

European Commission  
Rue de la Loi, 200  
1049 Brussels  
Belgium



2<sup>nd</sup> February 2021

Dear Sirs,

## Targeted consultation on the review of CSDR

AFME welcomes the opportunity to respond to this consultation on the review of the Central Securities Depositories Regulation (“CSDR”). This is a broad-ranging consultation, which covers many important policy areas. **The key concern to our members is a requirement to amend the Settlement Discipline provisions, in particular the mandatory nature of the buy-in rules.** We consider that other measures, such as those relating to allocation and confirmation procedures, enhancements to CSD functionality, and the introduction of a penalty mechanism, are broadly appropriate with the minor changes suggested in the response, and welcome their introduction at the first possible opportunity.

**Our most critical recommendation is that initiation of the buy-in process must be a discretionary right of the receiving party, not a mandatory obligation.**

**We propose a division of the settlement discipline regime.** This would involve a first phase in which cash penalties and other measures are introduced, followed by amended buy-in rules in a second phase at an appropriate later date.

There are two principal advantages to this sequencing:

1. Penalties and other measures can take effect, and their impact monitored and assessed by the authorities.
2. If there are to be significant amendments to the current buy-in rules, additional time will be required by all industry participants to adjust accordingly. This may involve changes to technology and a change to the legal agreements with counterparties to incorporate relevant contractual arrangements. It is impractical and inefficient for the industry to prepare for implementation based on the existing requirements.

**We ask that these timing concerns are given due consideration by regulators and policy makers, and that clarity is provided quickly on any proposed changes to the CSDR Settlement Discipline Regime.**

**AFME strongly believes that the aforementioned ‘first phase’ initiatives will deliver an improvement to current settlement rates.** To measure the success of these new initiatives, we would support further empowerment of ESMA to set target settlement efficiency rates, and to periodically recalibrate the applicable penalty rates. Taken together, these measures would provide a robust, flexible and transparent regulatory framework to appropriately incentivise market participants.

**This should be supplemented by a buy-in mechanism, which enshrines into EU law the discretionary right of the purchasing party to initiate a buy-in on a failed transaction, and sets out a high-level, harmonised framework for this process.**

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Our proposal for a discretionary buy-in based on high-level principles set out in regulation, reduces the burden on regulatory authorities and creates greater flexibility for market-driven solutions. The prescriptive nature of current Level 1 and Level 2 regulation significantly constrains the industry's ability to develop effective market practices. There are a substantial number of open issues on which the industry is reliant on urgent clarification from ESMA and the European Commission, many of which we highlight in our response. We wish to highlight that the buy-in should be considered as a trading-level event, and that the legislation requires amendment to make clear that the regulatory obligations apply to the parties principal to the trading-level agreement and settlement participants should not be required to enforce such obligations.

**A simplification of the regulation, and the removal of the mandatory nature of the buy-in regime, would resolve many of these issues.**

The currently proposed mandatory buy-in regime will severely damage market liquidity and raises overall transaction costs for investors. A reduction in liquidity will translate to higher costs, and reduced market access for European companies seeking access to market-based finance. Importantly, these impacts will disproportionately impact the trading and issuance of less liquid securities which are routinely issued by smaller companies.

We strongly believe that the proposed mandatory buy-in rules are substantially flawed and will have significant and potentially irreversible impacts on markets if implemented in their current form.

We attach for your reference a full copy of our consultation response. In particular on Section 7 on Settlement Discipline, the full response contains additional detail not included in our web portal submission due to character limitations.

We would welcome further opportunity to discuss our feedback with you and stand ready to assist wherever possible.

Yours sincerely,

*Peter Tomlinson*

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