

BVI Position on ESMA Draft Technical Standards for the Regulation on improving securities settlement in the European Union and on central securities depositories (CSD)

BVI¹ gladly takes the opportunity to present its views for the regulation on improving securities settlement in the European Union (EU) and on central securities depositories (CSD).

German investment managers are important users of the securities markets in the EU, we therefore support the aim to achieve an efficient, integrated and safe market for securities clearing and settlement in the EU, particularly for cross-border transactions. Efficient and safe securities settlement systems with an EU wide harmonized settlement discipline regime will benefit all investors and further promote a pan-European securities market.

German investment fund management companies are not directly involved in the value chain of clearing and settlement of securities transactions. They instruct the custodians of the relevant investment funds to match and settle securities (e.g. equity, bonds, fund units etc.) belonging to such investment portfolios. The custodians have a direct relationship with the CSDs. Investment fund management companies have to rely on the information obtained by the custodians in order to react in cases of settlement fails or possible buy-in.

The custodians have to ensure that all relevant information needs to be sent as fast as possible to the management companies. This will enable the investment fund management companies to solve all discrepancies for unsettled trades where a decision is required by the custodians from the investment managers. (Institutional) investors defined as professional clients in MiFID are not involved in the clearing and settlement process of securities transactions.

We fully support T+2 as settlement period target for transactions in transferable securities executed on trading venues. T+2 is the established settlement period in Germany which has proven to be stable during the financial crises. Furthermore, we welcome the option that the processing and execution of fund units beyond trading venues with different settlement cycles (e.g. money market funds T+0/1) are further possible. The processing of fund units within the EU is already highly automated as evidenced by the EFAMA/SWIFT survey² which BVI supports in full.

The European investment fund industry is very active in the development and implementation of standards in the clearing and settlement of investment fund units.³ Furthermore, BVI has also developed and implemented national market standards in the confirmation and allocation process of securities transactions.⁴

¹ BVI represents the interests of the German investment fund and asset management industry. Its 81 members currently handle assets of EUR 2.0 trillion in both investment funds and mandates. BVI enforces improvements for fund-investors and promotes equal treatment for all investors in the financial markets. BVI's investor education programmes support students and citizens to improve their financial knowledge. BVI's members directly and indirectly manage the capital of 50 million private clients in 21 million households. (BVI's ID number in the EU register of interest representatives is 96816064173-47). For more information, please visit www.bvi.de.

² http://www.efama.org/Publications/Public/Joint_EFAMA_SWIFT_Standardisation_Survey_2013_Annual_Report.pdf

³ <http://smpg.webexone.com/default.asp?link=>

⁴ <http://www.bvi.de/en/regulation/sector-standards/securities-transaction-standards/>



We focus our answers to the chapter “Settlement Discipline” which is relevant for the German investment fund industry:

Q1: Which elements would you propose ESMA to take into account / to form the technical standards on confirmation and allocation between investment firms and their professional clients?

We recommend that ESMA takes into account existing market practices/procedures when drafting the technical standards on the confirmation and allocation process. The technical standards should be principle based, e.g. contain a high level description of the actors and the responsibilities of the involved parties and leaving the UCITS management companies enough leeway to adjust the business relationship with the investment firms (e.g. banks, broker/dealers). The technical standards also have to take into consideration that the technical arrangements (e.g. formats, abbreviations etc.) should primarily be based on open international industry messaging and communication standards such as ISO 15022 and 20022. ISO 15022 is the relevant messaging standard for securities transactions (settlement and reconciliation, corporate actions). ISO 20022 is the leading industry multi-syntax financial messaging standard for investment funds and T2S.

The confirmation and allocation process takes place between professional clients (e.g. UCITS/management companies) and investment firms (e.g. banks, broker/dealers) for securities including fund units listed and traded on regulated markets within a portfolio of an investment fund (UCITS/AIF). Institutional investors defined as professional clients in MiFID are not involved in the confirmation and allocation process between investment firms and the UCITS management companies.

Germany implemented the settlement period T+2 a long time ago. German UCITS management companies have in place long established confirmation and allocation processes with the investment firms (e.g. broker/dealers) based on detailed legal and operational agreements (e.g. Service Level Agreements, SLAs).

The mentioned legal and operational agreements are designed on the basis of long established market standards detailing the actors and the responsibilities of the parties involved in the confirmation and allocation process. The German investment fund industry has actively participated in the development of market standards in the clearing and settlement area.

The agreed confirmation and allocation process enables the involved parties (UCITS management company and investment firm) to match securities as early as possible and to settle these transactions according to the actual/national settlement cycles. During the financial crises, the confirmation and allocation process between the investment firms and the UCITS management companies has proven to be stable and safe.



Q2: In your opinion, are there any exceptions that should be allowed to the rule that no manual intervention occurs in the processing of settlement instructions? If so please highlight them together with an indication of the cost involved if these exceptions are not considered.

We agree that all settlement instructions should be processed automatically. This will reduce the operational risks by all involved market participants and ensures a settlement on the intended settlement day. However, in the rare case of manual interventions, it needs to be ensured that the investment fund management companies obtain all relevant information on time from the custodian where a decision is required by the investment managers.

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

We agree that all transactions should be processed STP through the securities chain. The concrete definition of communication procedures and standards should be based on existing market standards provided by the relevant international standard setters (e.g. SWIFT, FIX etc.) As mentioned above, all standards should be exclusively based on ISO 15022 and 20022 respectively. Furthermore, any ESMA proposal on the relevant communication procedures and standards needs to be consulted again with the relevant market participants (e.g. investment fund management companies).

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?

Yes we agree in principal. Matching should be made compulsory as a prerequisite before settlement. Currently, CSDs set their own standards for the determination of the settlement instructions. A standardization of matched data fields will also support the process of the matching and settlement of cross border transactions, particularly between CSDs within the EU.

ESMA has to take into account that a regulatory framework for a matching of transactions on trade date (intended settlement day, ISD-2) should be based on existing market practices. German investment fund management companies often outsource the portfolio management of the investment fund to third party portfolio managers. In order to allow a reconciliation of the executed transactions between the fund management companies and the third party portfolio manager the custodians of the respective investment funds are instructed to match and settle securities transactions (e.g. equity, bonds) on a T+0 or often a T+1 basis. We therefore propose that matching of transactions should take place at the latest on ISD-1. During this matching timeframe, the CSDs should impose no disincentives on the market participants.

ISO client codes, especially LEI or BIC, are preferred solutions. Proprietary client codes should not be made mandatory as a matching field. The matching fields mentioned by ESMA are sufficient in order to identify the counterparties to the transaction.



Q5: Do you agree with the above proposals? What kind of disincentives (other than monetary incentives such as discounts on matching fees) might be envisaged and under which product scope?

Yes we agree. A matching as early as possible in the settlement process allows all involved market participants (e.g. investment fund management companies) sufficient time to resolve all inconsistencies in the settlement of the trade. However, in the case of an unmatched trade, it needs to be ensured that the investment fund management companies obtain all relevant information on the underlying portfolio trades on time from the custodian where a decision is required by the investment managers.

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.

Q7: In your view, should any of the above measures to facilitate settlement on ISD be mandatory? Please describe any other measure that would be appropriate to be mandated.

Q8: Do you agree with this view? If not please elaborate on how such arrangements could be designed and include the relevant data to estimate the costs and benefits associated with such arrangements. Comments are also welcome on whether ESMA should provide for a framework on lending facilities where offered by CSDs.

Q9: Do you agree with the above monitoring system description? What further elements would you suggest? Please present the appropriate details, notably having in mind the current CSD datasets and possible impact on reporting costs.

Q10: What are your views on the information that participants should receive to monitor fails?

No comment.

Q11: Do you believe the public information should be left to each CSD or local authority to define or disclosed in a standard European format provided by ESMA? How could that format look like?

Information on settlement fails should only be provided in aggregated and anonymized form on an annual basis to the public. We are of the view that ESMA should provide a standard European format to the CSDs enabling them to disclose the relevant information in the same manner to the public. It should be avoided that the publication of the same reasons for the settlement fails are treated differently in the EU Member States.

Q12: What would the cost implication for CSDs to report fails to their competent authorities on a daily basis be?

No comment.



Q13: CSDR provides that the extension period shall be based on asset type and liquidity. How would you propose those to be considered? Notably, what asset types should be taken into consideration?

We agree that the extension period for an appropriate buy-in mechanism should be based on asset types (e.g. equities, bonds, fund units (ETFs)) and liquidity as proposed by ESMA. We share the view that some securities need a longer extension period with up to seven days, especially ETFs. A tight deadline cannot be met as a significant number of underlying financial instruments in different markets need to be bought/sold.

Q14: Do you see the need to specify other minimum requirements for the buy-in mechanism? With regard to the length of the buy-in mechanism, do you have specific suggestions as to the different timelines and in particular would you find a buy-in execution period of 4 business days acceptable for liquid products?

We agree with the proposal made by ESMA.

Q15: Under what circumstances can a buy-in be considered not possible? Would you consider beneficial if the technical standard envisaged a coordination of multiple buy-ins on the same financial instruments? How should this take place?

No comment.

Q16: In which circumstances would you deem a buy-in to be ineffective?

We agree with the assessment that in the cases of repo and lending transactions, buy-in mechanisms are ineffective due to the characteristics of such transactions.

Q17: Do you agree on the proposed approach? How would you identify the reference price?

We agree.

Q18: Would you agree with ESMA's approach? Would you indicate further or different conditions to be considered for the suspension of the failing participant?

Q19: Please, indicate your views on the proposed quantitative thresholds (percentages / months).

Q20: What is in your view the settlement information that CSDs need to provide to CCPs and trading venues for the execution of buy-ins? Do you agree with the approach out-lined above? If not, please explain what alternative solutions might be used to achieve the same results.

Q21: Would you agree that the above mentioned requirements are appropriate?

No comment.