

From : DACSI (prepared by AHG CSDR Consultations 2015)

Subject : **Reply to the ESMA Consultation on Technical Advice under the CSDR version 2.0** (as submitted)

18 Feb 2015

What follows is the final text of DACSI's response to ESMA's Consultation Paper "Technical Advice under the CSD Regulation" (DACSI 14-2374).

1 What are your views on the proposed basis for the cash penalty calculation?

DACSI agrees with the proposed approach.

We consider that the concept of a reference price is the best imaginable way of taking into account the objectives of the penalty system. In particular, it provides the most effective and fair results where a chain of transactions is involved and parties in the middle of the chain are both to pay and to collect penalty amounts.

However, we note that populating and distributing reference prices daily will be a challenge. It is essential that reference prices are determined – either by sourcing or by calculation – uniquely and timely. Hence, the determination should take place centrally, i.e. by the issuer CSD of the relevant instrument. Any decentralised determination could lead to differing outcomes; the time needed for a solution of differences would be prohibitive.

We underline that portfolio transfers (transfers of positions with the same beneficial owner) have to be excluded from the penalty calculation: even when delivered through a chain of intermediaries, no other entity than the one who is essentially delivering and receiving the (set of) instruments could be harmed by any failure in the deliveries. Application of the penalty regime on portfolio transfers could – in case of failed deliveries – lead to enormous penalty amounts to be channelled through the chain without contributing to the objective of the regime, as no third parties can be adversely affected.

NB: the attribute "portfolio transfer" (PORT) is already widely used in the industry and a trigger for dedicated processing.

2 What are your views on the proposed approach regarding the categories of financial instruments and the penalty rates? In particular, do you consider that these penalty rates could dis-incentivise trading in small caps? Please provide evidence to support your views.

DACSI agrees with the proposed approach.

Although the chosen levels for the proportional penalty rates may be arbitrary and at least rough, we concur with the considerations used for defining the different instrument categories. Given these considerations, any rate level will be arbitrary, but the small number of categories and the relatively round numbers serve the purpose of simplicity quite well. In DACSI's opinion, any addition of granularity would be unnecessary, while in conflict with simplicity and not required by the deterrence concept.

No, we do not expect that these rates would dis-incentivise small cap trading, since in general trading in small caps is more often triggered by buy-and-hold strategies as compared to highly liquid large caps, and hence will be affected less by failed settlements and subsequent penalties.

3 What are your views on the proposed approach regarding the increase and reduction of the basic penalty amount?

DACSI completely agrees with the considerations in par. 58-59 and with the conclusion that no increase or reduction should be applied.

In par. 60, ESMA provides some examples of situations where the penalty could be reduced to zero. DACSI would like to express its support for this approach. However, DACSI would like to ask ESMA to provide clearer guidance on the exact cases where the penalty rate can be reduced to zero. A harmonised approach on this policy would exclude that different markets follow their own rules resulting in a non-level playing field in the EU and possibly in regulatory arbitrage.

4 What are your views on the proposed approach regarding the cash penalties in the context of chains of interdependent transactions?

DACSI fully supports this approach.

It is well noted that only intermediaries in the delivery chain of interdependent transactions are to be part of the penalty scheme; intermediaries who act as an agent in the trading phase only, are not to be affected.