
AFME's response to ESMA's Guidelines on the Access to a CCP or a Trading Venue by a CSD

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The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on the "**Guidelines on the Access to a CCP or a Trading Venue by a CSD**" that were published by ESMA. AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia.

AFME is listed on the EU Register of Interest Representatives, registration number 65110063986-76.

We summarise below our high-level response to the consultation, which is followed by answers to the individual questions raised.

Q1: What are your views on the proposed Guidelines?**The purpose of the Guidelines should be clearer**

We do not believe the purpose of this consultation paper is entirely clear in relation to ESMA's Guidelines on the Access to a Central Clearing Counterparty (CCP) or a Trading Venue by a Central Securities Depository (CSD). In particular, it should be made clearer that the Guidelines are on access to transaction feeds of a CCP or a trading venue by a CSD.

Paragraph three of the Executive Summary states that "...ESMA has prepared this Consultation Paper (CP) in order to consult interested parties for the purposes of elaborating guidelines on the access to a CCP or a trading venue by a CSD..." This initial description is unclear as it could suggest that a CSD may become a full trading or clearing member of a trading venue or CCP. However we do not believe this is what ESMA intended (since that is not what is mandated under Article 53 and such services would not constitute core services, non-banking-type ancillary services or banking-type ancillary services and therefore the CSD would be prohibited from conducting such activities under Article 18) nor would it be desirable because it changes the risk profile of the CSD entirely and presumably that is the very reason for the limitation of a CSDs activities in Article 18.

The Guidelines are not necessary

Whilst we believe that the purpose of the Guidelines is somewhat unclear, we understand the actual intention is to create guidelines relating to a request of a CSD to have access to transaction feeds of a CCP or a trading venue (i.e. to establish direct connections between the trading venue or CCP on the one hand and the CSD on the other). Assuming this is the case, we do not fully understand the need for such guidelines as direct connections between trading venues or CCPs and CSDs is commonplace across the EU. Examples already exist where non-CCP cleared trading venues have established direct connections to a CSD such as MTS and Brokertec. Similarly there are several examples where national, and regional CCPs have direct connections with CSDs; for instance, LCH Clearnet Limited are directly connected to Euroclear UK & Ireland, SIX SIS, Monte Titoli, VPS and Euroclear Bank whilst EuroCCP NV are directly connected to Euroclear UK & Ireland, SIX SIS, Monte Titoli, Euroclear Sweden, Euroclear Finland and VP.

These proposals conflict with the concept, and benefits, of Target 2 For securities (T2S)

We also believe that this proposal conflicts with the concept, and benefits, of T2S. Our expectation is that most Trading venues / CCPs will choose to become Directly Connected Participants at T2S and may also choose to use the services of a single investor CSD or custodian, as opposed to remain directly connected to each issue CSD. Obliging the trading venue or CCP to agree to access requests from other issuer or investor CSDs (providing it meets the risk criteria set out in this proposal) may erode many of the benefits of the T2S Directly Connected Participant model such as a single messaging interface, format, service level and pricing structure. The possible consequence of multiple CSD connections in a T2S world (as opposed to a single connection via a custodian or issuer CSD) will be higher costs in the form of CSD transaction fees, technology and operations, and legal effort and resource. Importantly, risk criteria alone should not be the sole consideration for a trading venue or CCP when considering a CSD access request. CCPs and trading venues should also have the flexibility to consider the efficiency of the operating model and be free to choose the most optimal and robust model for themselves, their participants and the market in general and should not be forced to agree to CSD access request just because they meet the risk guidelines set out in this proposal.

Broader set of factors should be considered in the comprehensive risk assessment

The Guidelines set out in the Consultation Paper rightly state that a comprehensive risk assessment must be performed (as per Art 53(3) of CSDR). However, the emphasis must be on the "comprehensiveness" of the risk assessment. Article 53(4) mandates ESMA to develop guidelines to specify the risks to be taken into account by CSDs but it is not clear (and in our view should not be the case) that the risks ESMA identifies as being relevant to the risk assessment should be exhaustive. This should be true of any Guidelines which ESMA proposes for the risk assessment that trading venues and CCPs are required to undertake. The

Guidelines should set a harmonised minimum set of risk factors and not an exhaustive list in order that trading venues and CCPs can comply with their Level 1 obligation to perform a "comprehensive" risk assessment.

If ESMA does not accept the view set out above, we are of the opinion that the paper potentially defines this assessment too narrowly in any event since it only includes legal, financial and operational risks. In reality, however, there are many other aspects and risks that a trading venue or CCP needs to consider before agreeing to an access request. Unless ESMA considers that the above categories are broad enough to capture the following additional factors, failure to consider the factors set out below may create additional risks for the trading revenue or CCP;

1. Service compatibility

When considering a request for access to transaction feeds, a trading venue or CCP needs to consider the services that they provide to trading and clearing members and if they are compatible with and can be supported by the CSD seeking the direct connection. These services may include the provision of liquidity, credit, specific reporting, enhanced asset servicing, tax services and the required communication protocols. The inability of a CSD to support these services could result in a more inefficient CCP operating model, potentially resulting in increased costs, greater latency and more complex processes. This may force the CCP to source different elements of the service from several different intermediaries.

2. Market knowledge / local factors

A trading venue or CCP establishing a direct connection with a CSD, at the CSD's request, should have regard to the required level of market knowledge and general expertise around local market practices etc. Failure to do so may leave the trading venue or CCP exposed to operational/financial risk from failing to act in accordance with market protocol. This situation becomes more complex if the trading venue or CCP operates on a regional basis as opposed to domestically.

3. The financial impact of connecting directly to CSDs

A trading venue or CCP establishing a direct connection with a CSD needs to analyse the financial impact. This is more complex and potentially introduces more risk when a trading venue or CCP operates on a regional basis as the impact of connecting to multiple issuer CSDs needs to be considered.

4. The technical ability to connect directly to CSDs

Trading venues and CCPs need to assess the technical ability to connect to the CSD. In many cases CSDs do not operate a standard interface and therefore the trading venue or CCP may potentially need to develop many different communication methods and formats. This is often alleviated when the trading venue or CCP chooses to use an intermediary such as a custodian that may offer a single interface across several CSDs.

In summary,

- we question the need for these Guidelines when there are already examples of trading venues and CCPs connecting directly to CSDs.
- we believe that the trading venue or CCP should be free to choose its optimal operating model and should not be bound to consider/agree to access requests from CSDs.
- if ESMA intends to move ahead with these Guidelines, it is essential that it considers a much broader range of factors when setting out Guidelines. Failure to meet the standards set out in these additional guidelines should be an acceptable reason for a trading venue or CCP to decline an access request.