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AmCham EU Position on Central Securities Depositories

Central Securities Depositories (CSDs) are a crucial component of the financial system in the EU and beyond. We agree that it is important that CSDs operate in a manner that is both safe and efficient, whether the service is provided domestically or across national borders. We welcome the opportunity the Central Securities Depositories legislation (CSD-R) provides to clarify the functions, governance and operations of EU CSDs, at the same time as providing a basis for greater choice in the services provided by the CSD sector.

CSDs are integral to the settlement process in the EU, and we welcome the opportunity provided by CSD-R to focus on greater settlement harmonisation. The CSD-R provides an opportunity to eliminate some of the key barriers to the Single Market in financial services identified by the Giovannini group over 10 years ago. In particular, the opportunity to remove Barrier 1 (lack of common standards and protocols), Barrier 6 (harmonised settlement cycles), as well as Barrier 9 (choice of location for issuers), is welcomed.

It is important that the development of the legislation takes into account the international dimension beyond the EU. Alignment with the global approach to CSD governance and operations enshrined in the CPSS-IOSCO principles for financial market infrastructures (FMIs) is crucial to the development of a consistent regulatory approach to CSDs. We also think it is important that services provided by CSDs from third countries are accessible to industry participants in the EU, subject to a suitable level of assurance on the consistency of supervision in the third country in question.

We support the open access provisions in the European Commission proposal. Authorised CSDs, under the condition of due proper mitigation of risks, should not require prior authorisation when establishing a link with another CSD. Access to transaction feeds, as in MiFIR and EMIR, should be facilitated, under the condition of clear criteria and proper interoperability requirements.

Below are some specific points we would like to draw out against the relevant sections of the CSD-R draft.

Title II

Securities Settlement

Article 5 –

In general we would support a move to a T+2 settlement cycle as the default in the EU, given the reduction in risk that a shorter cycle provides. What is not clear is whether this proposal applies beyond transactions conducted on trading platforms (for example, the

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inclusion of OTC transactions). The current wording is unclear if the intention is to include transactions that are not traded on the platforms mentioned.

We would also caveat our support for T+2 with the need to ensure that there is some flexibility built into the proposal. It may not be sensible to impose a T+2 regime on particularly illiquid stocks, initiating a buy-in procedure that, because of lack of liquidity in the market, simply leads to another settlement failure. Some flexibility in the adoption of a T+2 regime would also be important in order to accommodate efficiency in the execution of repurchase agreements (repo) and securities lending transactions, which often require shorter or longer settlement cycles. Therefore, a more pragmatic approach than that currently in the text needs to be applied.

Daily penalties and mandatory buy-in procedures could more broadly have a negative effect on liquidity and investor confidence. Specifically, mandatory buy-in could significantly harm certain securities markets, namely repos, as the proposals in relation to failed settlements do not reflect the realities of this market. In effect, these rules would lead to repos having to move to T+1 in order to ensure adherence to the settlement cycles, which makes matching more critical yet challenging, given the continued fragmentation of CSDs across Europe and the lack of harmonised cut-off times for executing trades or movements of collateral. This is likely to culminate in more fails, restricting primary dealers from making repo markets, hurting cash market liquidity and driving spreads wider for issuers as a result. Repo markets serve a critical function in the wider financial markets, and introducing these provisions could thus be very damaging to markets as a whole.

Article 6 –

We would agree with the need for measures to prevent settlement fails. Central to this is an effective trade date confirmation process. In the current text there appears to be confusion as to how trade confirmation works. While trading venues confirm the execution of a trade to their members, they do not facilitate what might be called a secondary trade confirmation process. This secondary process is what is needed to agree all the economic terms of a transaction required for settlement.

It is highly likely that the original trade confirmed at the trading platform level will be a block trade which will then be broken down into several different parts (allocations), and these component parts will all need to be confirmed prior to individual settlements being instructed. Such confirmations will include key settlement data that would not have been part of the confirmation at the trading platform level. These middle office trade confirmation processes are typically handled by independent vendors or CSDs, or failing that they are done manually between the parties – although this latter is not an efficient approach.

We would therefore suggest that the text needs to be expanded to recognise the need for a secondary trade confirmation process on the trade date, covering all the information required for settlement, and that this process may be conducted independently of the trading platform. This trade date confirmation process needs to be automated if it is to provide the efficiencies required for successful T+2 settlement.

Industry data standards for automated trade confirmation are already in place, and this is something which should be taken into account when this area of work is given to ESMA in the level 2 process.

Title III Central Securities Depositories

Relations with third Countries

Article 23 -

We agree that third country CSDs should be permitted to offer services into the EU, for reasons of choice and competition. The CSD-R needs to include a mechanism for assurance on the consistency of the regulatory approach in the relevant third countries. In so doing, however, lessons need to be learned in respect of the experience with equivalence discussions on adjacent pieces of EU financial legislation. In particular we would advocate an active transatlantic dialogue on equivalence to ensure maximum consistency between the EU and the US on CSDs. We cannot stress enough the importance of early dialogue, especially with US counterparts. However, this needs to focus on a shared understanding of the implementation of commonly agreed international standards, in this case those of CPSS-IOSCO. Common understanding of for instance prudential requirements is crucial to ensure mutual trust, which will in turn facilitate access between EU CSDs and third country firms.

Conduct of Business Rules

Article - 32

Genuine choice in terms of CSD services is dependent upon ease of access to those services, particularly if the access is to be required cross border. This has always been a problem area in the EU and was recognised as such in the Giovannini reports. At the practical level, CSD support for open messaging and reference data standards is crucial if access to CSD services on a cross border basis is to be enabled more easily. We therefore strongly support the focus on communication procedures in this article, and see it as essential that these provisions are taken forward in order to facilitate ease of access, client choice and interoperability.

Article 42

Given the critical nature of the services that are provided by CSDs, continuity of service is vital. We therefore support the aims of this article covering operational risk. Consistency with CPSS-IOSCO's approach is important here, and in particular we would point to the dependency a CSD may have on third party critical service providers (which is a strong feature of the CPSS-IOSCO recommendations). This article should be strengthened to include identification by CSDs of their critical service providers and the effective management of associated risks.



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