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GRUP B.V.B.



Bucharest, 22.05.2014

To: European Securities and Markets Authority

Ref: Draft Technical Standards for the Regulation on improving securities settlement in the European Union and on central securities depositories (CSD)

Dear Sirs,

Please find below the Depozitarul Central's observations and comments on the *Draft Technical Standards for the Regulation on improving securities settlement in the European Union and on central securities depositories (CSD)* published by ESMA.

1. Q3: ESMA welcomes concrete proposals on how the relevant communication procedures and standards could be further defined to ensure STP?

We appreciate that the use of communication procedures and standards that facilitate STP should be encouraged in order to be in line with the CPSS-IOSCO Principles for financial market infrastructures. However, Level 2 legislation should not mandate the use of specific communication standards (e.g. ISO 20022) since the use of these standards is not generalized today and thus their implementation would constitute a change in the market practice for the respective CSDs' participants and could translate in high IT costs both for the CSDs and for their participants. In addition, the standards evolve into new ones and this as well may cause technical issues. Should ESMA however consider imposing the use of specific communication standards in the future, it is essential that CSDs be given sufficient time to implement the change, given that this would require considerable IT investments both for CSDs and for their participants.

2. Q4: Do you share ESMA's view that matching should be compulsory and fields standardised as proposed? If not, please justify your answer and indicate any envisaged exception to this rule. Are there any additional fields that you would suggest ESMA to consider? How should clients' codes be considered?

The Romanian capital market performs free of payment operations (FOP, direct transfers) between the end investors accounts' kept either by participants or the CSD (i.e. Depozitarul Central). In this scenario, we appreciate it is important to extend the exemption from compulsory matching for all FoP instructions. The implementation of the compulsory matching for FOP instructions would constitute a change in the market practice for Depozitarul Central's participants.

With respect to use of matching tolerance amounts, we appreciate that CSDR technical standards should recommend the use of matching tolerance amount to facilitate timely settlement, therefore we believe that the standards should allow CSDs to determine the appropriate optional tolerance amount in consultation with their participants. Also, the use of a different tolerance amount for retail-sized transactions should remain optional.

3. Incentives for timely settlement – art. 6(3)

In order to encourage and incentivize timely settlement by CSD participants, technical standards should not:

(1) Require CSDs to identify the causes of unmatched instructions;

CSDs are not always in a position to identify the reasons why an instruction has not been matched. Requiring the CSDs to investigate the causes of an unmatched instructions would potentially require manual intervention and expose the CSD to legal risks.

(2) Specify the detailed modalities (timing, format) for CSDs to provide information on pending instructions to their participants

We do not think that the detailed modalities on how this information needs to be accessed should be specified in Level 2 legislation (e.g. within ,x' minutes, with what kind of message/interface). The practical modalities typically depend on the technical design of each CSD's system and on participants' preference based on the costs involved. The most important thing is that participants should have an easy access to such information.

Related to the Q5 and ESMA proposals from row 21 to 25, we appreciate that regulatory technical standards should not mandate specific technical functionalities for hold and release mechanism, which are anyway difficult to define in legislation and are unlikely in themselves to significantly reduce the number of settlement fails.

4. Q6: In your opinion, should CSDs be obliged to offer at least 3 daily settlements/batches per day? Of which duration? Please elaborate providing relevant data to estimate the cost and benefit associated with the different options

We appreciate that ESMA should not mandate a specific number of batches per day. The batches for securities settlement should be proportionate with the market demand and development. Should ESMA however consider imposing the use of 3 settlement batches per day as a minimum requirement in the future, it is essential that CSDs be given sufficient time to implement the change, given that this would require considerable IT investments both for CSDs and for their participants.

5. Q22: Would you agree that the elements (...) included in Annex I are appropriate? If not, please indicate the reasons or provide ESMA with further elements which you find could be included in the draft RTS, and any further details to justify their inclusion.

The Annex I provides a list with „*minimum requirements*” to be provided in the authorization process of a CSD. We consider that technical standards under the CSD Regulation should not be considered as ‘minimum requirements’ for competent authorities since this approach may lead to supplementary requirements from the national competent authorities.

It should be possible for European technical standards to be implemented proportionately, taking into account the diversity in CSD business models, activities and size. For instance, requirements covering the compliance function, the audit function, and the risk function in CSDs, should not mean that smaller CSDs have to appoint a staff member exclusively dedicated to each of these functions. It should be possible, instead, for these functions to be combined with other roles. For example, the same person could act both as legal counsel and compliance officer for the CSD.

The recordkeeping requirements currently envisaged by ESMA seem to be unnecessarily extensive and should be reduced substantially to avoid imposing unnecessarily high costs on CSDs and their users.

CSDs will have to make important technical adaptations to their systems in order to comply with some of the most complex technical standards. It is thus indispensable for ESMA to recognize that CSDs will not realistically be able to demonstrate compliance with all technical standards during the initial authorisation process. An appropriate transition period must be foreseen, at least for the standards which require significant adaptations of the IT systems of CSDs and of their participants.

6. Q27: Do the responsibilities and reporting lines of the different key personnel and the audit methods described above appropriately reflect sound and prudent management of the CSD? Do you think there should be further potential conflicts of interest specified? In which circumstances, if any, taking into account potential conflicts of interest between the members of the user committee and the CSD, it would be appropriate not to share the audit report or its findings with the user committee?

We appreciate that technical standards on monitoring tools should be limited only to the risks faced by CSDs since it is not clear how a CSD would be able to identify, manage, monitor and report risks in relation to participants' clients. In our view, it is the responsibility of the respective participant to assess and manage the risks in relation to its clients.

Also, we would like ESMA to bring some clarifications to the notion of "*dedicated functions*". Indeed, the requirement to have several dedicated functions (chief risk officer, compliance officer, chief technology officer and independent internal audit) should be interpreted flexibly taking into account the principle of proportionality, given that such functions will not always justify a full-time job in smaller organizations. Technical standards should make it clear that the "*dedicated functions*" should be clearly attributed to an individual, but that this individual should be allowed to perform other functions, as long as any potential conflicts of interests are disclosed and managed, according to the relevant provisions of CSDR.

7. Q28: Do you agree with this minimum requirements approach? In case of disagreement, what kind of categories or what precise records listed in Annex III would you delete/add?

We consider that the "*minimum requirements*" approach proposed by ESMA for CSD recordkeeping should be changed with "*maximum requirements*" approach that ensures truly harmonized standards and a level playing field for CSDs.

The list of items in Annex III of the Discussion Paper is very extensive and goes far beyond what is required by regulators today. In fact, based on our understanding of ESMA's current proposal, the quantity of data to be stored over (a minimum of) 10 years and related functionalities would result in potentially high IT costs.

Depending on the final recordkeeping requirements to be included in the CSDR technical standards, CSDs might have to make considerable investments to build and maintain the relevant IT systems, and such developments are likely to take months to implement. This could mean that it could be very difficult to comply with the recordkeeping requirements by the time the CSDs need to apply for authorization under CSDR. ESMA should consider such a constraint and determine an appropriate transition period to allow CSDs to develop the required functionalities.

The recordkeeping requirements will thus have to be adapted depending on the individual services provided by a given CSD based on the list of services contained in sections A, B and C of the Annex of the CSD Regulation.

Thank you for inviting us to respond to ESMA discussion paper.

Sincerely yours,



Adriana TĂNĂSOIU
Chief Executive Officer