.

Article 1 – paragraph 1 – point 14

[Article 17 (aaa) first paragraph 1-7 ESMA-regulation]

Text proposed by the Commission

SSMA’s proposed amendments

1. Where the Authority has reasonable grounds for considering that an entity authorised under Union law that provides the services or activities, for which it is authorised, on a cross-border basis has committed a serious infringement of the obligations set out in this Regulation or any Union act referred to in Article 1(2) or obligations set out in the provisions adopted pursuant to Union law referred to in Article 1(2) that could jeopardise the integrity of financial markets, financial stability or investor protection, it shall refer those findings to the competent authority that has granted the authorisation to that entity. The competent authority shall provide the Authority with clear, accurate and complete information that demonstrate the absence of the alleged

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infringement, or, where the competent authority agrees with the findings of the Authority, sets out the measures already adopted by that competent authority to stop the infringement. That information shall be provided within a reasonable timeline set by the Authority.

2. Where, despite the information provided by the competent authority pursuant to paragraph 1, the Authority continues to have reasonable grounds for considering that the infringement persists, the Authority shall, within 10 working days from the receipt of the information pursuant to paragraph 1 or from the expiry of the period referred to in that paragraph, take a decision requiring that competent authority to order the relevant entity to suspend the provision of services or activities on a cross-border basis.

3. Where the relevant competent authority does not comply with the decision referred to in paragraph 2 within 2 working days, the Authority shall adopt within 5 working days a decision requiring the relevant entity to suspend its provision of services or activities on a cross-border basis. The Authority shall simultaneously inform the competent authority referred to in paragraph 1 as well as all other competent authorities of the Member States where the entity provided its services or activities of that decision. Those competent authorities shall take all appropriate measures to ensure that the decision of the Authority is applied within their respective territories.

4. Where the relevant entity has adopted all the necessary corrective measures to stop the infringement, it shall provide to the Authority and to its competent authority the necessary information to assess the effectiveness of those measures.

5. The Authority shall within 15 working days from the receipt of the information referred to in paragraph 4 assess, in consultation with the competent authority that has granted the authorisation to the entity, the effectiveness of the corrective measures, as well as notify to the relevant entity and all relevant competent authorities whether the corrective measures are sufficient, in which case it shall revoke its earlier decision addressed to the relevant entity. Upon receipt of that notification by the Authority, the relevant entity may resume the provision of its cross-border services and activities in the Union.

6. To carry out the tasks conferred on the Authority pursuant to this Article, the Authority may address a duly justified and reasoned request for information to any financial market participant, national competent authority or any other relevant person.

7. The provisions set out in this Article shall not apply to cases where the Authority is the competent authority of an entity.’;

Justification

The SSMA supports a fast, EU wide supervisory tool that protects market integrity and creates credible deterrence against bad actors that undercut compliant firms. However, suspension of cross-border services is a powerful tool that can be compared to a temporary withdrawal of authorisation and appears legally uncertain. In fact, the Commission’s proposal implies that ESMA is given powers that go beyond the current NCA powers to impose sanctions (but not suspend services). Suspension of cross-border services can cause significant damage to affected market participants and their clients. Given the lack of proportionality and the intrusive powers given to ESMA, we therefore propose to delete Article 17 aaa.

Article 1 – paragraph 1 – point 21

[Article 29 (c) paragraph 2, second subparagraph ESMA-regulation]

Text proposed by the Commission

For the purpose of establishing a common supervisory culture, the Authority shall develop and maintain an up-to-date Union supervisory handbook on the supervision of financial markets participants and enforcement of the rules regulating their activities in the Union, which duly takes into account the nature, scale and complexity of risks, business practices, business models and size of financial institutions and of markets, including changes due to technological innovation, of financial market participants and markets. The Union supervisory handbook shall set out best practices and shall specify high-quality methodologies and processes. Where a competent authority decides not to comply with the Union supervisory handbook or **substantial elements thereof**, it shall communicate this fact to the Authority and provide its reasons for doing so.’;

SSMA’s proposed amendments

For the purpose of establishing a common supervisory culture, the Authority shall develop and maintain an up-to-date Union supervisory handbook on the supervision of financial markets participants and enforcement of the rules regulating their activities in the Union, which duly takes into account the nature, scale and complexity of risks, business practices, business models and size of financial institutions and of markets, including changes due to technological innovation, of financial market participants and markets. The Union supervisory handbook **shall be public and** set out best practices and shall specify high-quality methodologies and processes. Where a competent authority decides not to comply with the Union supervisory handbook or **relating to supervisory practices** it shall communicate this fact to the Authority and provide its reasons for doing so

Justification

In order to facilitate common supervisory practices throughout the Union, the SSMA supports that ESMA is given the task to develop a Supervisory Handbook. However, it is important to ensure that ESMA stays within its mandate and to avoid that the Handbook includes new legal interpretations which are not transparent for market participants. Against this background, the Supervisory Handbook should be public.

Enforcements should serve as examples but NCAs should not be required to follow them on a comply or explain basis. Cases may differ from one another and NCAs should always be left with manoeuvre and room for expert judgement when it comes to enforcement.

Article 1 – paragraph 1 – point 27

[Article 39n paragraph 9a ESMA-regulation]

Text proposed by the Commission

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Proposal in EP Draft Report (AM 75)

9a. By ... [18 months after entry into force of this Regulation] and annually thereafter,

ESMA shall include in its annual report an overview of supervisory fees levied by national competent authorities in sectors where ESMA has assumed direct supervisory competences, an assessment of whether such fees reflect the tasks retained by those authorities, and, where applicable, a recommendation to the Commission to take action where fees appear inconsistent with the obligation established in paragraph 2a of this Article.

Text proposed by the Commission

SSMA's proposed amendments

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9a. By ... [XX months after entry into force of this Regulation] and annually thereafter, ESMA shall include in its annual report an overview of supervisory fees levied by national competent authorities in sectors where ESMA has assumed direct supervisory competences, an assessment of whether such fees reflect the tasks retained by those authorities, and, where applicable, a recommendation to the Commission to take action where fees appear inconsistent with the obligation

Justification

The SSMA supports proposal in EP Draft Report (AM 75) to include an overview of supervisory fees in the ESMA annual report. However, the 18 month period does not take into account the need for a transitional period in order to ensure that the move of supervisory powers from NCAs to ESMA can take place without risks to the financial stability or the effectiveness of the EU capital markets. The proposal needs to be further calibrated on this point.

Article 1 – paragraph 1 – point 28 – point a

[Article 40 paragraph 1 point ba ESMA-regulation]

Text proposed by the Commission

Proposal in EP Draft Report (AM 76)

(ba) 5 independent members of the Executive Board;

ba) 5 independent members of the Executive Board, ***who each shall have two votes;***

Text proposed by the Commission

SSMA's proposed amendments

(ba) 5 independent members of the Executive Board;

ba) 5 independent members of the Executive Board;

Justification

The SSMA prefers the Commission's text proposal. It is important not to mix roles, responsibilities and accountability but have a clear governance structure. Also, we believe that the governance structure in ESMA, EBA and EIOPA should be the same unless there are objectively justifiable reasons for another order.

Article 1 – paragraph 1 – point 28 – point a (new)

[Article 40 paragraph 1 point c ESMA-regulation]

Present text (no amendments by COM)

Proposal in EP Draft Report (AM 77)

(c) **one representative** of the Commission, who shall be **non-voting**;

(c) two representatives of the Commission, **one with responsibility for economic and financial affairs and one with responsibility for financial services**, who shall be **voting members**.

Present text (no amendments by COM)

SSMA's proposed amendments

c) one representative of the Commission, who shall be non-voting;

c) one representative of the Commission, who shall be non-voting;

Justification

The SSMA prefers the current provision in Article 40.1 point c and does not support EP Draft Report AM 77. It is important not to mix roles, responsibilities and accountability but have a clear governance structure. Also, we believe that the governance structure in ESMA, EBA and EIOPA should be the same unless there are objectively justifiable reasons for another order.

Article 1 – paragraph 1 – point 34

[Article 44 b, paragraph 2 ESMA-regulation]

Text proposed by the Commission

2. Decision in accordance with Articles 17 (3) and (6), 17aa, 17aaa, 18(3) and (4), 22(4), Article 30 (4) and (8), Article 39h (a), **(b)**, (f), (g), (i), Article 39i, and Article 65 and any decisions based on sectoral legislation referring to this paragraph, shall be deemed adopted unless the Board of Supervisors objects within a period to be defined in the rules of procedure but not exceeding a maximum period of **ten** working days, **unless duly justified by the complexity of the decision and agreed by the two Boards**. In emergency situations the aforementioned period shall not exceed 48 hours.

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Text proposed by the Commission

2. Decision in accordance with Articles 17 (3) and (6), 17aa, 17aaa, 18(3) and (4), 22(4), Article 30 (4) and (8), Article 39h (a), (b), (f), (g), (i), Article 39i, and Article 65 and any decisions based on sectoral legislation referring to this paragraph, shall be deemed adopted unless the Board of Supervisors objects within a period to be defined in the rules of procedure but not exceeding a maximum period of ten working days, unless duly justified by the complexity of the decision and agreed by the two Boards. In emergency situations the aforementioned period shall not exceed 48 hours.

Proposal in EP Draft Report (AM 81)

2. Decision in accordance with Articles 17 (3) and (6), 17aa, 17aaa, 18(3) and (4), 22(4), Article 30 (4) and (8), Article 39h (a), **(b)**, (f), (g), (i), Article 39i, and Article 65 and any decisions based on sectoral legislation referring to this paragraph, shall be deemed adopted unless the Board of Supervisors objects **with a two thirds majority** within a period to be defined in the rules of procedure but not exceeding a maximum period of **five** working days, In emergency situations the aforementioned period shall not exceed 48 hours.

SSMA's proposed amendments

2. Decision in accordance with Articles 17 (3) and (6), 17aa, 17aaa, 18(3) and (4), 22(4), Article 30 (4) and (8), Article 39h (a), (b), (f), (g), (i), Article 39i, and Article 65 and any decisions based on sectoral legislation referring to this paragraph, shall be deemed adopted unless the Board of Supervisors objects within a period to be defined in the rules of procedure but not exceeding a maximum period of ten working days, unless duly justified by the complexity of the decision and agreed by the two Boards. In emergency situations the aforementioned period shall not exceed 48 hours.

Justification

The SSMA prefers the Commission's proposal and do not support EP Draft Report AM 81. Five working days is too short and 10 days should therefore be kept. Also, we believe that the governance structure in ESMA, EBA and EIOPA should be the same unless there are objectively justifiable reasons for another order.

Article 3: MiFIR, Regulation (EU) No 600/2014

Recital (new)

Text proposed by the Commission

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SSMA's proposed amendments

By providing information on pricing conditions across EU venues, consolidated tapes empower users to make better informed decisions and can also improve competition by driving trading to trading venues with better prices and better liquidity. However, as stated in recital 17 to Regulation (EU) 2024/791, there is no obligation for market participants to use the core market data provided by the consolidated tape. Market participants remain free to use data from other sources for trading and best execution purposes, provided such data is deemed reliable and accurate.

Justification

The consolidated tape data may be of value from a transparency and valuation perspective for some clients. However, from a legal certainty perspective it should be clear that no mandatory consumption of the data applies for the market participants. In fact, due to latency, the consolidated data will not 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. For the avoidance of doubt, this principle should be re-stated in a recital.

Explanatory note on consolidated tape:

The SSMA is concerned with the fact that in the background note to the MISP-proposal¹, the Commission states that it expects investment firms to use the market data published by the consolidated tape provider for best execution purposes.

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

¹ 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”)

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 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.

In order to avoid legal uncertainty on this point, it is important to re-state the principle from MiFID II/MiFIR-review that there is no mandatory consumption of the CT data and that firms are free to source other data that they deem useful for trading and best execution purposes.

Article 3 – paragraph 1 – point 2 – point a – point xiii

[Article 2 – paragraph 1 – point 36b MiFIR]

Text proposed by the Commission

SSMA's proposed amendments

'(36b) 'core market data' means:

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(a) all of the following data on a given share or ETF at any given timestamp:

(i) for continuous order books, the five best bids and offers with their corresponding volume;

(ii) for auction trading systems, the price at which the trading algorithm would be best satisfied and the volume potentially executed at that price by participants in that system;

(iia) for systematic internalisers, the five best bid and offer quotes published pursuant to Article 14 with their corresponding volume;

(iii) the transaction price and volume executed at that price;

(iiia) the volume-weighted closing price resulting from all closing auctions operated

by trading venues that are data contributors;

(iv) for transactions, the type of trading system and the applicable waivers and deferrals;

(v) the market identifier code uniquely identifying the trading venue and, for other execution venues, the identifier code identifying the type of execution venue;

(vi) the standardised instrument identifier that applies across execution venues;

(vii) the timestamp information on the following, as applicable:

(1) the execution of the transaction and any amendment thereto;

(2) the entry of the five best bids and offers into the order book;

(3) the indication, in an auction trading system, of the prices or volumes,

(4) the publication by the trading venues of the elements listed in points (1), (2) and (3);

(5) the entry of the five best bid and offer quotes by the systematic internaliser;

(6) the dissemination of core market data;

(b) all of the following data on a given bond or OTC derivative at any given timestamp:

(i) the transaction price and quantity or size executed at that price;

(ii) the market identifier code uniquely identifying the trading venue and, for other execution venues, the identifier code identifying the type of execution venue;

(iii) for bonds, the standardised instrument identifier that applies across execution venues;

(iv) for OTC derivatives, the identifying reference data as referred to in Article 27(1), second subparagraph;

(v) the timestamp information on the following:

(1) the execution of the transaction and any amendment thereto;

(2) the publication of the transaction by the trading venues;

**(3) the dissemination of core market data;
(vi) the type of trading system and the
applicable waivers and deferrals;'**

Justification

The SSMA considers that it is premature to amend the rules applicable to the consolidated tape for shares and ETF:s. We agree with the EP Draft Report (AM 107) that it is not reasonable from an operational or cost perspective to make changes to the CT-regime in the middle of ongoing implementation. Also, it cannot be excluded that once the consolidated tape has been launched, other areas of regulatory improvements are identified, and it is therefore more cost-efficient to wait for the review. In consequence, also Commission's test proposal for Article 22a MiFIR should be deleted (see below).

Article 3 – paragraph 1 – point 10

[Article 14 – paragraph 7 – subparagraph 1 – point f a (new) MiFIR]

Text proposed by the Commission

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Proposal in EP Draft Report (AM 114)

(fa) the methodology for determining whether there is a liquid market in a share, depositary receipt, ETF, certificate or other similar financial instrument for the purposes of paragraph 1, which shall be designed to ensure that a sufficiently high proportion of shares admitted to trading on regulated markets and multilateral trading facilities in the Union are classified as having a liquid market, and which shall incorporate dynamic calibration mechanisms to prevent systematic underclassification resulting from static threshold effects

Text proposed by the Commission

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SSMA's proposed amendment

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Justification

The SSMA questions the rationale behind this new mandate proposed by the EP Draft Report (AM 114) according to which a methodology for liquidity assessment shall deliver a certain outcome, i.e. ensure that a "sufficiently high portion of shares" are classified as

having a liquid market. We have not seen any cost/benefit analysis or evidence supporting this proposal and see a risk of unintended negative consequences. We see it as problematic that the proposal is based on the assumption of an EU average which is not representative for all equity markets. For example, the Swedish equity market already has a high share of listed shares is classified as liquid under the current regime and it is unclear what the effects of a changed methodology would be. We also note that dynamic calibrations in the past have been considered as operationally very challenging. Thus, AM 114 should be deleted.

Article 3 – paragraph 1 – point 10 a (new)

[Article 15 – paragraph 1 a MiFIR (new)]

Text proposed by the Commission

SSMA's proposed amendments

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'1a. Systematic internalisers shall draw up in a readily accessible and machine-readable format, a document describing the arrangements in place to ensure that transactions are executed on a bilateral basis, including a description of any systems or connectivity arrangements used in connection with the systematic internaliser activity.

Systematic internalisers shall notify their competent authority of the document referred to in the first subparagraph and of any material changes thereto without undue delay.'

Justification

SIs fulfil an important function for the EU capital markets as liquidity providers, providing bilateral execution services to clients by taking risk on their own account. According to the MiFIR, SIs are not allowed to conduct multilateral trading or orderbook-like trading. To the extent such multilateral practices exists, it should be stopped by NCAs enforcing existing rules. To facilitate supervision and enforcement of the rules, SSMA proposes the introduction of a new documentation and notification requirement to the NCAs relating to SIs systems and connectivity arrangements which is in line with parts of the amendments in EP's Draft Report (AM 115 c). The other parts of AM 115 we do not support, noting that there are already rules in MiFIR on SIs commercial policy and best execution arrangements (Article 15 and 17 MiFIR and Article 27 MiFID II). The idea of "a public rule book" risks giving the impression that an SI has a similar business model to a trading venue, i.e. that it is multilateral trading when in fact it is bilateral.

Article 3 – paragraph 1 – point 11

[Article 15 – paragraph 2 – subparagraph 2 – point b MiFIR]

Text proposed by the Commission

SSMA's proposed amendments

(b) **in case of retail orders**, they immediately, and in any event before execution, update their public quotes to reflect the price improvement.

(b) they immediately, and in any event before execution, update their public quotes to reflect the price improvement.

Justification

The SSMA supports proposals in EP Draft Report (AM 117 and AM 118) that the quote-update obligation should apply to all orders – not only “retail orders”. From an operational perspective it is difficult to distinguish between “retail” orders and other orders.

Article 3 – paragraph 1 – point 11

[Article 15 – paragraph 2 – subparagraph 3 MiFIR]

Text proposed by the Commission

SSMA's proposed amendments

For the purpose of the second subparagraph, a retail order is an order originating from a retail client as defined in Article 4(1), point (11) of Directive 2014/65/EU and that has a size of up to and including the threshold referred to in Article 14(2).;

Deleted

Justification

The SSMA supports proposals in EP Draft Report (AM 117 and AM 118) that the quote-update obligation should apply to all orders – not only “retail orders”. From an operational perspective it is difficult to distinguish between “retail” orders and other orders.

Article 3 – paragraph 1 – point 15

[Article 22 a first paragraph MiFIR]

Text proposed by the Commission

SSMA's proposed amendments

***Systematic internalisers shall, with regard Deleted
to shares and ETFs that are traded on a
trading venue, transmit to the data centre
of the CTP, as close to real time as
technically possible, the data required
pursuant to Article 14(1), in accordance
with the requirements specified in the
regulatory technical standards adopted
pursuant to Article 22b(3), point (d). Those
data shall be transmitted in a harmonised
format, through a high-quality
transmission protocol.';***

Justification

The SSMA has for a long time stressed the problems with latency and poor data quality on the CT. Since all providers of data will have different latency to the CT 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. We also question the rationale behind the proposal to require SIs to provide five best bids and offers to the CT (see above). Since not all clients have access to SIs there is a risk that this data will be misleading to clients. In fact, it could even be detrimental to data quality of the CT and article 22 a should therefore be removed. See also proposal relating to Article 2 – paragraph 1 – point 36b.

Explanatory note on SI regime:

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 since this constitutes multilateral trading. In our view, focus should be on supervision and enforcement. To facilitate this, we propose that SIs should document their arrangements and notify the national competent authorities. There should be no publication of commercial sensitive information.

The SSMA questions the Commission's 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.

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.

Article 3 – paragraph 1 – point 30

[Article 38fa – paragraph 2 a MiFIR]

Text proposed by the Commission

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Proposal in EP Draft Report (AM 120)

2a. No later than 18 months after the date on which ESMA assumes supervisory competence for the first significant trading venue pursuant to paragraph 1, ESMA shall submit to the European Parliament, the Council and the Commission an assessment of its operational readiness to assume market surveillance responsibilities for all entities subject to its supervision under this Article.

The assessment shall cover ESMA's data infrastructure, real-time surveillance capacity, staffing, and cross-border coordination arrangements with national surveillance authorities.

Where ESMA concludes that it is not operationally ready to assume market surveillance responsibilities in full by the expiry of the transitional period referred to in paragraph 2, it shall set out the measures required to achieve readiness and the expected timeline.

The Commission shall, within six months of receiving that assessment, either propose an extension of the transitional period via a delegated act or publish a statement explaining why no extension is warranted

Text proposed by the Commission

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SSMA's proposal for amendments

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Justification

The SSMA supports the Commission's proposal that national authorities should remain responsible for monitoring compliance with, inter alia, market surveillance of trading taking place in their territory. We strongly believe that in depth knowledge of trading patterns and local ecosystem is important for market surveillance as well as an ability to act quickly. We do not agree that this will increase fragmentation but rather ensure market integrity. Thus, SSMA does not support proposal by EP Draft Report (AM 120) that also market surveillance should be part of ESMA's centralised supervisory powers. (This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Article 3 – paragraph 1 – point 31

[Article 38fb – paragraph 9 a (new) MiFIR]

Text proposed by the Commission

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Proposal in EP Draft Report (AM 123)t

9a. By ... [3 years after entry into force of this Regulation], ESMA shall submit a report to the European Parliament, the Council and the Commission assessing whether systematic internalisers that would meet the conditions set out in paragraphs 1, 2 and 3 of this Article, applied mutatis mutandis to the trading activity of systematic internalisers, should be subject to direct ESMA supervision.

The report shall assess the cross-border dimension of systematic internaliser activity, the extent to which divergent national supervisory practices create risks of regulatory arbitrage, and the implications for market integrity, price discovery and investor protection. On the basis of that report, the Commission shall, where appropriate, submit a legislative proposal to the European Parliament and the Council.

Text proposed by the Commission

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SSMA's proposal for amendments

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Justification

The SSMA is concerned with the proposal in EP Draft Report AM 123 to introduce a review clause relating to whether systematic internalisers should be under the direct supervision of ESMA. SIs are credit institutions or investment firms which have a license under MiFID II to trade on own account and execute of client orders. EPs proposal could lead to significant conflicts as regards division of responsibilities between ESMA and ECB/EBA. Delete AM 123 in EP Draft Report.

Article 3 – paragraph 1 – point 39 – point a

[Article 52 – paragraph 14 MiFIR]

Text proposed by the Commission

14. By 30 June **2028**, ESMA, in close cooperation with the expert stakeholder group established pursuant to Article 22b(2), shall assess the market demand for the consolidated tape for shares and ETFs, the impact of that consolidated tape on the functioning, attractiveness and international competitiveness of Union markets and firms, and whether the consolidated tape has delivered on its aim to decrease information asymmetries between market participants and to make the Union a more attractive location to invest. ESMA shall report to the Commission on the appropriateness of adding additional features to the consolidated tape. On the basis of that report, the Commission shall submit, where appropriate, a legislative proposal to the European Parliament and the Council.’;

SSMA’s proposal for amendments

14. By 30 June **2029**, ESMA, in close cooperation with the expert stakeholder group established pursuant to Article 22b(2) **and following a public call for evidence**, shall assess the market demand for the consolidated tape for shares and ETFs, the impact of that consolidated tape on the functioning, attractiveness and international competitiveness of Union markets and firms, and whether the consolidated tape has delivered on its aim to decrease information asymmetries between market participants and to make the Union a more attractive location to invest. ESMA shall report to the Commission on the appropriateness of adding additional features to the consolidated tape. On the basis of that report, the Commission shall submit, where appropriate, a legislative proposal to the European Parliament and the Council.

Justification

In order to have sufficient time to collect data and experience from the consolidated tape for equities, ESMA’s report on CT for shares and ETFs should be published in 2029. It is important to ensure that any proposals for amendments are evidence-based and preceded by a call for evidence which also take the user perspective into consideration. In addition to cooperation with the stakeholder group established pursuant to Article 22b (2), it is therefore appropriate that ESMA collects users experience from the consolidated tape data by a call for evidence.

Article 4: CSDR, Regulation (EU) No 909/2014

Article 4 – paragraph 1 – point 2 – point (t)

[Article 2 – paragraph 1 – point 54 CSDR]

Text proposed by the Commission

SSMA's proposed amendment

'omnibus client segregation' means an arrangement where a CSD keeps records and accounts that enable any participant to that CSD to hold in one securities account the securities that belong to different clients of that participant.

Deleted

Justification

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. 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, both definitions should be kept in article 38. Alternatively, both definitions could be included in the list of definitions in article 2.

Article 4 – paragraph 1 – point 4 – point (c)

[Article 6 – paragraph 4 – second sentence CSDR]

Text proposed by the Commission

SSMA's proposed amendment

CSDs and participants shall put in place measures to **ensure that the processing of settlement instructions is fully automated**. CSDs shall require participants to settle their transactions on the intended settlement date **and to put in place measures ensuring that requirement**.

For each securities settlement system it operates, a CSD shall put in place measures to **encourage and incentivise the timely settlement of transactions by its participants**. CSDs shall require participants to settle their transactions on the intended settlement date.

Justification

In general, there are benefits with automation, but to avoid unintended consequences, detailed requirements for automation should be avoided, especially in relation to the client facing parts of the institutions. 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.

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.

We propose to keep the present text in the second sentence in article 6 – paragraph 4.

Article 4 – paragraph 1 – point 4 – point (d)

[Article 6 – paragraph 5 – second subparagraph CSDR]

Text proposed by the Commission

When developing the details of the measures referred to in the first subparagraph, ESMA shall take into account the technology used by CSDs, such as DLT. When developing the details of the measures and procedures referred to in point (a)(iii) of the first subparagraph, ESMA shall consider any aspects relevant for cross-border transactions.

SSMA's proposed amendment

When developing the details of the measures referred to in the first subparagraph, ESMA shall take into account **existing international standards for messages. ESMA shall also take into account** the technology used by CSDs, such as DLT. When developing the details of the measures and procedures referred to in point (a)(iii) of the first subparagraph, ESMA shall consider any aspects relevant for cross-border transactions.

Justification

Settlement allegation messages (see the definition of settlement mismatch message in article 2(1) point (52)) are already used in a standardised manner, as ISO messages, which should be taken into account if technical standards are developed.

Article 4 – paragraph 1 – points 8-12

[Articles 10-11c CSDR]

The SSMA supports the Rapporteur's proposed amendment in these article (and any corresponding amendments throughout the text), to delete the grouping of CSDs into significant and less significant CSDs (AMs 130-139, 141-142).

Justification

The practical result of the Commission's proposed grouping of CSDs into significant and less significant CSDs 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 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 super-vision 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.

Article 4 – paragraph 1 – point 35

[Article 34 – paragraph 9 CSDR]

Text proposed by the Commission

SSMA's proposed amendment

Settlement internalisers shall disclose to their clients the prices and fees associated with the services they provide and shall differentiate between the prices pertaining to settlement in and outside a securities settlement system. They shall disclose the prices and fees of each service provided separately, including discounts, rebates and the conditions to benefit from those reductions.

Deleted.

Justification

What information banks and investment firms 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, there is limited value for clients in differentiating the pricing structure as per the Commission's proposal, 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.

Article 4 – paragraph 1 – point 37 – point (a)

[Article 38 – paragraph 3 CSDR]

Text proposed by the Commission

SSMA's proposed amendment

A CSD shall keep records and accounts that enable **omnibus client segregation**. Where a CSD is operating its core services using DLT, and where the CSD enables all participants and their clients to have individual client segregation as defined in paragraph 4, such CSD may, in derogation to the first sentence,

A CSD shall keep records and accounts that enable **any participant to hold in one securities account the securities that belong to different clients of that participant ('omnibus client segregation')**. Where a CSD is operating its core services using DLT, and where the CSD enables all

opt not to offer omnibus client segregation.
This provision is without prejudice to the obligations of the CSD to comply with the requirements set out in Article 48a for at least one of the security settlement systems it operates.

participants and their clients to have individual client segregation as defined in paragraph 4, such CSD may, in derogation to the first sentence, opt not to offer omnibus client segregation.

Justification

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. 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, both definitions should be kept in article 38. Alternatively, both definitions could be included in the list of definitions in article 2.

Article 4 – paragraph 1 – point 39

[Article 40 (and the Rapporteur's proposed Recital 58 a (new)) CSDR]

While the SSMA welcomes the Rapporteur's proposed new recital 58 a, clarifying that the obligation for CSDs to connect to the common settlement infrastructure operated by the Eurosystem (T2S) does not extend to central securities depositories settling in Member State currencies not yet available on the infrastructure, we would like to highlight that introducing a mandatory requirement for all CSDs settling in euro and other T2S-supported currencies to connect to the T2S platform, still represents a significant shift from previous communications, which portrayed connection to T2S as voluntary. CSDs performing settlement in EUR and DKK without a current connection to T2S – which includes some national CSDs that perform settlement in EUR (in some cases in addition to another EU Member State currency) – 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.

Article 4 – paragraph 1 – point 42 – point (a)

[Article 48 – paragraph 1 – new subparagraph CSDR]

Text proposed by the Commission

SSMA's proposed amendment

CSDs intending to establish an interoperable link shall provide the risk assessment referred to in the first subparagraph to their respective competent authorities in the application for authorisation of such interoperable link

Deleted

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

to be submitted by each of the concerned CSDs in accordance with the procedure laid down in Article 48b.

Justification

The provision proposed by the Commission 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. 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, irrespective 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, and the CSDs take action to establish links to other CSDs where this would benefit the market and where there is a demand.

Article 4 – paragraph 1 – point 42 – point (c)

[Article 48 – new paragraphs 2a, 2b, 2c and 2d CSDR]

Text proposed by the Commission

SSMA's proposed amendment

2a. Interoperable links of CSDs that outsource some of their services related to those interoperable links to a public entity as referred to in Article 30(5) and CSD links that are not interoperable links shall not be subject to authorisation but shall be notified by the CSDs to their competent and relevant authorities prior to their implementation, by providing all relevant information that allows those authorities to assess compliance with the requirements provided in this Article.

Deleted

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

2b. The competent authority of the requesting CSD shall require that CSD to discontinue a CSD link that has been notified when that link does not fulfil the requirements provided for in this Article and thereby would threaten the smooth and orderly functioning of the financial markets or cause systemic risk. Where a competent authority requires the CSD to discontinue a CSD link, it shall follow the procedure laid down in Article 20(2) and (3).

2c. An authorised CSD may establish a CSD link with a third-country CSD. In that case, it shall comply with the conditions and procedure provided in this Article. The information provided by the requesting CSD shall allow the competent authority to

evaluate whether such links fulfil the requirements provided in this Article or the requirements that are equivalent to those provided in this Article.

2d. An authorised CSD intending to establish an interoperable link with a third-country CSD shall submit an application for authorisation to its competent authority, as required under Article 19. The competent authority shall refuse to authorise such a CSD link only where it would threaten the smooth and orderly functioning of the financial markets or cause systemic risks.

Justification

The provision proposed by the Commission 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. 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, and the CSDs take action to establish links to other CSDs where this would benefit the market and where there is a demand.

Article 4 – paragraph 1 – point 43

[Article 48a CSDR]

Text proposed by the Commission

SSMA's proposed amendment

CSD connectivity

1. Where a significant CSD fulfils the criteria laid down in Article 11a(1) and is not part of a group of CSDs, or it is the only significant CSD within a group that fulfils the criteria of Article 11a(1), such CSD shall be considered a CSD hub.

Where two or more significant CSDs within a group fulfil the criteria of Article 11a(1), the group shall, without undue delay, appoint one of those CSDs as its CSD hub and notify ESMA via the central database. ESMA shall disclose in the register referred to in Article 21, the CSD hubs, without undue delay.

2. Every CSD hub shall establish and maintain a bilateral link with each of the other CSD hubs.

Deleted

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)



3. Every CSD that is not a CSD hub shall establish and maintain a bilateral link with a CSD hub.

4. Paragraphs 2 and 3 shall not apply to a DLT SS or a DLT TSS operated by a CSD as defined respectively in Article (2), points (7) and (10), of Regulation (EU) 2022/858.

5. CSDs involved in a bilateral link referred to in paragraphs 2 or 3, as applicable, shall ensure that all financial instruments issued in each of the CSDs involved are available for settlement through that bilateral link.

6. Receiving CSDs in links composing the bilateral link established pursuant to paragraphs 2 or 3, as applicable, may charge a reasonable commercial fee to the requesting CSDs, to recover the costs incurred by the establishment and the use of those links from the requesting CSDs.

7. CSDs shall comply with the obligations set out in paragraphs 2 or 3, as applicable, at the latest by [OP enter date = 18 months after entry into force of this amending Regulation].

8. Where ESMA determines that a CSD previously considered to be a CSD hub failed to meet the criteria laid down in Article 11a(1) for three consecutive years, all of the following shall apply: (a) that CSD shall no longer be considered a CSD hub and ESMA shall notify the CSD concerned of such determination;

(b) ESMA shall remove the CSD, without undue delay, from the register referred to in paragraph 1;

(c) ESMA shall notify all CSDs that have established bilateral links with that CSD pursuant to paragraphs 2 or 3, and their competent authorities;

(d) the CSDs referred to in point (c) of this paragraph shall have 18 months to re-establish their compliance with the requirements set out in paragraphs 2 or 3, with another CSD hub.

9. The Commission shall be empowered to adopt delegated acts in accordance with Article 67 to amend the conditions under

which a CSD shall be subject to the obligations set out in paragraphs 2 and 3.

The Commission shall consider the appropriateness of making any such changes. Where amending such conditions the Commission shall take into account the cross-border relevance of the CSDs established in the Union and the risks they pose to the financial stability of the Union.

Justification

The provision proposed by the Commission 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. 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, and the CSDs take action to establish links to other CSDs where this would benefit the market and where there is a demand.

Article 4 – paragraph 1 – point 43

[Article 48b CSDR]

Text proposed by the Commission

SSMA's proposed amendment

Procedure to authorise interoperable links

Deleted

Authorised CSDs shall submit an application for authorisation to ESMA where they intend to establish an interoperable link.

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

2. Applications to establish each of the standard and interoperable links composing the bilateral links referred to in Article 48a(2) and (3) shall be submitted by both receiving and requesting CSDs and treated as a single application. By way of derogation from the first sentence, where one of the standard and interoperable links that is to compose the mandatory bilateral link between two CSDs pursuant to Article 48a(2) and (3) has already been established, only an application for authorisation of the missing standard and interoperable link that is to compose the bilateral link shall be submitted to ESMA. Once ESMA has authorised the missing

links, the requirements referred to in Article 48a(2) or (3), as applicable, shall be considered to be fulfilled.

3. The application shall be immediately shared with the respective registered recipients referred to in Article 21a for both CSDs involved in the intended interoperable link and, where applicable, the respective colleges referred to in Article 24a of both CSDs involved in the intended link.

The applicant CSDs shall include in the application all documents and information necessary to demonstrate that they will have established, at the time of the authorisation of the interoperable link, all the necessary arrangements to meet their obligations as laid down in this Regulation in respect of such interoperable link.

4. During the period specified in paragraph 6, ESMA and the relevant authorities may request the applicant CSDs to provide additional documents or information where such documents or information are needed to assess the applicant CSDs' compliance with the relevant requirements laid down in this Regulation in respect of the interoperable link they intend to establish. ESMA may take a decision on the application in the absence of the CSDs' response.

5. During the period specified in paragraph 6, ESMA shall conduct a risk assessment of the applicant CSDs' compliance with the relevant requirements laid down in this Regulation in respect of the interoperable link they intend to establish and shall, for both applicant CSDs involved, consult the relevant authorities, the college referred to in Article 24a, where applicable, and the competent authority on whether the interoperable link the applicant CSDs intend to establish complies with the requirements laid down in this Regulation and on any potential risks that may arise as a consequence of such interoperable link.

6. Within three months from the acknowledgement of receipt of the application referred to in Article 21a(2), ESMA shall adopt its decision and transmit

it to the respective registered recipients referred to in Article 21a for both CSDs involved in the interoperable link, the respective colleges referred to in Article 24a of both CSDs involved in the interoperable link, where applicable, and the applicant CSDs. The decision shall include a fully reasoned explanation of whether the authorisation has been granted or refused.

Without prejudice to paragraph 4, ESMA shall refuse to authorise an interoperable link only where the link would threaten the smooth and orderly functioning of the financial markets or cause systemic risk.’;

Justification

The provision proposed by the Commission 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. 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, and the CSDs take action to establish links to other CSDs where this would benefit the market and where there is a demand. Moreover, the proposed time schedule in article 48b will be difficult to keep for CSDs that are not (yet) connected to T2S.

Article 4 – paragraph 1 – point 46

[Article 51a CSDR]

Text proposed by the Commission

SSMA’s proposed amendment

Relayed links

**‘1. Where a CSD requests a CSD hub to be the third party to a relayed link with a CSD established in the Union, the CSD-hub and the receiving CSD shall reject such a request only on the basis of risks considerations. The CSD hub and the receiving CSD shall not deny a request on the grounds of loss of market share.
2. The CSD hub acting as the third party in a relayed link and the receiving CSD may charge a reasonable commercial fee to the requesting CSD to recover the costs**

Deleted

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

***incurred by the establishment and the use
of the links referred to in paragraph 1.***

Justification

The provision proposed by the Commission 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. 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, irrespective 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, and the CSDs take action to establish links to other CSDs where this would benefit the market and where there is a demand.

Article 4 – paragraph 1 – point 47 – point (a)

[Article 52 – paragraph 1 CSDR]

Text proposed by the Commission

When a CSD submits a request for access to another CSD pursuant to **Articles 48a(2) and (3)**, 50 and 51, the receiving CSD shall treat the request promptly and shall provide a response to the requesting CSD within three months. If the receiving CSD agrees to the request, the CSD link shall be implemented within a reasonable timeframe, which shall be no longer than 12 months.;

SSMA's proposed amendment

When a CSD submits a request for access to another CSD pursuant to Articles 50 and 51, the receiving CSD shall treat the request promptly and shall provide a response to the requesting CSD within three months. If the receiving CSD agrees to the request, the CSD link shall be implemented within a reasonable timeframe, which shall be no longer than 12 months.

Justification

The provision proposed by the Commission 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. 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, irrespective 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, and the CSDs take action to establish links to other CSDs where this would benefit the market and where there is a demand.

We propose to keep the present text in the paragraph.

Article 4 – paragraph 1 – point 47 – point (b) – point (i)

[Article 52 – paragraph 2 – the third subparagraph CSDR]

Text proposed by the Commission

SSMA's proposed amendment

In case of a refusal **to grant access through a link not referred to in Article 48a(2) or (3)**, the requesting CSD has the right to complain via the central database to the competent authority of the CSD that has refused access.

In the case of a refusal, the requesting CSD has the right to complain to the competent authority of the CSD that has refused access.

Justification

The provision proposed by the Commission 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. 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, and the CSDs take action to establish links to other CSDs where this would benefit the market and where there is a demand.

We propose to keep the present text in the subparagraph.

Article 4 – paragraph 1 – point 47 – point (c)

[Article 52 – paragraph 2a CSDR]

Text proposed by the Commission

SSMA's proposed amendment

In case of refusal to grant access through a link referred to in Article 48a (2) or (3), the receiving CSD shall provide a duly justified refusal via the central database to ESMA and to the requesting CSD. The refusal shall be based on a comprehensive risk assessment.

Deleted

Within 30 working days from the notification of the refusal to ESMA and to the requesting CSD, the receiving CSD and the requesting CSD shall provide ESMA, via the central database, with their proposed measures to mitigate the risks underlying the refusal.

Within 90 working days from receipt by ESMA of the complete submission of proposed measures by the receiving and requesting CSDs, ESMA, in cooperation with the competent authority of the CSD not considered to be a CSD hub, where applicable, and taking into account those proposed measures, shall identify necessary measures to be taken to mitigate the risks underlying the refusal and shall issue an order, via the central

database, to the receiving or requesting CSDs, as applicable, to adopt those necessary measures and set up the link referred to in Articles 48a(2) or (3), as applicable, by a certain date.

Justification

The provision proposed by the Commission 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. 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, and the CSDs take action to establish links to other CSDs where this would benefit the market and where there is a demand.