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Response to the consultation on CSDs and on the harmonisation of certain aspects of securities settlement in the European Union

This is a joint response by the Swedish Ministry of Finance, the Swedish Financial Supervisory Authority and the Riksbank – henceforth Swedish Authorities – to the public consultation by the Commission on Central Securities Depositories (CSDs) and related issues.

Part I Appropriate regulatory framework for CSDs

1.1 Personal scope and exemptions

Q1. What is your opinion on a functional definition of CSDs?

Q2. What is your opinion on the scope of the possible legislation and providing for any exemptions (such as for central banks, government debt management offices, transfer agents for UCITS, registrars, account operators)?

First, and very generally, the Swedish Authorities call for the identification and adoption of a clear objective for the forthcoming legal act, in terms of benefit for end users (i.e. issuers and investors) as a guide for the process going forward. A clear objective will, among other things, aid in assessing individual provisions and contribute to possibly motivating amendments of other acts of law that would improve the efficiency and safety of the post-trade sector in Europe.

The Authorities support the functional approach, as outlined in the consultation paper. In the interest of legal certainty, the definition of services will need to be as clear as possible. We also support the proposed exemptions, *inter alia* for account operators as defined in the context of "direct holding systems". Account operators interface with account holders in relation to owner accounts maintained by the CSD, i.e. at the top tier of the book entry system, but should not themselves be considered

to perform core CSD services. The CSD is a singular entity performing central functions for the entire market, whereas account operators often perform additional functions as intermediaries.

1.3 Core CSD services

Q3. What is your opinion on the above description of the core functions of a CSD?

Q4. Which core functions should an entity perform at a minimum in order to be qualified as a CSD?

Q5. Should the definition of securities settlement systems be reviewed?

The core functions of a CSD appear to have been properly identified. In fact, it is hard to imagine a CSD not performing all three functions simultaneously. The central register for the market (notary function) should generally be a precondition for initial entries at the top tier of a book entry system (central safekeeping function), on the basis of which transfer orders are subsequently executed (settlement function). Thus, the core CSD functions seem to have a lot in common and we would not object if some of them were merged into one core service at the top tier of a book entry system.

Of the three core functions , the central safekeeping function seems to have a wider scope, extending beyond account provision into central administration of financial instruments, for which an exhaustive description seems to be lacking (the list of examples being preceded by "e.g.").

In relevant cases, it should be considered that CSDs in some direct holding systems – if not all – maintain owner accounts that are provided by law. The day-to-day operation of these accounts are shared with account operators, according to rules laid down by law. This means that the CSD, while being the account provider, does not have a contractual relationship with its account holders, whose rights are regulated by law (including access free of charge). In these cases, requirements imposed on CSDs may have to consider: (i) the possibly vast number of accounts and (ii) the absence of contractual agreements with account holders.

The provision of necessary services at the top tier of a book entry system may be considered as defining characteristics of a CSD. In principle, this would mean that the fulfilment of any of the core functions, as discussed, qualifies the service provider as a CSD. In practice, they should most often go together.

We do not see a need to review the basic definition of a securities settlement system (SSS) other than for specific reasons (cf. answer to questions 25 and 26). We consider that SFD currently provides for a system operator that is responsible for the operation of the system.

1.4 Ancillary CSD services

Q6. What is your opinion of the above description of ancillary services of a CSD? Is the list above comprehensive? Do you see particular issues as to including one or several of them?

CSDs have developed over a long time, under the auspices of national law, national supervision and oversight. Therefore, CSDs may be less harmonised than most financial institutions, while still performing their basic functions as market infrastructures in a fully satisfactory way also under conditions of market stress.

The first best-option is to not allow a CSD to provide bank-like services that give rise to credit (or liquidity) risks in the books of the CSD. However, this is not a rule without exceptions as there might be a room for credit services under certain circumstances (cf. so called international CSDs that are active mainly in the market for fixed income securities).

Ancillary CSD services need to be clearly defined for the purposes of allowing pass porting on the basis of national authorisation. On that note, we would agree to a definition based on a detailed list of ancillary services, as suggested in the Consultation Paper. However, there should still be opportunities for the provision of ancillary services nationally that does not necessarily involve an EU passport and, hence, are not enumerated in the regulation.

On a general level, ancillary services should have a clear connection with core services for which a CSD has been authorised. Any other condition would need to be complemented by prudential rules limiting the extent to which a CSD may enter into the provision of ancillary services that will put its ability to fulfil core CSD functions at risk. We do however have a preference for a low-risk regime, whereby a CSD will not be allowed to provide other services than those that have a clear connection with the core services for which it has been authorised, in view of their importance for securities markets.

2. Authorisation and ongoing supervision of CSDs

2.2 Domestic and non-domestic activities of a CSD

Q7. According to you, could the abovementioned cases impact a future regime of authorisation and supervision? Yes? No? No opinion? Please explain why. Are there other cases which could have an influence on a future regime of authorisation and supervision?

The Swedish Authorities agree that a certain threshold of externality will impact the regime of authorisation and supervision and will require the involvement of authorities from the Member States concerned. The involvement of other authorities is especially important in cases where the CSD provides services to financial market infrastructures, such as trading venues and CCPs. When it comes to access between CSDs, we believe that only interoperability arrangements should require the consent of authorities from other Member States.

As regards issuers or participants from other Member States, the involvement of other authorities should not be needed, unless a certain threshold of externality is reached. Therefore, this threshold would need to be clearly defined, preferably on level 2. Of course, this applies to CSDs with low risk models. For CSDs that provide banking-type services and extend credit on their own books, the involvement of the authorities responsible for the supervision of the three participants to whom the CSD has the largest exposures/credit extensions would be appropriate.

The Swedish Authorities are of the opinion that in cases with external impact, a college should be established (see EMIR article 14).

The reference to T2S in the last bullet point does not seem to be relevant, since a special college is being established for that purpose.

The Swedish Authorities would be in favour of an opt out regime (cf. response to question 15). This will not require the involvement of the host Member State in the authorisation process when it comes to core and ancillary services. However, a CSD providing issuer services in another Member State will most probably need to obtain the approval by the competent authority of the host Member State in order to secure compliance with corporate law.

2.3 Initial authorisation procedure

Q8. What other elements should be submitted as part of the initial application procedure by a CSD?

The elements suggested by the COM seem reasonable. We have one remark regarding the specification of financial instruments in the application. Clearly, the CSD needs to specify which financial instruments it intends to deal with, but this should not imply a need to submit a request for authorisation to the competent authority every time the CSD intends to deal with new financial instruments. This would be too burdensome for the CSD and would not be as justified as for a CCP (see EMIR article 11, extension of activities and services). Instead, a CSD should have a reporting obligation to the competent authority, every time it intends to deal with new financial instruments. The competent authority will then notify ESMA, who would list the financial instruments in the CSD register proposed in section 2.4.

Q9. According to you should the authorisation procedure of a CSD be distinct from the designation and notification procedure under Art. 10 of the SFD? Yes? No? No opinion? Please explain why.

No. The designation procedure is only applicable to CSDs who also apply for core service 3 and thus operate a SSS. The SFD has a very limited definition of a system. Thus the requirements for a system to become designated and notified to the COM are not very high. In Sweden, institutions that fulfil the more stringent requirements set out in Swedish law for settlement and CSDs, automatically fulfil the requirements set out in the SFD. An institution that fulfils the requirements set out in the regulation

and operates a SSS would automatically fulfil the requirements in the SFD, so the authorisation, designation and notification procedures could be dealt with in the same process, provided that the law of the Member State chosen by the participants is the same as the law governing the authorisation procedure.

2.4 CSD register and temporary grandfathering

Q10. What is your view on establishing a register for CSDs?

The Swedish Authorities welcome the establishment of a register for CSDs. A register will enhance transparency, especially with the migration of transfer orders to T2S and the establishment of links between CSDs to a greater extent than today.

Q11. What is your view on the above proposal for a temporary grandfathering rule for existing CSDs?

The Swedish Authorities support the proposal for a temporary grandfathering rule for existing CSDs. If designation and notification will be a requirement for CSDs that operate a SSS, then it needs to be clarified how to deal with systems that are not yet notified in case of the insolvency of a participant. A participant incurs a legal risk, especially in cases where a CSD with a designated and notified SSS has a link with a CSD with a non designated and notified SSS.

2.5 Capital requirements

Q12. According to you, does the above approach concerning capital requirements, suit the diversity of CSDs? Yes? No? No opinion? Please explain why.

Capital requirement should have a clear connection to risks. It is reasonable that a CSD has an appropriate minimum level of initial capital (equity). The capital for a specific CSD shall be decided taking into account the operational risks taken by the CSD. The capital shall at least be sufficient to ensure an orderly winding-down or restructuring of the activities over an appropriate period and that the CSD is adequately protected against other risks that are not already accounted for by specific capital requirement.

If bank-like ancillary services are allowed, e.g. granting of short-term credit and securities lending, the capital requirement should be closely linked to the risks inherited in the business. The method used to calculate the capital requirement cannot be seen in isolation but have to be decided taking into account other prudential requirements, such as maturity of the credits and similar conditions, limitation on exposures and provisions on risk management. Having said this, we do prefer capital requirements to be calculated taking into account the principles set up by the CPSS/IOSCO framework. If the CPSS/IOSCO framework is not considered adequate or complete, necessary adjustment should be made to the framework. However, we are not convinced that the capital requirements in Directive 2006/48/EC (CRD) are best suited to calculate capital requirements in this case, especially if credit is restricted to intraday credit etc.

2.6 Supervision

Q13. According to you, should the competent authorities have the above mentioned powers? Yes? No? No opinion? Please explain why.

In Sweden, the competent authority already has some of the above mentioned powers. Some proposals are adopted from EMIR, so they are not unfamiliar. The Swedish Authorities do not oppose those powers.

2.7 Licence

Q14. Would a special purpose banking license be appropriate for "banking type services"?

Q15. Which of these three passporting options would you support? Full passporting? Limited passporting? Opt out regime? Please explain why.

The Swedish Authorities consider it important that the regulatory framework will not be to the disadvantage of CSDs with a low-risk approach, *inter alia* regarding the extension of credit to participants. We do not wish to disallow ICSDs that extend credit to participants on their own books as an integral part of their business model. However, Member States should have the option to opt out, at their own discretion, from a widened use of credit services by CSDs in their own jurisdiction. We would therefore prefer the third alternative (opt out regime), provided that this would be compliant with the Treaty provisions on free movement of services and the right of establishment.

3. Access and interoperability

3.2 Access of market participants to CSDs

Q16. What is your opinion about granting a right for market participants to access the CSD of their choice?

The Swedish Authorities support the granting of such a right, presuming that the issuer CSD has a link (standard access) with the CSD chosen by the participant.

3.3 Access of issuers to CSDs

Q17. What is your opinion on the abolition of restrictions of access between issuers and CSDs?

The Swedish Authorities would in principle welcome such an initiative since an abolition would increase competition among CSDs. However, possible interconnections with corporate law will have to be considered.

Q18. According to you, should the removal of Barrier 9 be without prejudice to corporate law? Yes? No? No opinion? Please explain why.

Removal of barrier 9 should be without prejudice to corporate law. If the effectiveness of such a provision turns out to be limited, attention should be directed at possible amendments of corporate law, with due regard to the objective of the legislation (cf. answer to Q1 and Q2).

Q19. How could the integrity of an issue be ensured in the case of a split of an issue?

No views on this matter. We believe however that it would be appropriate with an analysis on the consequences on corporate and tax law in case of a split of an issue.

3.4 Access and interoperability between CSDs

Q20. What is your opinion on granting a CSD access rights to other CSDs and what should their scope be?

The Swedish Authorities support the proposal. We believe that standard access between CCPs should be sufficient in order to facilitate cross-border settlement. Interoperability is an advanced form of relationship that requires the CSDs to establish mutual solutions. Interoperability between CSDs is not as essential as interoperability between CCPs might be.

3.5 Access between CSDs and other market infrastructures

3.5.1 Access to CSDs by trading venues

Q21. What is your opinion on a CCP's right of access to a CSD?

CCPs should be granted the right to access a CSD as any other participant that meets the participation requirements. In accordance with ESCB-CESR recommendation 14, a CSD should have objective and publicly disclosed criteria for participation that permit fair and open access. Rules and requirements that restrict access should be aimed at controlling risk.

Q22. What is your opinion on access conditions by trading venues to CSDs? Should MiFID be complemented and clarified? Should requirements be introduced for access by MTFs and regulated markets to CSDs? Under what conditions?

Not only investment firms and operators of MTFs have the right to choose a settlement system of another Member State but also the operators of regulated markets (see article 46 MiFID). Nevertheless, the COM has proposed a provision regarding the rights for trading venues to access a CCP in EMIR rather than in MiFID. For consistency reasons, either MiFID should be amended and clarified or separate provisions on access rights be introduced in the respective regulation.

3.5.2 Access by CSDs to transaction feeds

Q23. According to you, should a CSD have a right to access transactions feeds? Yes? No? No opinion? Please explain why.

We believe that CSDs should have a right to access transaction feeds. The Code of Conduct refers to this right as a conditional right and the legislation should deal with it as such, i.e. require that certain conditions are met.

Q24. What kind of access rights would a CSD need to effectively compete with incumbent providers of CSD services? Should such access be defined in detail?

No views.

4. Prudential rules and other requirements for CSDs

4.2 Legal framework

Q25. Do you think that the legal framework applicable to the operations performed by CSDs needs to be further strengthened?

Q26. In particular should all settlement systems operated by CSDs be subject to an obligation of designation and notification?

The Settlement Finality Directive (SFD) does not only apply to systems set up by CSDs but also to other systems like payment systems and clearing systems. Any amendments of SFD should therefore be appropriate for all systems falling under that Directive or at least be applicable only to certain systems. If amendments are considered in order to strengthen financial stability for interoperability arrangements, an alternative could be set to have specific requirements in the legislative act (as proposed in section 3.4 of the consultation). Having said this, we believe that SFD may need to be amended/clarified in the following respects.

Amendments due to T2S
In the consultation paper the T2S project is described as an outsourcing of IT tasks, necessary for the performance of the settlement function. There is nevertheless uncertainty in the market and among central banks regarding where the securities dealt with by T2S are legally recorded and, accordingly, the law that will be applicable to them (compare Article 9(2) of the Settlement Finality Directive and Article 9 of the Financial Collateral Directive). The issue may be dealt with in the forthcoming proposal on Securities Law Directive. If not, we propose amendments to the SFD or another appropriate legal framework in order to clarify the situation.

Interoperability
We do not believe that it is necessary to amend the SFD in order to impose identical interoperability rules concerning the definition of the moment of entry into the system and the moment of "irrevocability". Another solution is to prescribe, as a prerequisite for interoperability, that the systems have identical interoperability rules concerning the definitions of the moment of "entry" into the systems or irrevocability. However, amending SFD could also be considered.

In this context we would also like to attract attention to the meaning of the term "interoperable systems" in the Settlement Finality Directive. It excludes access through for example participation in another CSD or links between for example a CSD and CCP or payment systems. Whether this solution is appropriate needs to be considered further.

Further amendments
All systems operated by a CSD should be subject to an obligation of designation and notification, in order to make the provisions in the Settlement Finality Directive fully applicable.

4.3 Securities lending to tackle pre-settlement risk

Q27. What do you think of the general elements of these requirements, particularly with respect to the obligation for CSDs to facilitate securities lending and the obligation of counterparties to securities loans to put in place adequate risk controls?

Experience from the Swedish market shows that securities lending and repo-facilities are effective remedies for settlement fails, without incurring risks on the CSD as those facilities do not involve the CSD as principal but are provided by intermediaries. We are therefore hesitant to a provision obliging the CSDs to provide such facilities.

4.4 Book entry form

Q28. What do you think about the requirement for issuers to pass their securities through a CSD into a book entry form? If such an obligation were considered, which securities should it concern? Only listed securities? All securities with an ISIN code? Only equities? Eligibility approach?

According to Swedish corporate law, it is for the issuer to decide whether to pass its securities through a CSD. An issuer wishing to do this must however do it in a book entry form. Issuers on exchanges or MTFs are required by the trading venue to issue their securities in a book-entry form. Our CSD has a wide range of issuers, including smaller companies that are not being traded anywhere. We are hesitant to an unconditional obligation for all issuers, irrespective of size, to pass their securities through a CSD in a book- entry form, unless it is their choice to do so, i.e. before listing on an exchange or an MTF.

We do not believe that there should be a restriction to specific securities. Instead, every issuer should be granted the right to access the CSD of its choice.

An eligibility approach may be burdensome and has not the same relevance as in EMIR.

Q29. What is your opinion with respect to grandfathering ?

Almost all securities processed by CSDs in the EU are entered into a book entry form. There are however two ways to book-enter a security, dematerialisation and

immobilisation. In order to facilitate cross-border settlement and competition among CSDs, the COM might consider a harmonisation of the book-entry form in the forthcoming SLD proposal.

4.5 Delivery versus payment (DVP

Q30. What do you think about the requirements above for DVP? Do you see any issues in respect of the different DVP models?

Q31. What are your particular views on the grandfathering principle coupled with the requirement for the introduction of a guarantee fund?

DVP is a useful settlement method for reducing settlement-, credit-, and liquidity risks and we agree that it is a sound minimum requirement. It is not clear, however, whether a specific settlement method should be prescribed in the legal framework. We therefore propose to let the legal requirement focus on risk levels rather than specific settlement methods. Requirements on the precise nature of the settlement could be entrusted to secondary legislation. This opens up for a somewhat more flexible regulation.

Grandfathering can be considered for those (not yet notified) systems with settlement methods that do not live up to the same low risk profile as DVP. In such a context, time limits for adapting the settlement method in order to achieve the minimum risk profile seem appropriate. Conditioning on precautionary measures, such as a guarantee fund, should be regarded as an exception and should be combined with an appropriate time limit unless there are strong reasons against such a time limit.

4.6 Settlement of the cash leg in central or in commercial bank money

Q32. What do you think about a preference of settlement in central bank money? Should such a preference be applied equally to all types of securities?

Q33. Do you think that the principles outlined above could be transposed in future legislation?

Q34. What is your opinion about the extent of the requirements that should be imposed when commercial bank money is used?

Central bank money should be used whenever practicable and feasible.

The outlined principles could provide a basis for future legislation.

Requirements to be imposed when commercial bank money is used, in addition to the outlined principles or made to clarify the outlined principles, should be entrusted to secondary legislation.

4.7 Reconciliation and protection of customers' securities

Q35. What do you think about the rules above?

Q36. Are further rules needed in order to ensure reconciliation and segregation?

Any account provider, including CSDs, should be required to reconcile their holdings with the upper-level intermediary or – as should be the norm – with the issuer in cases where the CSD is directly mandated by that person to maintain the register pursuant to [provision on core CSD services, notably the notary function].

A CSD should be required to segregate any securities it holds for itself from the securities it holds for its customers. Intermediaries will need to segregate, in their own books, securities held by their customers. The systems and procedures adopted by the CSD need to allow such segregation. It is doubtful whether further provisions on segregation are needed in the forthcoming legal act on CSDs, or whether that would be more effectively handled by other legal acts, such as MiFID.

4.8 Operational risk controls

Q37. Do you think that these six basic principles cover sufficiently operational risks?

Yes. The details should be left for technical standards.

4.9 Governance

Q38. What do you think about the eight principles above, particularly with respect to board composition and the need for a risk committee?

The enumerated governance arrangements do not mention the relationship between the CSD and its owners and affiliated companies. The group structure should be transparent and close links shall not be allowed to prevent effective supervision.

The Swedish Authorities are of the opinion that a CSD should be prohibited from providing other services than CSD services. If such a prohibition is not introduced, it is necessary that the competent authorities can require that that the CSD core and ancillary services are legally separated.

We prefer an open-ended regulation which to a larger extent is based on principles. The detailed regulation should be left to technical standards. When drafting the provision, this should be taken into account.

The board of a CSD should have independent board members. Article 25 of EMIR can serve as model.

There is no need to require that a CDS shall have a risk committee if it does not provide banking type services.

4.10 Outsourcing

Q39. According to you, should CSDs be subject to a principle of full responsibility and control on outsourced tasks? Yes? No? No opinion? Please explain why.

Yes, the Swedish Authorities believe that a CSD shall at all times be responsible and in full control of outsourced activities. A CSD must, even after the outsourcing, be able to meet legal and regulatory requirements and the outsourcing must not obstruct the competent authority from conducting an effective supervision. We suggest a provision similar to article 33 in EMIR.

Outsourcing of licensed operations or activities that have a natural connection with financial operations shall be conditioned and only be allowed if the CSD meets the requirements on outsourcing set out in the regulation. The competent authority would need to be notified prior to the outsourcing and should have the possibility to interfere if it deems the outsourcing inappropriate. When outsourcing other tasks, a notification to the competent authority prior to the outsourcing would suffice.

Q40. Should there be any other exemptions from the principle of responsibility and control of CSDs on outsourced tasks?

Given the multilateral character of T2S, CSDs will not be able to maintain full control over the outsourced tasks. An exemption from the general principle is therefore essential, in order to enable the CSDs to join T2S.

4.11 Financial risks directly incurred by CSDs

Q41. What is your opinion on the above prudential framework for risks directly incurred by CSDs?

Future legislation should contain provisions aiming at reducing risk. The principals on how to deal with liquidity and credit risks are balanced. It is important that the prudential framework for risk allows enough flexibility in order to allow co-ordination with other international initiatives. Details should be specified in technical standards building on for example CPSS/IOSCO´s principles.

4.12 Credit risk controls when CSDs act as facilitators

Q42. What do you think about the principles above?

When a CSD acts as facilitator, it should not take any credit risks on its own books, e.g. by guaranteeing a certain amount to the bank that extends the credit to the participant. Asset lending or extension of credit between a participant and credit provider should be viewed as a business agreement between the participant and the provider of credit. Capital requirement and collateral should therefore primarily be regulated through the legislative framework for that provider of credit. Requirements on the CSD should only be made in the presence of significant externalities with the potential to threaten a timely settlement. However, it is reasonable to require more from the CSD in the case of securities lending than credit since this is likely to involve

accounts administered by the CSD. When it comes to credit one cannot rule out that such credit is extended outside the account structure of the CSD. In the light of this view, the second and the sixth bullet points (collateralization and short term credit) are too strict. A CSD could act as a facilitator in many different ways. It should be entrusted to secondary legislation to ensure that settlement risk does not increase due to the extension of credit and securities lending by other parties than the CSD itself.

4.13 Price transparency and service unbundling

Q43. What do you think about including these elements of the Code in legislation?

For transparency reasons and in order to foster competition among CSDs, the Swedish Authorities support the inclusion of the above mentioned elements of the Code of Conduct in the regulation. We want however to highlight that the regulation should not be too detailed on this matter.

Part II: Harmonisation of certain aspects of securities settlement in the European Union

Q44. According to you, is the above described harmonisation of key post trade processes important for the smooth functioning of cross-border investment? Yes? No? No opinion? If yes, please provide some practical examples where the functioning of the internal market is hampered by absence of harmonisation of key post trading processes. If no, please explain your reasoning.

Q45. Do you identify any other possible area where harmonisation of securities processing would be beneficial?

No firm views at this point.

5. Settlement discipline

5.2 Definition of settlement fails

Q46. According to you, is a common definition of settlement fails in the EU needed? Yes? No? No opinion? Please explain why. If yes, what should be the key elements of a definition?

Settlement fails should be evident, once they occur (on the same day). We do not have a firm view on whether a common definition would be helpful. If data collection and targets for settlement efficiency would be introduced, a common definition might be beneficial.

5.3 Scope of a harmonised regime on settlement discipline

Q47. According to you, should future legislation promote measures to reduce settlement fails? Yes? No? No opinion? If yes, how could these measures look like? Who should be responsible for putting them in place? If no, please explain.

We would regard settlement discipline in the Swedish market as being generally good (recent figures indicating 98,5 % in the settlement of equity securities and 99,8 % in the settlement of fixed income securities). However, the introduction of a CCP for transactions in large cap stocks have increased the stakes, as a growing number of transactions are being centrally cleared before settlement. This means that a settlement fail involving cleared transactions would have more far-reaching consequences than settlement fails in the past.

Settlement discipline in the Swedish market is promoted by securities lending and repo facilities, in line with current market standards. We would not rule out that further measures to improve and strengthen settlement discipline would be appropriate in the new situation.

5.4 Ex ante measures for settlement discipline

Q48. What do you think about promoting and harmonising these ex-ante measures via legislation?

According to our experience, effective securities loan and repo facilities have contributed significantly to a good settlement discipline. The access by market participants to such facilities might be mandated by law, although effective solutions that are already in place should not be disallowed. Given the greater prevalence of CCPs, additional measures might be considered that addresses (also) centrally cleared transactions. We are not aware of specific problems related to short selling.

5.5 Ex post measures for settlement discipline

Q49. What do you think about promoting and harmonising these ex-post measures via legislation?

Rules on buy-in and cash compensation may be part of market practice, as may any penalties for failing to comply with the rules. Any rules by law should acknowledge that market-led solutions may be feasible and possibly sufficient. If regulatory measures are considered necessary, the scope should not be extended beyond securities. If it will be cheaper to fail in one system than another, this may affect the behaviour of participants.

6. Harmonisation of settlement periods

Q50. According to you, is there a need for the harmonisation of settlement periods? Yes? No? No opinion? Please explain why

Yes it might be a need for harmonization but not necessarily.

The Commission notes that *any* difference in settlement periods *is likely* to increase costs, complexity and operational risk. However this argument can apply to a lack of harmonization in many areas and is not unique for the length of settlement periods. The Swedish Authorities therefore believe that a more thorough analysis is needed to

motivate actions on settlement cycles at EU-level. Since the market situation may hinder CSDs to agree on the length of the settlement cycle, this would be an argument for a legislative initiative on settlement periods. In this context it should also be considered if harmonization will have the intended effect if the different CSDs (or SSS) have different definitions of "business day".

Q51. In what markets do you see the most urgent need for harmonisation? Please explain giving concrete examples

Shares, see also answer to question 54.

Q52. What should be the length of a harmonised period? Please explain your reasoning

If harmonization is intended, a starting point can be T+2. We should avoid full harmonization since that would prevent market participant from going below the stipulated settlement period. If full harmonization is intended, technical standards may be a better instrument.

Q53. What types of trading venues should be covered by a harmonisation? Please explain your reasoning

Regulated markets and other market platforms where shares are traded (natural to have more far reaching obligations applying to regulated markets).

Q54. What types of transactions should be covered by a harmonisation? Please explain your reasoning

It is probably most important to harmonize market conventions for equity securities, as the ownership is widely disseminated with the presence of also retail investors.

Q55. What would be an appropriate time span for markets to adapt to a change? Please explain

No views.

7. Sanctions

Q56. According to you, how should the principles examined in the communication on sanctions apply in the CSD and securities settlement environment?

We believe that the sanctioning regime described in the consultation can apply for CSD:s as well as for other authorized financial institutions.

Besides a sanction regime, a resolution regime for CSD:s (as well as for all other systemic important infrastructures) is highly desirable.