FINANS DANMARK

Høringssvar CSDR Refit

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Finance Denmark welcomes the revised proposal and that it includes issues raised by the sector in previous consultations. We still believe that the buy in regime is very flawed, impossible to implement, unproportionally expensive and ineffective means to improve settlement quality. If the buy-in regime is not taken out of the regulation altogether, we welcome the proposed two-step approach, which avoids an immediately introduction of mandatory buy-in since we find the penalty regime a sufficient tool.

Specific comments:

Penalties: To secure a **level playing field** between markets with omnibus account structure and segregated account structure, we suggest that retail clients should explicitly be taken out of the penalty regime. Since implementation of penalties as of February 1, 2022, we have seen many very small penalties between Financial Institutions and their retail customers, often rounded to zero. In markets with segregated accounts CSDs are sending penalty messages on end investor accounts which is not expedient.

We find it counterintuitive that penalties are not symmetric. Settlement fails have different penalties on the security side and the payment side. It should not matter which part of the trade fails.

Definitions: A "trading party" is imposed several obligations and defined as a party acting as principal in a securities transaction but a principal is not defined in either the level 1 or 2 texts. The terms "Principal" and "Participant" are used inconsistently in different constellations. Settlement of transactions in segregated markets is usually done at CSD level with customers having safe-keeping accounts at the CSD. This brings retail customers in scope for buy-in rules if the transaction is not cleared and not executed on a trading venue. The lack of a clear definition could have the consequence, that retail customers are in scope of the buy-in obligations which is highly impractical. We urge the Commission to provide clear definitions of a trading party, principal and participant and their role in the BI process, where a retail client should not be considered as 'Trading party'.

Calendar: We see a need for a common EU calendar for penalty payments making payments possible regardless of national bank holidays. Another issue is the inconsistent use of day count. Extension period on SME instruments is counted in calendar days while other instruments are counted in business days. Day- count should generally be in business days.

Buy-in: It is unclear how the Commission intends to assess settlement efficiency and appropriate levels hereof. Markets are very different and there is no consistent calculation of settlement rates across CSDs. If buy-ins should be implemented, a clear timeline is needed as time to prepare is needed. We suggest a procedure, where ESMA recommends implementation to the Commission followed by public consultation and an implementation phase of not less than 12 months. Transactions not involving two trading parties should include margin/collateral transfers and exercise of derivatives with physical settlement which should be included as examples in recital 4.

Pass-on: We support the pass-on mechanism, but it is of utmost importance that the level 2 text defines who is obligated to initiate buy-in. Exception of specific transaction types should not disrupt the pass-on process.

Suspension: We support the mandate given to the Commission to suspend the buy-in where necessary. Challenges are amongst others: How quickly can the suspension implemented and what is the effect on trades already subject to a buy-in at the time.

No BIA needed: Recital 11 states that participants may execute their own buy-ins. If there no longer is a mandatory appointment of a BIA, we welcome that. However, we urge for a clearer wording of this in the proposal.

CSD ancillary services: We are concerned that widening of CSD's possibilities to offer these services to other CSDs increases systemic risk for the combined infrastructure.