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27 April 2015

EBA Consultation Paper on Draft Technical Standards under the CSD Regulation ("CSDR")
Euroclear SA/NV response

This response covers the views of all CSDs within the Euroclear Group to the EBA RTS Consultation under the CSDR.

Euroclear is also a Board Member of ECSDA and chairs both its Public Policy Working Group and its Settlement Practice Working Group. As a consequence, Euroclear has been extremely closely involved in the production of ECSDA's consultation response, with which we are in full agreement. Our response should be read as a complement to that of ECSDA.

The response has been submitted to EBA in the appropriate template. This document includes four parts:

- Part I – Executive Summary
- Part II – Differences between the risk profile of CSDs and CCPs
- Part III – Responses to the EBA consultation questions and detailed comments on other elements of the consultation
- Part IV – Proposals for amendments to the EBA RTS

We are happy to provide the EBA Task Force with quantitative input in view of the EBA cost benefit analysis.

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PART I Executive Summary

1. Requirements for CSD banking providers are not well calibrated - with a sizeable impact on Euroclear Bank and the EU and global markets it serves

We are concerned that several of the EBA proposed standards for CSD banking providers are not well calibrated, and are therefore, disproportionate in their effects. This would have a sizeable impact on Euroclear CSDs, Euroclear Bank (EB) and other EU-based CSD banking service providers with unintended consequences for the markets. We strongly encourage EBA to revise some of the standards, as suggested in this response. We do not believe that the EBA proposals would result in a positive cost/benefit analysis for the EU and global markets and market infrastructures (see below).

The standards that would most negatively impact EB and the Euroclear CSDs are the following:

- The standard defining which "other financial resources" can be used to cover credit exposure does not allow CSD banking service providers to consider their capital as "financial resources". This is not in line with the CPMI/IOSCO Principles for Financial Market Infrastructures (PFMIs) - Principle 4 - paragraph 3.4.6. Recital 6 of CSDR Level 1 is explicit of the need to remain consistent with these global standards.
- The standards that define the eligibility of collateral include overly restrictive conditions which would reduce the collateral CSD banking service providers can accept from their borrowing participants. Moreover, the requirements on collateral haircuts are disproportionate and assume that current practices of CSD banking service providers are suboptimal (which is not demonstrated);
- The standards on "other financial resources" would have a detrimental impact on the Letter of Credit that covers exposures related to activity across the Bridge between EB and Clearstream Banking Luxembourg (CBL). The Letter of Credit would no longer qualify as a financial resource covering related credit exposure;
- Rules related to cash lending to pre-finance corporate action processing require CSD banking service providers to set conditions on paying and issuing agent with whom CSDs have no contractual relationship. A CSD banking service provider cannot control or change market practice in this area. These rules exceed the EBA CSDR mandate as, in this context, the EBA can only set rules for CSD banking service providers, not for all other market participants.
- The capital requirements for CSDs double count risks, and the calculation of business risk capital requirements has an inadequate basis, i.e. operating expenses.
- Rules for liquidity management are not totally in line with CSDR Level 1 and do not adequately differentiate between liquidity management and liquidity sources in a 'day to day' situation, compared to stress situations.
- The proposed capital surcharge for CSD banking service providers is based on an extreme, theoretical and unreal scenario.

Furthermore – and as on overarching comment - we believe that some EBA standards are based on a misunderstanding of the credit and liquidity risks incurred by the CSD banking service providers, and of the way they manage collateral. These misunderstandings are likely the result of the wrong assumption that CSD banking service providers incur similar credit and liquidity risk to CCPs and that they manage their collateral in the same way. The substantially different business and risk profiles of CSD banking service providers and CCPs (which we document in Part II) should be a sufficient reason for EBA to be able to deviate more from EMIR rules. We strongly urge EBA to revise some standards to make them more commensurate with CSD banking service providers' business.

If EBA proposed standards negatively impact CSD banking service providers, like EB and CBL, this will give rise to regulatory arbitrage within the EU and globally, and could lead to an increase, rather than a decrease, in systemic risks. Disproportionately strict rules imposed upon CSD banking service providers (which compete globally) will unavoidably lead to activity or participants leaving these EU-based infrastructures to the benefit of (EU or non-EU) commercial banks, that are not subject to the same strict CSDR rules. EBA standards would also weaken the international competitiveness of these market infrastructures leading to international business leaving the EU altogether, which cannot be the EU's objective in view of the Capital Markets Union. We strongly urge EBA to assess such wider market impact as part of its EBA impact assessment.

EBA standards should be more carefully balanced to ensure not to disrupt tested and successful risk management practices. The most important element that ensures the low risk of the CSD banking service providers is the limitation of the banking activities to a very narrow set of banking services that is solely supporting settlement and custody activity. This means that their banking risks (which are mainly intraday and without typical commercial bank maturity transformation) are already much lower than those of commercial banks or indeed CCPs.

EB has been an innovator and front-runner in the monitoring, measurement and management of intraday risks, even without regulatory requirements in these areas, but rather as a result of pressure from market participants that wanted to ensure an extremely low risk environment. EB has never had a credit loss, or liquidity problem, in more than 40 years, even when having dealt with sizeable participant defaults (Barings, Lehmans) or sovereign crises (Argentina, Greece). Any change to its practices would need to be carefully analysed.

2. We urge EBA to make a quantitative and qualitative cost benefit analysis of the proposed standards

In view of the above, we would urge EBA to complete its impact assessment and to assess wider market consequences. For example, we are concerned about the negative impact of the following elements:

- Market-wide impact of the new collateral rules (which would increase further the general market pressure on availability of High Quality Liquid Assets) or on the international business of EB. Overly strict requirements on CSD banking service providers will be an incentive for their participants to move out of the safe financial market infrastructure/CSD environment into a less regulated environment (within or outside of the EU).
- Impact of the rules on cash lending to pre-finance corporate actions and the need to have irrevocable guarantees from paying agents. This will reduce the attractiveness of the CSD banking service providers to international issuers as well as of their so-called Investor CSD activities (that cover more than 50 markets worldwide).

- Impact of the requirement to establish pre-arranged liquidity facilities for each settlement currency which is practically impossible to implement for smaller international currencies. This could force EB to reduce or stop its service offering in certain currencies and related markets.
- The proposed capital requirements will have sizeable impacts on CSDs and CSD banking service providers which has not yet been analysed by the EBA. Additional capital appears to be justified solely by the output of the new rules, not by an analysis of a weakness in existing models or any evidence of undercapitalisation in a business context. For example, there is no demonstration by the European Commission or EBA of a market failure that would warrant such a sizeable intervention.

We are ready to provide EBA quantitative input for its cost benefit analysis.

3. Implementation of the standards will require more time, or a delay to authorisation

IT adaptations to bring measurement and monitoring systems in line with the EBA requirements will require time to implement and will not be possible by end of 2015/2016 (as they will conflict with the implementation of requirements related to T2S, Settlement Discipline Regime, Recordkeeping and other elements of CSDR implementation). EBA should consider phasing in the requirements as we have proposed for the CSDR Recordkeeping and Settlement Discipline Regime. As mentioned above, some of these standards will have an impact on the wider market which indicates the need for a phased introduction. Implementation of some standards will require long-term negotiations (e.g. for potential pre-arranged funding arrangements).

4. Restrictive definition of "other equivalent financial resources" does not recognise the capital of a CSD banking service provider as a valid financial resource – this is against the basic logic of Basel/CRR rules, the PFMI and the capital surcharge.

The proposed standards are not in line with PFMIs which allow credit exposure to be covered by available capital[1]. The PFMI permits the CSD banking service providers to extend credit covered by their capital. We find the EBA proposal that excludes capital as other financial resource puzzling and contradictory to globally accepted capital standards. Capital is the best and ultimate support to cover any decrease of assets value as clearly stated in Basel III capital requirements.

Moreover, the capital surcharge for CSD banking service providers as proposed by EBA is defined exactly to cover those situations where collateral would not be sufficient or available to cover credit exposures.

The EB capital supports credit provision which is not collateralised to entities such as central banks, supranational institutions and very highly rated (A/AA rated) financial institutions which typically provide liquidity to the investment banks in the EB overnight settlement process. Not allowing EB to grants such credit extensions would mean that the credit needs of these investment banks would increase, which is not necessarily a result that would entail lower risk.

[1] Principle 4: 3.4.6. In order to manage the risk from a participant default, a payment system should consider the impact of participant defaults and robust techniques for managing collateral. A payment system should cover its current and, where they exist, potential future exposures to each participant fully with a high degree of confidence using collateral and other equivalent financial resources **(equity can be used after deduction of the amount dedicated to cover general business risk)**

Moreover, some central banks, supranational institutions and the European Stability Mechanism have restrictions which do not allow them to post collateral. EB will therefore, have no other choice than to remove their credit lines. We believe such measure would have a substantial market impact beyond the impact on CSD banking service providers themselves.

5. Collateral – even less liquid collateral - remains valid as credit risk mitigation; changes required to collateral haircut calculation are excessive without demonstrated weakness

We do not understand the EBA requirement for the average time to maturity of the banking service provider's portfolio not to exceed 2 years. We believe such a requirement is not necessary and inadequate for exposure incurred by CSD banking service providers. Restricting collateral in such a way could have serious consequences for the market (with possible stress on the limited set of highly liquid assets).

The proposed requirements on collateral and "other" collateral are too restrictive (e.g. with regard to the pre-arranged funding arrangements) which would mean that the universe of "other" collateral would in practice be empty.

It is very important for EB to be able to accept "other" collateral to support its international activities. For certain non-EU clients, not being able to accept government paper from lower rated countries (for example) would mean that our clients would have to increase their risk profile to hold eligible collateral, as they would have mismatched balance sheets at a currency level. They may not even be allowed to do this by their home regulator.

The requirements on collateral haircuts proposed by EBA would represent a significant change in the way EB calculates its haircuts, as it would have to "test" its calculated haircuts with external sources of haircut information. It would mean we would have to rely more on a third party's commercial haircuts, rather than our internal proven risk-averse haircuts. This would ultimately result in the CSD banking service providers using the risk principles of its service provider, rather than its own. We do not believe CSDR Level 1 gives EBA a mandate to overhaul the current system of haircuts which has proven its worth, as it has been tested several times (e.g. upon the default of Barings, Lehman, etc.). We would urge EBA to reconsider some of the requirements.

6. Stringent requirements on "other equivalent financial resources" put the workability of the Bridge at stake

The functioning of the interoperable link between EB and CBL (Bridge) could be put at risk if the current letter of credit issued by a syndicate of banks cannot be considered as "other equivalent financial resource". The condition requiring the members of the syndicate to put collateral aside means that EBA considers that the joint probability of default of EB (or CBL) and one or all of the syndicate commercial banks – which is very low - needs to be covered by another – third – level of protection, (i.e. collateral). We believe such level of protection is unnecessary, since it does not respond to an identified market failure that is covered and addressed in the CSDR Level 1.

7. **Proposed rules on income and redemption payments have impacts beyond CSD banking service providers, create an unlevel playing field for CSD banking service providers versus CSDs without a banking licence, and are not in line with objectives of the Capital Markets Union**

The requirement for irrevocable guarantees from paying agents seems to exceed the EBA mandate in the CSDR, as it has an impact on general market structure, and does not deal with credit and liquidity risk of CSD banking service providers themselves, but rather with practices of third parties not subject to CSDR.

CSD banking service providers cannot impose rules on issuing and paying agents with whom they have (and need) no contractual relationship. The EBA proposed standards therefore mean that they would no longer be able to pre-finance income and redemption proceeds for securities for which they act as so-called Issuer or Investor CSD. This will increase funding costs and liquidity risks for market participants, and lead to more settlement fails.

Moreover, the proposed rules will bring the CSD banking service providers at a competitive disadvantage when compared to CSDs without banking licence (which are not subject to these EBA standards) and with regard to non-EU CSDs, such as SIX and DTCC, which do not have such restrictive rules. CSDs do not know if the paying agent has been advancing income or redemption proceeds (and some will use commercial bank money providers).

EBA should consider the impact of this rule on the Commission's plans for an efficient EU Capital Markets Union as it would reduce attractiveness of EU CSDs for EU and non-EU issuers.

If EBA or the Commission believe that the practices of payment of income and redemption proceeds should be revised, it would need to be achieved through another legislative instrument that would cover issuers, their paying agents, all CSDs and the relevant intermediaries. Even in that case, such a law could only be applicable to EU entities and could not impose practices beyond the EU.

In addition, we believe that the condition (c) in Art 27 leads to a "triple" protection as it comes in addition to the need to collateralise the related cash lending.

8. **Capital requirements for CSDs - risks are double counted**

We completely support the ECSDA position on this topic and do not repeat the arguments here. We provide in this response some additional comments on capital required for restructuring and orderly-wind down.

9. **Liquidity risk: requirements for measurement and management of liquidity risk should be more proportionate**

EBA should note that EB has never in its history (not even in the aftermath of the Lehman default) needed to use liquidity contingency sources, as its day-to-day available liquidity has always proven sufficient. We therefore request EBA to keep the requirements realistic and proportionate:

- Requirements for measurement of intra-day liquidity needs should NOT include the total value of intraday credit lines. There is no link between credit lines granted and the CSD banking service provider's liquidity risk (but rather between actual credit usage and liquidity risk). We believe such rule may result from the misunderstanding mentioned above and illustrated in Part II.
- Requirements for management of liquidity and liquidity sources for smaller, less important currencies should be more proportionate.
- We do not understand why EBA has omitted "uncommitted cash correspondent credit lines" as liquidity source recognised by the BCBS recommendations. Clearly, such uncommitted credit lines need to be considered as available qualifying resources for intraday liquidity management.[2] We believe there may be a misunderstanding with EBA on the different tools used by EB to manage its "day-to-day" intraday liquidity (which includes uncommitted credit lines) and in times of stress (where EB does not count on these lines and ensures other sources, such as committed liquidity sources and collateral from the defaulting participant are available).

We believe EBA should make a clearer distinction between liquidity management and sources in day-to-day situations, and those in stress situation in line with CSDR Article 59 (4) (b) and (c).

10. Capital surcharge for CSDs banking service providers - based on extreme, theoretical and unreal scenario

We appreciate that EBA wants a simple calculation method for the capital surcharge. The FSB applied a simple additional % for Global SIFIs' capital adequacy. We are unclear why regulators did not adopt the same simple approach for CSD banking service providers.

We believe that the proposed capital surcharge calculation is not based on a plausible scenario as it assumes CSD banking service providers should have enough capital to cover a scenario whereby:

- The default of all participants takes place unexpectedly and exactly on the day and the hour/moment, at which point the aggregated exposure for each of the participants' peaks. It is likely that the CSD banking service provider will have anticipated the default of a participant and would have been able to reduce credit lines. Moreover, this also assumes that all efforts for recovery and resolution of a participant fail, and
- The market value of all collateral - on the day of the peak exposure – drops by 10% - on top of an already very conservative haircut. It is extremely unlikely that all available collateral would drop in value by 10% as there will likely be a flight to quality (e.g. to highly rated government debt) which may even increase in value.

We have other concerns with the calculation of the surcharge, for which we propose amendments in Part IV.

[2] As mentioned in the BCBS paper "Monitoring indicators for intraday liquidity management", April 2013, p10.

PART II Difference in risk profiles of CCPs and CSDs

We believe it is vital for EBA to re-assess the CSD banking service providers' business and risk profiles as it differs substantially from that of CCPs:

CCP	CSD banking service provider	Impact on EBA standards
CCPs become counterparty to every cleared transaction; incur direct exposure on ***all*** their members until a transaction is settled or a contract is ended.	CSDs are never a counterparty to a transaction; nor do they incur direct exposure on their participants. CSDs incur credit exposure on a participant ***only*** when a credit line is granted, collateral is available and the participant does not have sufficient cash in its account to settle an instruction.	CSDs (unlike CCPs) have more control on the credit risks they incur, as they grant uncommitted credit lines which can be cancelled or reduced at any time.
CCPs are not banks. Even if some have a banking licence, ***CCPs do not offer banking services;*** they do not accept cash deposits, nor do they provide cash lending. CCPs do not incur cash exposure like CSDs, but are exposed to their members as they are counterparty to a transaction. CCPs do not have a bank balance sheet they can use for liquidity management.	CSD banking service providers are banks; they accept cash deposits and provide cash lending. For example, when participant A buys securities for €100mn from participant B; participant A can use its credit line (i.e. go into overdraft), participant B will have a long cash balance as sales proceeds are received. In this case, there is no funding/liquidity gap in the books of the CSD. ***Not every credit extension granted by the CSD will lead to a liquidity gap***; provision of credit to some participants, does not mean that a CSD has a liquidity gap as it can have sufficient "internal" liquidity on its balance sheet coming from long cash balances from other participants. Moreover, even when credit is extended to one of the borrowing participant's accounts, this participant may have long balances in other cash accounts/currencies which could mean that overall there is no overdraft position for that participant.	CSDs perform typical bank asset and liability management, i.e. depending on a participant's short and long cash balances, CSD will manage liquidity needs with external liquidity sources. ***CSD external liquidity needs are much smaller, than the total amount of credit extensions granted.***
CCPs become owner of collateral posted by their members by title transfer (securities collateral is posted in a CCP securities account, cash collateral in a cash account at a commercial)	CSD banking service providers become the owner of collateral ***only*** upon default of a participant when collateral rights become enforceable	CSDs do not and cannot use participant collateral for their own liquidity management in day-to-day situations. ***For CSDs, liquidity of participant collateral is relevant in case of participant default only, i.e. in stress situations only.*** Even in stress events, CSDs have access to other liquidity sources than the participant's collateral. This is why it is more acceptable for a CSD to have a portion of less liquid collateral than for CCPs. The liquidity of the collateral is an input to the

		CSD liquidity stress test scenarios which ensures the CSD will have sufficient liquid sources in times of stress.
CCPs' members transfer securities or cash collateral (variation or initial margin) to the CCP securities account with a CSD or bank upon a margin call.	CSD participants keep their assets in custody with the CSD. They keep securities that can be used as collateral in a specific pledged account (i.e. on a pooled basis, and all types of collateral can be available in the account). Participants do not need to transfer collateral for each credit extension.	EBA should acknowledge that CSD participants do not "transfer" securities to the CSD and that securities in a pledged account are comingled, i.e. securities are not kept separately depending on their liquidity profile (art 19/20).
CCPs calculate and collateralise net exposure (novation and netting)	CSD banking service providers calculate gross exposure (i.e. when a participant buys securities and sells them later on during the same day, CSDs will not calculate the "net" exposure between the buy and sell, but will calculate the exposure gross, i.e. for the buy instruction only, not taking into account incoming funds from the subsequent sale).	CSD take a very prudent (and gross) approach in their measurement of exposures, which means they will require much bigger amounts of collateral. Hence the need to ensure that sufficient securities can be used as collateral.
CCPs operate in a much more intermediated environment: the number of GCMs is limited, hence EMIR rules on credit risk and collateral are only valid for the first layer (i.e. GCMs)	CSD banking service providers' customer base is much larger and diversified internationally, hence CSDR rules on credit and collateral apply to a much more diversified and less intermediated client base.	EBA should take into account the more diversified and international participant base of CSDs
Use of CCPs is mandated by EMIR	Use of CSDs for settlement, custody or collateral management, etc. is not mandated in CSDR or elsewhere. CSDR itself opens competition for issuers by allowing them to choose their CSD.	Too stringent rules could mean participants choose alternative providers for their settlement, custody and collateral management; those providers are generally not subject to same regulatory requirements (hence the CSDR discussion on "settlement internalisation") and may actually be located outside of the EU (where CSDR's settlement internalisation rules do not apply).

The different risk profiles of CSD banking service providers and CCPs should be a sufficient reason for EBA to be able to deviate from the approach taken in EMIR. There is no mandate in CSDR Level 1 that EMIR has to be taken as a basis for the CSDR standards in the area of capital requirements. Even where CSDR does refer to EMIR standards (credit and liquidity), CSDR expressly recognises that such an alignment only should be made "where appropriate". We have not seen any discussion in the EBA paper of how and why is it appropriate to assimilate CSDs to CCPs in some instances – in spite of their fundamentally different business models and risk profiles.

PART III Responses to consultation questions and detailed comments on other RTS articles

Articles 1 – 7

Please refer to the ECSDA comments, which we fully support

Article 8 – Capital requirements for winding-down or restructuring

In addition to the comments provided by ECSDA, we have the following comments:

It is unclear to us how the capital requirements for winding down or restructuring under these standards interact with the minimum requirement of own funds and eligible liabilities under BRRD, in case of CSDs with a banking license.

We do not believe that the MREL or bail-in tool under BRRD are drafted with CSDs in mind, given the specificities of the nature of CSDs and other special tools available and more appropriate for them. In the global context, it has been clarified in October 2014 by FSB and CPMI-IOSCO that CSDs with a banking license should not be part of the recovery and resolution framework for banks, but rather that of the CSDs. BRRD contains suggestion of separate regime for CSDs[3], however today CSDs with a banking license fall under the bank regime. Level II of CSDR should clarify this inconsistency with global rules.

Furthermore, European CSDs will be the first in the world to allocate capital to the resolution phase, ahead of any global FSB requirements. Therefore, the EU should defend consistency of these requirements at the global level and ensure that European CSDs do not suffer from a competitive disadvantage. The EU institutions should ensure that the capital requirement, including those for winding down or restructuring of CSDs, are part of the equivalence assessments for the CSDs willing to provide core services in the EU.

We therefore request EBA to ensure that the recovery of CSDs is covered only under CSDR (or future CSD specific legislation) and that CSDs are removed from the MREL and bail-in tool under BRRD. We refer to the recent consultation response Euroclear has submitted to EBA with regard to MREL.

Please also note our proposed amendments related to Annex 1.

Article 9 – Capital surcharge resulting from the provision of intra-day credit

Question 3: What are the operational or practical impediments to the implementation of the proposed methodology for the calculation of the capital surcharge? Do you envisage any amendment to the proposed methodology that might lead to a better measurement and management of those risks?

[3] For example, the FSB Key attributes for effective resolution framework states in Annex I dedicated to the resolution of FMIs and FMI participants the following: "2.1. FMIs that are systemically important should, irrespective of their licensing status (for example, FMIs licensed as banks), be subject to a resolution regime that applies the Key Attributes in a manner appropriate to the specific characteristics of the type of FMI in question and its critical role in financial markets. The resolution regime should include the features that are relevant to the specific types of FMI covered by the scope of that regime."

We appreciate that EBA wants a simple measure for the capital surcharge. However, we have reservations on the adequacy and proportionality of the proposed measure for the following reasons:

- The proposal represents a double-counting of the risks, i.e. intraday "peak exposure" will result in a certain amount of "end of day" risk. The latter attracts capital requirements under CRR in any case. As proposed, the surcharge needs to be added on top which means that the capital charge for end-of-day exposure would be included twice in the capital figures.
- The EBA assumes that the default of all participants takes place unexpectedly and exactly on the day and the hour/moment, at which the aggregated exposure for each of the participants peaks (which is totally unrealistic). It is likely that the CSD banking service provider will have anticipated the default of a participant and has been able to reduce credit lines. Moreover, this also assume that all efforts for recovery and resolution of all participants fail.
- As most collateral accepted by the CSD banking service provider will be highly liquid collateral with minimum credit and market risk, a drop of 10% in the valuation of the collateral (on top of the conservative haircut taken into account by the CSD) is a purely theoretical scenario. We even believe that the market value of the highest quality collateral may actually increase rather than decrease due to the likely flight to quality. In addition, if EBA would allow a CSD to use proprietary haircuts, this scenario would penalise a CSD using a conservative haircuts methodology (the higher the collateral haircuts, the bigger will be the impact of a 10% drop). We therefore propose not to use proprietary haircuts, but to use the haircuts as defined in Regulation (EU) No 575/2013.
- The Financial Collateral Comprehensive method of Regulation (EU) No 575/2013, proposes haircuts for different types of collateral and time to maturities, assuming a daily mark-to-market, a daily re-margining and a 10-business day holding period (article 224). As the EBA technical requirements require the collateral to be liquidated on day 1, another 10% haircut for a holding period of 1 day across the different residual maturities, is excessive.
- The proposal to determine one day of peak exposure for a calendar year will make the capital surcharge very volatile from one year to another and difficult to predict.
- There is a clear overlap between Pillar I and Pillar II. EB's economic capital for credit risk already considers intraday credit exposure. In addition, a capital stress test buffer is added to cover several scenarios. Putting a capital surcharge under Pillar I will reduce the relevancy of Pillar II. Pillar II is more constraining than Pillar I for CSD banking service providers.
- The formula that calculates the capital requirements for the internal based rating approach (article 153 in the CRR) is calibrated for long term credit exposures and not meant to be applied on intra-day (very short term) exposures. We are in favour of a adapting the formula for short term maturities.

We therefore propose to amend the calculation of the capital surcharge as follows:

- Compute the surcharge based on the average of the five largest peak exposures in the preceding calendar year (to reduce volatility of the capital figure),
- Remove from the calculation the end-of-day exposures, which are already subject to standard CRR charges,
- Use the same haircuts as applicable in regulation (EU) No 575/2013. This would ensure that CSD banking service providers use the same haircuts for the surcharge as for their end of day CRR capital requirements and would also ensure consistency between CSD banking service providers,

- Amend the drop in market value to 5% which is more reasonable.

As an alternative, EBA could still consider the simple % capital add-on approach as adopted by FSB for Global SIFIs.

Article 11 – General provisions on credit risk management framework

Art 11 (4) requires monthly review by the "risk committees" of a report relating to the measurement of credit risk. Under the CSDR ESMA Standards, we understand the risk committee to be a Board committee chaired by a person that is independent from the CSD's executive management. This is an example of a situation where the involvement of an internal committee would be more appropriate.

This problem arises in various parts of the standards, we therefore propose to clarify in a recital that "risk committees" may be a Board or an internal committee depending on the circumstances and the governance structure of the CCS-banking service provider.

Article 12 – Measurement of intraday credit risk

- Art 12 requires intraday credit risk measurement for each settlement currency. In a prudential context, we do not see why the credit measurement would need to take place by currency as the credit exposure and the credit limit are all expressed one currency and the necessary FX conversion takes place automatically based on FX rates updated daily.
- Art 12 (a) requires that measurement should be separated for each of the banking ancillary services set out in Section C of CSDR Annex. This is not in line with the way CSD banking service providers operate: they will measure, monitor and manage credit exposures ***from all services in an integrated manner***. The services listed in Section C of CSDR do not correspond to separate business lines of the CSD banking service providers. ***This comment is valid for all of the following articles***.
- Art 12 requires anticipation of peak exposure. While EB defines credit limits, anticipation of usage is not possible in practice, as exposure depends on the client activity in the CSD and the time by which settlements are processed and settled. In addition, we do not understand why such anticipation would be necessary: the CSD would have decided on a credit facility that is commensurate with the credit quality of the client and with its activity (but not its possible peak activity). We therefore propose to make it clear that the relevant requirement is to analyse ex post the data which the tools have recorded.
- Art 12 (b) requires breaking-down the measurement by type of collateral (Art 19, Art 20(1) and Art 20(2)). As explained below under Art 18, such break down is inconsistent with the way collateralisation happens (i.e. through a pooled concept in a pledged account). We propose to remove this breakdown as based on erroneous understanding of the collateralisation practices of CSDs (see also Part II for a differentiation between the practices of CSDs and CCPs in this area).

Art 13 – Measurement of overnight credit exposures

- Art 13 requires that measurement be done for each of the banking ancillary services set out in Section C of CSDR Annex. See comment on Art 12 (a).

Article 14 - Monitoring intraday credit exposure

- Art 14 (a) (b) requires that measurement should be separated for each of the banking ancillary services set out in Section C of CSDR Annex. See comment on Art 12 (a).
- Building such monitoring systems requires considerable IT investments. EB is currently already implementing significant improvements to the monitoring systems, but these systems would not yet include all requirements from the EBA proposed standards. Further update of the systems will still be needed but will not be possible in 2016 (due to conflicting resources requirements, e.g. on T2S)
- Art 14 (b) refers to recordkeeping of credit exposures. We believe such requirement should be proportionate and propose that only data on peak intraday exposures be kept.
- Art 14 (c) the breakdown of counterparties does not correspond to the way CSDs categorise their counterparties. We would prefer a less descriptive list, knowing we have to record intraday exposures on all types of counterparties.
- Art 14 (e) refers to "each settlement currency". See our comment on Art 12.

Question 4: To what extent do CSD-banking service providers have the capability to have a real-time view on their positions with their cash correspondents, based on compulsory information provided by those cash correspondents?

CSD banking service providers will endeavour to have real-time views on positions with cash correspondents. We note however that not all cash correspondents offer such real-time data exchange, and that we may not always have sufficient market power to impose this on our service providers. We therefore request EBA for a proportionate application of this principle.

Article 15 – Monitoring overnight credit risk

- Art 15 requires that monitoring be done for each of the banking ancillary services set out in Section C of CSDR Annex. See comment on Art 12 (a).

Article 16 – Management of intraday credit risk

- Point (c) should be aligned with the wording in CSDR itself and simply refer to "borrowing participants".

Article 17 – Credit limits

- Art 17 (c) requires that credit limits be set for each of the banking ancillary services set out in Section C of CSDR Annex. See comment on Art 12 (a).
- Art 17 (d) should refer to the ***aggregate*** level of available liquid resources.
- Art 17 (e) (ii) is not necessary: if the value of the collateral provided by a borrowing participant decreases, there is no need to reduce or withdraw the credit lines: the borrowing participant can only use its credit line up to the amount of the available collateral. We suggest to adapt the wording accordingly.

Article 18 – General

Question 5: What might be the practical, legal or operational impediments to the methodology set out in this Sub-section?

- Art 18 (1) refers to "collateral is in compliance with pre-arranged funding arrangements as referred to in point (i) of Art 59 (4)". This seems to assume that there should be a pre-arranged funding arrangement for all collateral. *This assumption is not in line with CSDR Art 59(4) points (d) and (e) which do not indicate that pre-arranged funding arrangements are the only possible route to obtain liquidity.* We believe this request stems from the misunderstanding of the role participant collateral plays in the liquidity management of the CSD banking service provider (see Part II).
- Art 18 (1) (a) refers to the need to segregate the collateral from other securities of the borrowing participant. EB takes collateral from participants using a security financial collateral arrangement (pledge structure) in the meaning of the Financial Collateral Directive. The pledged securities are held in one or more separately identified pledged accounts of the participant within the books of the CSD-banking service provider and thus segregated from other accounts of the participant.

  All securities in a pledged account are subject to the pledge and the securities credited to the account can change until an event of default occurs. This is a characteristic of a floating pledge/charge. In case of excess securities, the collateral taker may select which securities to retain and liquidate (up to the amount of the secured obligation), and which ones to release to the participant. The above way of collateralisation is also desirable as it allows the CSD banking service provider to benefit from additional protection when clients are over-collateralised (i.e. when their credit usage is below the collateral value of assets available in the pledged account).

- To ensure consistency with the Financial Collateral Directive, we propose to clarify that the segregation must take place where the relevant account is held (e.g. with the CSD banking service provider itself) because this is where the right to the collateral is created, i.e. not at the level of any other intermediary
- Art 18 (1) (b). We understand and agree with EBA that CSDs should prefer collateral as defined in Art 19 over collateral defined in Art 20. However, in line with the above explanation, a client that agrees to pledge securities held in a pledged account will legally pledge as collateral ALL securities kept in that account, i.e.:
  - Securities that qualify as collateral according to Art 19
  - Securities that quality as collateral according to Art 20
  - Other securities: even if they do not qualify as collateral and have no collateral value, because they are credited to the pledged account, the CSD nevertheless has the possibility to liquidate or monetise these securities.
  - Upon default of the client, the CSD has the right to enforce its security interest against ALL securities in the account (obviously only up to the level of the exposure). We would like to stress that it is <u>absolutely necessary</u> to give the CSD banking service provider flexibility to decide in which priority it will liquidate or monetise the assets as it will need to take into account the market conditions at that moment.
  - The "pledge" arrangement has proven to be a very efficient and safe way for CSDs managing the risks of the operator ensuring settlement efficiency in the settlement system because of the built-in

    - collateral substitution possibilities within the account. The CSD will therefore not "segregate" in the pledged account those securities that qualify as collateral according to Art 19 from other securities. The CSD will not manage these securities in Art 19 or Art 20 "buckets".
    - The pledged account is a basket of collateral, and the content of the basket will change according to the participant's settlement activity, provided collateral of sufficient value to cover the credit extended remains credited to the account at all times.
- For the above reasons, we would propose to amend the language "securities collected as collateral" into "securities provided as collateral".
- We also propose language to amend Art 18 to reflect the above practice, including a link to Article 36, i.e. the need to include the liquidity aspects of the collateral liquidity in the liquidity stress testing.
- We also note that CSDR level 1 does not require EBA to indicate that high quality liquid assets should be used in priority over other collateral.
- Art 18 (d): requirement to monitor on a near real-time basis the credit quality, market liquidity and price volatility of each security is unrealistic and disproportionate. These characteristics of collateral do not change so often that a near real-time monitoring would be required. Moreover, frequent updating of prices would entail a higher risk of pro-cyclicality. We would therefore propose a requirement to monitor on a daily basis and if required more frequently.

Article 19 – Highly liquid collateral with minimum credit and liquidity risk

Generic comment related to Art 19, 20, 24: These articles include a condition (b) with regard to the currency of the collateral or other equivalent financial resources, i.e. that the collateral is to be denominated in "a currency in which the CSD banking service provider settles transactions in a securities settlement system, within the limit of the collateral required to cover the CSD banking service provider's exposures in that currency". We do not believe that the last part of the condition is proportional and needed: it seems to assume that EB can only accept collateral in the currency of the exposure. That would be very constraining. EB does take into account FX risk in its collateral haircut calculation to deal with currency mismatch between collateral and exposure (also included in Art 22 on Haircuts). We propose to drop all instances of the above condition.

Our comments related to article 19:

- As indicated in our comments in Part II, we believe there are sufficient elements of difference between CSD banking service providers and CCPs that should allow EBA to deviate from the EMIR requirements with regard to collateral posted to a CCP. As indicated, EBA should take into account that participant collateral is NOT used in the CSD banking service provider's day-to-day liquidity management, and that –even in stress situations – CSD banking service providers will have access to other sources of liquidity than participant collateral. This will allow them to bridge potential liquidity gaps until the realisation of the collateral.
- To make the rules more adequate in a CSD environment, we propose:
    - In Art 19 (1) (a) (iii): add a reference to Article 118 of Regulation (EU) No 575/2013 (referring to the EU, IMF, BIS, EFSF, ESM)
    - Remove Art 19 (1) (c) which includes a requirement for the average time to maturity of the banking service provider's portfolio not to exceed 2 years. We believe such requirement is not necessary and

inadequate for exposure incurred by CSD banking service providers. There is no mandate to EBA to copy the EMIR rules. Restricting collateral in such way could have serious consequences on the market (with possible stress on this limited set of high liquid assets). We would urge EBA to conduct a specific impact assessment on the introduction of this requirement for the CSD environment; the major part of government debt securities has a time to maturity above 2 years (as governments are incentivised by current low interest rates to undertake long term borrowing). We propose to drop the requirement.

- Clarify condition Art 19 (2) (h) (iii): this condition would imply that the CSD banking service provider cannot accept securities issued by entities that are agent banks or cash correspondents. This basically means that the CSD cannot accept any securities issued by major financial institutions. We fail to see the rationale for this requirement which will have significant impact on the eligible collateral for CSDs
- Art 19 (g) requires prices to be publicly available. This unduly restricts the collateral and e.g. some instruments such as commercial paper and certificates of deposit which can well represent good quality collateral.
- Art 19 (h) should be aligned with CSDR Art 59 (4) (e) which refers to collateral that can be liquidated promptly.
- Finally, the text should be aligned with the spirit of CSDR article 59(3) and (4) which refer to "<u>each</u> securities settlement system". It would therefore be appropriate to refer to "<u>**a**</u> securities settlement system" in articles 19(1)(d) and 19(2)(c)(ii) of the RTS.

Article 20 – Other collateral

- A right of use is a specific legal right recognized by the Financial Collateral Directive. Therefore we recommend to clarify that article 20(1) relates to "other types of collateral that may be <u>accepted</u> by a CSD-banking service provider".
- As currently drafted, Art 20 requirements are too strict for CSD banking service providers to have any securities that would qualify as "other collateral". As indicated before, the possibility to accept such "other collateral" is particularly important in view on non-EU clients that do not have (or which have to acquire) any assets that would follow the EU definition of high quality liquid assets (as defined in Art 19). If we would not be able to accept such other collateral, some of the international business of EB would be at risk (with business moving to entities not subject to CSDR rules inside or outside of the EU).
- It is very important for EB to be able to accept "other" collateral to support its international activities. For certain non-EU clients, not being able to accept government paper from lower rated countries (for example) would mean that our clients would have to increase their risk profile to hold eligible collateral, as they would have mismatched balance sheets at a currency level. They may not even be allowed to do this by their home regulator.
- To make the rule more adequate and practical, we propose to:
    - Remove from Art 20 (1) (d) the reference to the pre-arranged funding arrangement that provide for same-day liquidation of the instruments. As indicated above, in case the other collateral needs to be monetised or liquidated, the CSD banking service provider will need to ensure that it has other liquidity sources to bridge the time gap between the default of the client and the timing of the monetisation or liquidation of collateral. Moreover, as condition in Art 20 (1) (b) already required

that the collateral be ESCB-eligible, the CSD banking provider will use this route to monetise its assets (i.e. it does not need pre-arranged funding arrangements on top).

- o In Art 20 (2) (c), amend the rule such that it is sufficient for the CSD banking service provider can to have EITHER of (i) or (ii), i.e. not a combination of both conditions which have the same objective.

Article 21 – Collateral valuation

In Art 21 (2) (a) (b) (c), we do not understand the requirement for collateral valuation on a real-time or near-real time basis. This requirement is disproportionate and not practical to implement. For example, T2S provides limited possibilities for managing client collateral (e.g. EB can feed T2S only once a day and before 19.00). As most collateral will consist of fixed income securities, the price fluctuations between the two valuations will generally be limited.

Moreover, the collateral haircut as defined in Art 22 is sufficiently conservative to take into account any changes in market value that could occur in the time between two collateral valuations. We therefore propose to remove the reference to real-time and near-real-time basis and propose daily re-valuations at least.

Article 22 - Haircuts

The requirements proposed by EBA represent a significant change in the way EB calculates its haircuts at present as it has to "test" its calculated haircuts with external sources of haircut information. It would mean we have to rely more on a third party commercial haircuts over our internal proven risk-averse haircuts. This would ultimately result in the CSD banking service providers using the risk principles of external providers rather than its own.

We propose the following:

- In Art 22 (2) (b) should be deleted as it is disproportionate. For example, it would have the perverse effect that if the CSD banking service provider has one liquidity provider which applies particularly conservative haircuts – and potentially for a relatively small part of the liquidity funding plan – this would oblige the use of that haircut for the entire collateral portfolio.
- In Art 22 (2) (a) and (b), if the CSD banking service provider does not have or need pre-arranged funding arrangements with a financial institution or central bank, it does not need to establish such arrangement for the sole purpose of determining the haircut.
- In Art 22 (2) (c) the collateral will not be "liquidated" with the central bank but can be "monetised", i.e. used to generate liquidity.
- In Art 22 (4) on elements to be taken into account for calculation of the haircut, we believe that some of the elements are impractical to take into account, e.g. the bid/ask spread may not always be available.
- In Art 22 (4) point (h) on wrong-way risk "due to correlation between the participant's creditworthiness and the collateral posted" makes the haircut dependent on the client that posts the collateral. We strongly believe that a haircut should only be defined with regard to the collateral's characteristics and that any elements related to the creditworthiness of the client should be dealt with in the acceptance criteria of the CSD and the way it sets its credit limit. Point (h) would mean e.g. that the haircut for an AAA-rated

government bond would differ depending on the credit quality of the borrowing participant. We urge EBA to drop point (h).

- We do not understand Art 22 (4) point (i) "characteristics of collateral as "other" collateral". This requirement is in overlap with regard to the other elements of Art 22 (4) as "other collateral" may in any case attract higher haircuts because of points (a) to (g). We believe that EBA should drop point (i) as it is redundant.
- In Art 22 (7) refers to the fact that haircuts should avoid pro-cyclicality. It is unclear to us how this can be achieved as the elements in Art 22 (2) and (4) may all lead to haircuts being increased if market conditions deteriorate which seems to imply some form of pro-cyclicality. We urge EBA to provide more clarity on this aspect.

Article 23 – collateral concentration limits

- Art 23 (3) (e) – we propose to delete "settlement currency" as the settlement currency is not related to the collateral.
- Art 23 (3) (i) – we propose to delete "all borrowing participants" as such limit would assume that the all borrowing participants would default at the same time and all participant collateral would need to be liquidated at the same time which is unrealistic.
- Art 23 (4) (b) – we propose to delete the reference to an internal assessment of the level of credit risk of a financial instrument or issuer. It is unnecessary and practically impossible for a CSD banking service provider to make an internal assessment of all issuers or financial instruments (of which there are several hundreds of thousands).
- Art 23 (5) – the concentration limit of 10% is relevant only when compared to exposure of a particular borrowing participant, not at collateral portfolio level (as the latter would assume that all participant default at the same time and all collateral has to be liquidated at the same time).
- Art 23 (5) (c) – we propose to refer to a commercial entity, to exclude the case whereby the entities covered under (a) or (b) would be part of a state-owned group.
- Art 23 (7) – we propose to delete the latter part of the last sentence as this element is disproportionate and not realistic to implement. We do not see how we would be able to identify undertakings that are essential for the issuer's business.

Article 24 – Other equivalent financial resources

Question 6: What are the practical impediments of the implementation of this Article (Art. 24)?

As Art 24 is currently drafted, we have two major concerns which will have significant impact:

- The capital of the CSD banking service provider is not considered as an equivalent financial resource, and
- It will have a major impact on the Letter of Credit covering exposure over the Bridge, i.e. the interoperable link between EB and CBL.

In spite of the explicit mention in CSDR recital of the need to remain consistent with global standards, the rules in article 24 are not in line with the PFMIs and such significant impact was not a policy goal in the CSDR level 1.

Capital not counted as equivalent financial resource

- The EBA proposal that excludes capital as other financial resource is not in line with the CPMI/IOSCO Principles for Financial Market Infrastructures (PFMIs) - Principle 4 - paragraph 3.4.6.) and contrary to the basic concept of capital requirements underlying Basel capital requirements. Recital 6 of CSDR Level 1 is explicit of the need to remain consistent with global standards. Capital is the best and ultimate support to cover any decrease of assets value. Moreover, the capital surcharge for CSD banking service providers as proposed by EBA is being defined exactly to cover those situations where collateral would not be sufficient or available to cover credit exposures.
- The entities that currently receive credit that is not collateralised but covered by EB capital are typically central banks, supranational institutions and very highly rated (A /AA rated) financial institutions. They provide liquidity to investment banks in the EB overnight settlement process.
- The impact of the EBA standard is that these clients will need to ensure they collateralise their credit line. For some central banks and supra-nationals (including the European Stability Mechanism) this will be challenging as they are often by law not permitted to put up their assets as collateral. The result therefore, will be that EB will no longer be able to provide credit to those entities - which means that the credit needs of investment banks will increase which cannot be the policy objective.
- We therefore propose that EBA allows the CSD banking service provide to use capital as an equivalent financial recourse in line with the PFMIs.

Impact on the Letter of Credit for the Bridge

- Art 24 (2) (a) limits the amount of a commercial bank guarantee to cases whereby the settlement value is below 1% of the settlement value of the SSS. Settlement values are not an adequate proxy to limit the use of a Letter of Credit as the underlying credit risk is not directly related to settlement values. Any metric would need to be looking at credit exposures.
- Art 24 (2) (h) requires such commercial bank guarantee to be backed by collateral by the provider of the guarantee. This basically means that EBA does not accept the validity of commercial guarantees as credit risk mitigation. The Bridge Letter of Credit is underwritten by a consortium of high credit worthy credit institutions which each subscribe for a limited amount. We are unaware about concerns being raised by the European Commission, Council and European Parliament on this aspect.
- Art 24 (2) (h) (iii): requirements to include the CSD Management Body (i.e. Board) are excessive and not proportionate. We propose to amend and refer to risk committee.
- Art 24 (2) (i) refers to the need for the letter of credit to be honoured within one day. We believe this condition is not realistic. Instead, the CSD banking service provider should ensure that it has sufficient other liquidity arrangements to bridge the gap until the letter of credit is honoured.

These elements are not proportionate and will have significant impact on the cost and/or efficiency of the Bridge which is often praised as the only model of CSD interoperability in the EU, with proven efficiency over more than 30 years. We do not believe EBA can decide on such a major change to existing market practice based on its CSDR Level 1mandate.

Drafting issues

- The objective of paragraphs (2)(d) and (3)(c) of Art 24 is to ensure legal certainty in relation to guarantees. Unfortunately, the drafting does not only address matters of law, but also matters of fact which are outside the control of the CSD-banking service provider. Contractually, the CSD-banking service provider will be able to ensure that the guarantee is expressed to be irrevocable and unconditional, and it can conduct the necessary due diligence to obtain comfort under the relevant law that the guarantee is valid and enforceable in accordance its terms (standard legal due diligence). We have proposed changes to reflect this.

Article 27 – Cash lending to pre-finance corporate actions

We agree with EBA's proposals in Art 27 (a) and (b). However, we believe a minor amendment is required to ensure that point (a) is consistent with Subsection 4.

We have several concerns in relation to point (c),

- We believe this condition exceeds the mandate from Level 1 as this condition has an impact on market practices which are not related to the CSD banking service providers which cannot oblige paying agents to issue irrevocable intraday guarantees. Unless there is legislation issued to force commercial banks acting as paying or issuing agent to provide data on which payments are advanced or credited upon receipt by them, CSD banking providers will not have the information necessary to be compliant. If EBA or the Commission believe that the general market practices related to payment of income and redemption proceeds should be revised, it would need to be achieved through another legislative instrument that would cover issuers, their paying agents, all CSDs and the relevant intermediaries.
- We do not understand why this condition is needed on top of condition (b); if the exposure is in any case covered by collateral or other equivalent financial resources. In practice, this will therefore mean that EB will no longer be able to pre-finance income and redemption proceeds which will increase funding costs in the market, and increase settlement fails.
- The proposed rules will bring the CSD banking service providers to a competitive disadvantage when compared to CSDs without banking licence (which are not subject to these EBA standards) and with regard to non-EU CSDs that may not be subject to such restrictive rules. CSDs do not know if the paying agent has been advancing income or redemption proceeds (and some will use commercial bank money providers). The impact of this rule would be to reduce attractiveness for EU and non-EU issuers of issuance into an EU CSD; hence this would go against the Commission's plan for creation of an efficient EU Capital Markets Union.

In addition, we believe that the condition (c) in Art 27 leads to a requirement for "triple" protection as it comes on top of to the need to collateralise the related cash lending.

Article 28 – Reporting of credit risk

In our view, the drafting of paragraph 3 goes beyond the scope of article 28(1) because it refers to non-compliance with **any** requirement of the RTS. As drafted, it would subject the CSD-banking services provider to an unreasonable duty of self-incrimination, even more so as there are no qualifications to limit the scope to material (future) breaches and reasonable expectations about future compliance. We believe the text should be amended to clarify its link with paragraphs (1) and (2).

Article 31 – Measurement of intraday liquidity risks

- Art 31 (1) (b) - A CSD banking service provider is not in a position to anticipate intraday timing of flows. Most in- and out-flows are not time dependent (except for some specific time critical payments) as there is only a commitment to pay with good value date.
- Art 31 (2) (b) (v) deviates from the BCBS requirements and is therefore inconsistent with Recital 6 of the CSDR itself: EBA has removed from available liquid resources the uncommitted lines of credit which are used in a day-to-day situation by CSD banking service providers. We do not understand why EBA would deprive CSD banking service providers of an existing liquidity source. EBA should be aware that EB has never needed to use any of its liquidity contingency resources in its history (not even in the aftermath of the Lehman default). In other words, the uncommitted lines of credit have always proven to be a sufficient liquidity resources. In stress scenarios, the CSD banking service providers may indeed need to turn to other liquidity sources (see below).
- Art 31 (2) (b) - EBA should foresee the auto-collateralisation mechanism under T2S as a liquidity source.
- Art 31 2) (c) (i) and (ii) are unclear and should be removed as there is no link between settlement volumes and liquidity needs.
- Art 31 (2) (d) - EBA proposes to include in the calculation of the liquidity need the total value of intraday credit lines extended to participants. This is not a correct method of assessing liquidity risk as there is no link between the amount of the credit lines granted to participants and the CSD banking service provider's liquidity needs. It is the use of the credit lines that should be taken into account and which is already taken into account in Art 31 (2) (a). We believe (d) should be deleted as in duplication with (a). Moreover, Article 17 (d) makes a reference to the need to take into account liquidity aspects when defining credit limits.

Article 33 – Monitoring of intraday liquidity risks

Recordkeeping requirements for intraday should be more proportionate and require data to be kept at regular relevant intervals.

Article 35 – Managing liquidity risks

We believe that this, and the following, articles require revision to ensure that management of day-to-day liquidity is treated separately from management of liquidity in stress situations. The current drafting mixes the two. Making a clear distinction between the two situations would greatly benefit readability and compliance. We have proposed which paragraphs should be moved in order to obtain the above result.

As mentioned earlier, we note that CSDR article 59(5) only mandates alignment with EMIR level 2 standards "where appropriate".

- There is some confusion about liquidity stress tests mentioned under this article and the stress tests scenarios mentioned under Art 37. This is why we propose to move several paragraphs into Article 37.

- Art 35 (11): This standard seems to assume that the CSD banking service provider only has liquid assets provided as collateral by its borrowing participants as liquidity sources. This is not the case and therefore ignores the fact that CSD banking service providers have other liquid resources to cover their intraday needs (see below).
- We are concerned that EBA does not make a clear distinction between the CSD's own liquid assets and collateral received from participants; securities received as collateral from participants in the form of a pledge still belong to the participants until, and unless, the collateral right is enforced. Article 35(13) refers to the governance arrangements for liquid resources which, according to article 36 includes participant collateral. However, we do not see how the separation of assets discussed in paragraph (13)(a) could be performed for participant collateral.

Question 7: To what extent do CSD-banking service providers hold their intraday liquidity risk buffers independently to other liquidity risk buffers, such as the Liquidity Coverage Ratio (LCR)? If this is not currently done, are there any obstacles to ensuring this? Can CSD-banking service providers estimate the intraday buffer assets required to meet Article 35 compared to the assets that they currently hold that would qualify as eligible liquid assets under this Regulation beyond the minimum LCR standard?

We are not sure we understand this question and would like to discuss with EBA.

The assets EB holds to satisfy the LCR are its own assets. EBA seems to assume that EB would use HQLA provided by participants as collateral to fulfil its CRR requirements on LCR. This is not the case. Participant assets held in pledged accounts continue to be owned by participants. It is only upon enforcement of the collateral right, i.e. in case of default of the participant that EB can enforce its rights over the collateral assets.

Unlike commercial banks, EB does not perform maturity transformation: both its assets and liabilities are very short term, generally intraday. Therefore, with regard to CRR - LCR, EB only needs a limited amount of HQLA, i.e. to cover the difference between the 75% of the cash inflows and the cash outflows. Without the 75% limit on the cash inflows, EB would not have any liquidity gap and hence not need to keep HQLA. The HQLA that EB holds for CRR purposes <u>does not come from the collateral posted to it by borrowing participants</u>. The EB treasury will seek to obtain sufficient HQLA by e.g. entering in reverse repos for EB's own account or investing EB's capital into HQLA securities (as per CSDR Art 46).

As noted before, EBA also seems to assume that collateral provided by participants would be the main source of liquidity with regard to intraday liquidity risk. This is not the case. The below table shows an extract of the EB Bank CPSS/IOSCO disclosure framework report (extract from 2015 version which is in preparation). It explains the liquidity sources used by EB.

Categorization of liquid resources

EB relies on different liquidity resources both for liquidity risks arising from day-to-day operations and in case of contingency. Four classes of liquidity resources are used:

- committed liquidity resources
- APS collateral

- highly reliable liquidity resources and
- uncommitted liquidity resources.

Committed liquidity sources

- **Investment book:** EB has an investment book invested in ESCB-eligible securities, which are pledged to NBB to obtain liquidity.
- **Treasury book:** EB has a treasury book partially invested in ESCB-eligible securities, which are pledged at NBB to obtain liquidity.
- **ECB eligible securities**: securities received in reverse tri party repos can be pledged at NBB as of Q3 2015
- **Bilateral standby facilities:** Granted by commercial banks based on bilateral contracts foreseeing that these amounts should be provided same-day to EB upon simple request.
- **Backstop facility:** Multicurrency contingency liquidity facility provided by a syndicate of banks.
- **Committed FX swap facilities:** EB has a committed swap facility that could be used to convert liquidity available in one currency into another.

Appropriation of Pledged Securities (APS)

For participants that are top credit users in EB, an arrangement has been set up allowing EB after such participant has been put into default to immediately appropriate the participant's pledged securities.

Highly reliable liquidity sources

Participants' "core" cash balances: Participants leave long cash positions on their accounts, which can be used as an operational liquidity source by EB. These long cash positions could (at least partially) be considered as working cash balances for securities settlement in the books of EB.

Uncommitted liquidity sources

- **"Non-core" participants' long cash balances:** Participants long cash positions that are not considered as liquid resources.
- **Intraday line cash correspondents (CACO):** EB's cash correspondents provide EB with intraday credit facilities that are uncommitted and undisclosed.
- **Intraday credit lines with other commercial banks (non-cash correspondents):** credit lines provided by commercial banks that are not linked to daily processing of pay-in and out flows
- **Settlement agents' operational lines:** for cross-border settlement in some local markets, EB installs liquidity/collateral arrangements with settlement agents (e.g. Denmark, France, Germany, and Italy).
- **Unsecured and secured Borrowing capacity:** EB has treasury relationships with several market counterparts worldwide from which it might borrow in case of need.
- **FX Swap:** (see above, but uncommitted).

Article 36 – Qualifying liquid resources

This article deviates from the BCBS requirement and Recital 6 of CSDR. EBA has removed from available liquid resources the uncommitted lines of credit which are used in a day-to-day situation by CSD banking service providers. As noted above, those lines are a very valid source of day-to-day intraday liquidity.

The article should not limit the possible qualifying liquid resources and allow the use of other resources such as the ones includes in PFMI 7.

Article 36(e) refers to collateral eligible for pledging to a central bank. The reference to pledging means that collateral granted via other techniques, like title transfer, would not qualify. The reference should say "… eligible as collateral with a central bank …".

Article 37 – Stress testing liquid financial resources

Art 37 (1): a CSD shall determine and test the sufficiency of its liquidity resources at a currency level by regular and rigorous stress testing. There is a need to define the frequency of performing these stress tests. Also, there should be a level of materiality to perform a stress test in a specific currency; we propose that the CSD banking service provider can obtain an exemption from this requirements for currencies with immaterial volumes.

Article 38 – Unforeseen and potentially uncovered liquidity shortfalls

Here also, we propose this rule allows the CSD banking service provider to obtain an exemption for currencies with immaterial volumes. This would make the rule more proportionate and permit a risk-based approach.

Article 39 – Arrangements for the timely liquidation of collateral or investment using prearranged funding

Art 39 (3) – the CSD banking service provider shall consider as a candidate financial institution only those that have at least access to credit from the central bank issuing the currency of the prearranged funding arrangements. Here also, we propose this rule allows the CSD banking service provider to obtain an exemption for currencies with immaterial volumes. This would make the rule more proportionate and permit a risk-based approach.

Article 39(12):

- As mentioned under Article 20, a right of "use" is a specific legal right recognized by the Financial Collateral Directive. Therefore, we recommend that Article 39(12) does not use this terminology.
- 12(b): as in other instances, the EBA text seems to make a confusion between CSD's own assets (i.e. proprietary assets that the CSD may post as collateral, for instance to secure credit lines CSD receives from liquidity providers) and collateral that the CSD "receives" (i.e. collateral posted by clients, for instance to secure credit lines clients receive from the CSD).
- It should be the responsibility of the CSD banking service provider to ensure that the collateral which it accepts in the books of a third party settlement bank is segregated from unencumbered assets (cf also our comments under Article 18 about segregation).
- 12(c): Finally, no arrangement with a third party can give absolute guarantees to prevent losses (partially because the third party is not party to the collateral agreement), but the CSD banking service provider can, via its due diligence, ensure that the collateral provided to it is subject to adequate asset protection.

Article 40 - reporting of liquidity risk

In our view, the drafting of paragraph 3 goes beyond the scope of article 40(1) because it refers to non-compliance with **any** requirement of the RTS. As drafted, it would subject the CSD-banking services provider to an unreasonable duty of self-incrimination, even more so as there are no qualifications to limit the scope to material (future) breaches and reasonable expectations about future compliance. We believe the text should be amended accordingly.

Annex I – Winding down or restructuring scenarios

- We would like to better understand EBA's reasoning. EBA lists scenarios that would threaten the viability of the CSD but does not refer to the CSD recovery planning (which is also an obligation under CSDR). We strongly believe these scenarios should not be disconnected from the recovery plan. There should also not be a need for different scenarios for recovery/restructuring/orderly wind down plans. The same scenarios may be addressed by recovery options (including options involving restructuring) or lead to an orderly wind down (if recovery fails, but the CSD is not yet in resolution).

- Winding down: for national CSDs, as the functions that the CSD fulfils have to be fulfilled and as market practices in the EU are not yet sufficiently advanced to allow for any EU CSD to take over seamlessly the basic functions of any other CSD for any securities, "orderly wind down" of the CSD would probably imply selling off either the CSD in its entirety or some business lines. Where this is the case, estimating the time needed to find a buyer is unknown. In particular, in a business loss situation (which is one of the scenarios underpinning the need for an orderly wind-down plan), this may not be attractive for any prospective buyers.
- The requirements are too prescriptive ("shall include all the following scenarios" and should be phrased in a way similar to the EBA RTS for recovery plan scenarios. CSDs should be required to consider such scenario, but not obliged to include them in the plan if they are not appropriate (e.g. adverse movements in the price of assets would not lead to major impacts). They should also be allowed to include any other scenarios that would threaten their viability.

PART IV – Proposals for amendments to the EBA RTS

Recital to add:

Proper governance of a CSD-banking service provider's credit and liquidity risks is essential to meet the objectives of this Delegated Regulation. It is essential that the right risks are assessed by the right governance body. References in this document to "risk committee" should be understood as references to either a board risk committee or an internal committee entrusted with responsibility for assessing risk matters, whichever of the two is most appropriate taking into account the subject at stake and the overall governance of the entity.

TITLE I

Capital requirements for all CSDs referred to in Article 47 of Regulation (EU) No 909/2014

Articles 1 – 8 please refer to ECSDA response

Please note our comments on Annex 1

TITLE II

Capital surcharge for CSDs with a banking licence and designated credit institutions, as referred to in Article 54 of Regulation (EU) No 909/2014

Article 9

Capital surcharge resulting from the provision of intra-day credit

1. For the purposes of calculating the additional capital surcharge related to intraday exposures, as referred to in point (d) of Article 54(3) of Regulation (EU) No 909/2014, and in point (e) of Article 54(4) of that Regulation, a CSD authorised in accordance with point (a) of Article 54(2) of Regulation (EU) No 909/2014 to provide banking-type ancillary services and a credit institution designated by a CSD to provide banking-type ancillary services in accordance with point (b) of Article 54(2) of Regulation (EU) No 909/2014 ('CSD-banking service provider') shall apply the following steps in sequence:
   (a) it shall identify, over the most recent calendar year, the ***five*** date***s*** with the highest intraday credit exposure ('peak exposure***s***') resulting from providing the services set out in Section C of Annex 1 of Regulation 909/2014;
   (b) it shall assume that all the collateral collected in relation to the peak exposures, after the application of the haircuts ***of the Financial Collateral Simple or Financial Collateral Comprehensive method of Regulation (EU) No 575/2013 for collateral defined according to Articles 19 and 20*** loses ***~~10~~ 5***% of its market value;
   (c) it shall deduct from the peak exposures the end of day exposure on that same day ("adjusted peak exposure");

(d) it shall calculate for ~~***this***~~ ***these adjusted*** peak exposure***s*** the own funds requirements for credit risk in accordance with paragraph 2 assuming that those exposures are end-ofthe-day exposures ~~***(‘capital surcharge’)***~~.

(e) ***It shall take the average of these five own fund requirements (“capital surcharge”)*** For the calculation of the capital surcharge referred to in paragraph 1, institutions shall apply one of the following approaches:

i the Standardised Approach for credit risk referred to in Part Three, Title II, Chapter 2 of Regulation (EU) No 575/2013, where they do not have permission to use the IRB approach;

ii the IRB approach and the requirements of Part Three, Title II, Chapter 3 of Regulation (EU) No 575/2013, where they have permission to use the IRB approach.

3. The outstanding amount of the ***adjusted*** peak exposure as referred to in paragraph 1 shall be considered an exposure value in the meaning of Article 111 of Regulation (EU) No 575/2013 for the purpose of paragraph 2(a) and an exposure value in the meaning of Article 166 of that regulation for the purpose of paragraph 2(b). Relevant requirements of Part Three, Title II, Chapter 4 of Regulation (EU) No 575/2013 apply accordingly.

TITLE III

Prudential requirements applicable to credit institutions or CSDs authorised to provide banking-type ancillary services, as referred to in Article 59(3) of Regulation (EU) No 909/2014

Article 10, 11 – No comments

Sub-section 1

Measurement of Credit Risks

Article 12

Measurement of intraday credit risk

For the purposes of measurement of intraday credit risk as referred to in point (a) of Article 11(1), a CSD-banking service provider shall measure intraday credit risk exposures and ~~***anticipate***~~ ***analyse*** peak intraday credit exposures by way of operational and analytical tools that identify and measure intraday credit exposures on an ongoing basis, and which record, in particular, all of the following metrics for each ***borrowing participant*** ~~***counterparty***~~ ~~***and per each settlement currency***~~:

(a) peak and average intraday credit exposures for ~~***each***~~ ***the*** banking-type ancillary service***s*** set out in Section C of the Annex to Regulation (EU) No 909/2014;

(b) peak and average intraday credit exposure per borrowing participant, and further breakdown of credit exposures covered by:

(i) ~~***highly liquid***~~ collateral ~~***with minimal market and credit risk***~~ as referred to in Article 19; ***; and***

(ii) ~~***highly liquid collateral as referred to in***~~ Article 20 ***(1)***

(iii) ~~***other collateral as referred to in Article 20(2);***~~

(iv) other equivalent financial resources as referred to in Article ~~***25***~~ ***24***;

(c) peak and average intraday credit exposure to other counterparties and, if secured, further breakdown of intraday credit exposures covered by:

(i) ~~***highly liquid***~~ collateral ~~***with minimal market and credit risk as***~~ referred to in Article 19***; and***

(ii) ~~***highly liquid collateral as referred to in***~~ Article 20~~***(1);***~~

(iii) ~~***other collateral as referred to in Article 20(2);***~~

(iv) other equivalent financial resources as referred to in Article ~~***25***~~ ***24***.

Article 13

Measurement of overnight credit exposures

For the purposes of measuring overnight credit exposures as referred to in point (a) of Article 11(1), a CSD-banking service provider shall measure the overnight credit exposures for ~~**each**~~ ***the*** banking-type ancillary service***s*** set out in Section C of the Annex to Regulation (EU) No 909/2014 by recording on a daily basis, at the end of the day, the outstanding overnight credit exposure from the previous day.

Sub-section 2

Monitoring Credit Risks

Article 14

Monitoring intraday credit exposures

For the purposes of monitoring intraday credit risk as referred to in point (b) of Article 11(1), a CSD- banking service provider shall, in particular:

(a) monitor, through an automatic reporting system, the intraday credit exposures related to the service***s*** referred to in Section C of Annex of Regulation (EU) No 909/2014;

(b) maintain for a period of at least ten years a record, of the ***peak*** intraday credit exposures ~~***for each banking-type ancillary service referred to in Section C of the Annex of Regulation (EU) No 909/2014;***~~

(c) record the intraday credit ~~***risks***~~ ***exposures*** stemming from each entity on which intraday credit exposures are incurred, including ***where relevant***:

(i) settlement banks;

(ii) payment systems;

(iii) securities settlement systems;

(iv) *nostro* agents;

(v) custodian banks;

(vi) participants to the securities settlement system operated by a CSD, at entity and group levels;

(vii) CSDs with interoperable links.

(d) fully describe how the credit risk management framework takes into account the interdependencies and the multiple relationships that a CSD-banking service provider may have with each of the entities referred to in point (c).

(e) specify, for each counterparty, ***~~and for each settlement currency,~~*** how the CSDbanking service provider monitors the concentration of its intraday credit exposures, including its exposures to both of the following entities:

(i) entities listed in point (c);

(ii) entities of the same group as the entities listed in point (c);

(f) specify how the CSD-banking service provider assesses the adequacy of the haircuts applied to the collateral collected;

(g) specify how the CSD-banking service provider monitors the collateral coverage of the credit exposures and the coverage of credit exposures with other equivalent financial resources.

Article 15

Monitoring overnight credit ~~risk~~ ***exposures***

For the purposes of monitoring overnight credit ***~~risk~~*** ***exposures*** as referred to in point (b) of Article 11(1), a CSD-banking service provider shall, in relation to the overnight credit exposures and for ***~~each~~ the*** banking-type ancillary service***s*** referred to in Section C of the Annex of Regulation (EU) No 909/2014:

(a) maintain a record with all the information referred to in Article 14 and with the same level of granularity as required therein, with regards to the overnight credit exposures;

(b) record the information referred to in point (a) on a daily basis;

(c) keep the records referred to in point (a) for a period of at least ten years.

Sub-section 3

Management of Intraday Credit Risks

Article 16

General requirements for the management of intraday credit risk

For the purposes of management of intraday credit risk as referred to in point (c) of Article 11(1), a CSD-banking service provider shall:

(a) specify how it assesses the design and operation of its credit risk management framework relating to all the activities listed in Section C of the Annex of Regulation (EU) No 909/2014;

(b) undertake the assessment referred to in point (a) at least annually;

(c) grant only uncommitted credit lines to the borrowing participants ***~~of the securities settlement system operated by the CSD~~***.

Article 17

Credit limits

For the purposes of managing intraday credit risk as referred to in point (c) of Article 11(1), and where setting the credit limits to an individual borrowing participant at the group level, a CSD-banking service provider shall:

(a) assess the creditworthiness of the borrowing participant based on a methodology that does not rely fully on external opinions;

(b) verify the compliance of collateral and other equivalent financial resources provided by a participant to cover intraday credit lines, with the requirements of Articles 18 and 24, respectively;

(c) ***~~assess the credit limits to a borrowing participant based on the multiple relationships that the CSD-banking service provider has with the borrowing participant on which the credit exposures are incurred, such as where the CSDbanking service provider provides more than one ancillary services among those referred to in Section C of the Annex of Regulation (EU) No 909/2014 to the same participant;~~***

(d) take into account the ***aggregate*** level of available qualifying liquid resources in accordance with Article 36;

(e) review the credit limits to a borrowing participant with the view to ensuring both of the following:

   (i) where the creditworthiness of a borrowing participant decreases, that the credit lines are withdrawn or credit limits are reduced ;

   (ii) where the value of collateral provided by a borrowing participant decreases, that the credit ***~~lines are withdrawn or credit limits are~~ availability is*** reduced

(f) review the credit lines granted to borrowing participants at least annually based on their actual usage of credit.

Sub-section 4

Collateral and other equivalent financial resources

Article 18

General

1. For the purpose of measuring, monitoring and managing its collateral, as referred to in points (c) and (d) of Article 59(3) of Regulation (EU) No 909/2014, ***~~and in order to ensure that the collateral is in compliance with prearranged funding arrangements as referred to in point (i) of Article 59(4) of that Regulation,~~*** a CSD-banking service provider shall, in particular:

(a) maintain the ***assets posted as*** collateral ***in accordance with the requirements of Articles 19 and 20*** ***~~referred to in point (c) of Article 59(3) of Regulation (EU) No 909/2014,~~*** segregated ***in a different account ("pledged account")*** from the other securities of the borrowing participant. ***The CSD must ensure adequate segregation of participant collateral from participants' other securities at the level of the relevant account as referred to in the Financial Collateral Directive***

(b) ***take into account the liquidity of collateral referred to in Articles 19 and 20 in accordance with Article 36*** ***~~accept collateral that is highly liquid with minimal credit and market risk as referred to in Article 19, or in accordance with point (d) of Article 59(3) of Regulation (EU) No 909/2014, accept other types of collateral in specific situations, provided that both of the following conditions are met:~~***

(i) ***~~all the securities in the account of the borrowing participant that meet the requirements of Article 19, have already been collected as collateral;~~***

(ii) ***~~all the securities in the account of the borrowing participant that meet the requirements of Article 19 and Article 20, have already been collected as collateral;~~***

(c) ***~~ensure that:~~***

(i) ***~~in the situations referred to in point (i) of paragraph (b), only securities referred to in Article 20(1) can be collected as collateral;~~***

(ii) ***~~in the situations referred to in point (ii) of paragraph (b), only securities referred to in Article 20(2) can be collected as collateral and within the limits of available qualifying liquid resources referred to in Article 33 with the view to meeting the minimum liquid resource requirement referred to in Article 33(2);~~***

(d) monitor on ***~~near real-time~~ on a daily*** basis the credit quality, market liquidity and price volatility of each security collected as collateral, in accordance with Article 21;

(d) specify methodologies related to the haircuts applied to the collateral value, in accordance with Article 22;

(e) ensure that the collateral remains sufficiently diversified to allow its liquidation within the periods referred to in Articles 19 and 20 without a significant market impact, in accordance with Article 23.

2. For the purpose of measuring, monitoring and managing its other equivalent financial resources, as referred to in point (c) of Article 59(3) of Regulation (EU) No 909/2014, a CSD-banking service provider shall comply with the requirements of Article 24.

Article 19

Highly liquid collateral with minimum credit and market risk

1. For the purposes of point (b) of Article 18(1), financial instruments shall be considered as highly liquid collateral bearing minimum credit and market risk, where they are debt instruments that meet all of the following conditions:

(a) they are issued or explicitly guaranteed by one of the following:

(i) a government;

(ii) a central bank;

(iii) a multilateral development bank among those referred to in Article 117 of Regulation (EU) No 575/2013;

(iv) ~~***the European Financial Stability Facility or the European Stability Mechanism***~~ ***Institutions referred to in Article 118 of Regulation (EU No 575/2013)***;

(b) the CSD ***banking service provider*** can demonstrate that they have low credit and market risk based upon its own internal assessment carried out employing a defined and objective methodology that does not fully rely on external opinions and that takes into consideration the country risk of the particular country where the issuer is established;

(c) ~~***the average time-to-maturity of the banking service provider's portfolio does not exceed two years;***~~

(d) they are denominated in one of the following currencies:

(i) a currency the risks of which the CSD-banking service provider is able to manage;

(ii) a currency in which transactions are settled by the CSD-banking service provider in ~~***the***~~ ***a*** securities settlement system~~***, within the limit of the collateral received in that currency***~~;

(e) they are freely transferable without any legal constraint or third party claims that impair liquidation;

(f) they have one of the following:

(i) an active outright sale or repurchase agreement market, with a diverse group of buyers and sellers, including under stressed conditions and to which the CSD-banking service provider has reliable access;

(ii) they can be liquidated by the CSD-banking service provider through a prearranged funding arrangement as referred to in point (e) of Article 59(4) of Regulation (EU) No 909/2014 and Article 37;

(g) ~~***price data on these instruments are publicly available on close to a real time basis;***~~

(h) they can liquidated ***promptly*** ~~***on a same-day basis***~~.

2. For the purpose of point (b) of Article 18, transferable securities and money market instruments shall be considered as highly liquid collateral bearing minimum credit and market risk, where all of the following conditions are met:

(a) the financial instruments have been issued by an issuer that has low credit risk based on an adequate internal assessment by the CSD-banking service provider, employing a defined and objective methodology that does not rely fully on external opinions and that takes into consideration the risk arising from the establishment of the issuer in a particular country;

(b) the financial instruments have a low market risk based on an adequate internal assessment by the CSD-banking service provider, employing a defined and objective methodology that does not rely fully on external opinions; (c) they are denominated in one of the following currencies:

   (i) a currency the risk of which the CSD-banking service provider is able to manage;

   (ii) a currency in which the CSD-banking service provider settles transactions in ***~~the~~*** ***a*** securities settlement system, ***~~within the limit of the collateral required to cover the CSD-banking service provider's exposures in that currency;~~***

(d) they are freely transferable and without any legal constraint or third party claims that impair liquidation;

(e) they have one of the following:

   (i) an active outright sale or repurchase agreement market, with a diverse group of buyers and sellers, to which the CSD-banking service provider can demonstrate reliable access, including under stressed conditions;

   (ii) they can be liquidated by the CSD-banking service provider through a prearranged funding arrangement as referred to in point (e) of Article 59(4) of Regulation (EU) No 909/2014 and Article 39;

(f) they can liquidated ***promptly*** ***~~on a same-day basis~~***;

(g) ***~~price data on these instruments are publicly available on a close to real-time basis;~~***

(h) they are not issued by any of the following:

   (i) the participant providing the collateral, or by an entity that is part of the same group as the participant, except in the case of a covered bond and only where the assets backing that bond are appropriately segregated within a robust legal framework and satisfy the requirements set out in this Sub-section;

   (ii) a CSD-banking service provider or an entity that is part of the same group as a CSD-banking service provider;

   (iii) ***~~an entity~~*** ***a non-financial entity*** whose business involves providing services critical to the functioning of the CSD-banking service provider, unless that entity is an EEA central bank or a central bank that issues a currency in which the CSD-banking service provider has exposures;

(iv) they are not otherwise subject to significant wrong-way risk.

Article 20

Other collateral

1. For the purposes of point (i) of point (b) of Article 18(1), other type***s*** of collateral ***that may be accepted*** ~~***to be used***~~ by a CSD-banking service provider shall be financial instruments that meet all of the following conditions (‘highly liquid assets - HLA’):

(a) they are freely transferable without any legal constraint or third party claims that impair liquidation;

(b) they are eligible at a central bank of the Union, where the CSD-banking service provider has access to routine credit at that central bank;

(c) they are denominated in one of the following currencies:

(i) a currency the risk of which the CSD-banking service provider is able to manage;

(ii) a currency in which the CSD-banking service provider settles transactions in ~~***the***~~ ***a*** securities settlement system, ~~***within the limit of the collateral required to cover the CSD-banking service provider’s exposures in that currency***~~;

~~***(d) the CSD-banking service provider has a prearranged funding arrangement as referred to in point (e) of Article 59(4) of Regulation (EU) No 909/2014 and Article 37***~~, ~~***which provides for the liquidation of these instruments on a same-day basis***~~.

2. For the purposes of point ~~***(ii)***~~ ***(iii)*** of Article 18(~~***d***~~ ***b***), other type***s*** of collateral ***that may be accepted*** ~~***to be used***~~ by a CSD-banking service provider shall be financial instruments that meet the following conditions (‘securities settled in the trade’):

(a) they are freely transferable without any legal constraint or third party claims that impair liquidation;

(b) they are denominated in one of the following currencies:

(i) a currency the risk of which the CSD-banking service provider is able to manage;

(ii) a currency in which the CSD-banking service provider settles transactions in ~~***the***~~ ***a*** securities settlement system, ~~***within the limit of the collateral required to cover the CSD-banking service provider’s exposures in that currency;***~~

(c) the CSD-banking service provider has ~~***both***~~ ***one*** of the following:

(i) a prearranged funding arrangement as referred to in point (e) of Article 59(4) of Regulation (EU) No 909/2014 and Article 36, that provides for the liquidation ***or monetisation*** of these instruments within 5 days;

(ii) sufficient qualifying liquid resources as referred to in Article ~~***34***~~ ***36*** that allow covering the time gap for liquidating ***or monetising*** such collateral in case of ***the*** default of ~~***the***~~ ***one*** participant.

Article 21

Collateral Valuation

1. For the purposes of monitoring its collateral, as referred to in point (d) of Article 18(1), a CSD-banking service provider shall comply with the requirements of paragraphs 2 to 5.
2. For the purposes of paragraph 1, a CSD-banking service provider shall establish valuation policies and procedures that ensure all of the following:
   (a) that the financial instruments referred to in Article 19 are valued mark-to- market ***~~on a real-time basis or on a near to real-time~~*** ***on a daily*** basis;
   (b) that the financial instruments referred to in Article 20(1) are valued ***~~on a real-time basis, or on a near to real-time basis~~*** ***on a daily basis*** and, where that is not possible, that they are valued on a mark-to-model basis;
   (c) that the financial instruments referred to in Article 20(2) are valued ***~~on a real-time basis or on a near to real-time basis~~*** ***on a daily basis***, and where that is not possible, that they are valued on a mark-to-model basis.
3. The methodologies for the mark-to-model valuation referred to in points (b) and (c) of paragraph 2 shall be fully documented.
4. For the purposes of paragraph 1, a CSD-banking service provider shall review the adequacy of its valuation policies and procedures in all of the following cases:
   (a) on a regular basis which shall be at least annually;
   (b) such review shall be carried out where a material change affects the valuation policies and procedures.

Article 22

Haircuts

1. For the purposes of point (f) of Article 18(1), the CSD-banking service provider shall specify the methodologies for calculating the haircuts applied to the collateral value. In particular the CSD-banking service provider shall comply with the requirements of paragraphs 2 to 6.
2. For the purposes of paragraph 1, a CSD-banking service provider shall set the level of the haircuts as follows***, where relevant***:
   (a) at least at the level required by the financial institution or the central bank with which the CSD-banking service provider has a pre-arranged funding arrangement as referred to in point (e) of Article 59(4) of Regulation (EU) No 909/2014 and Article 37;
   (b) ***~~where the CSD-banking service provider has multiple pre-arranged funding arrangements, at least at the level of the highest haircuts required by a financial~~***

~~***institution among those with which the CSD-banking service provider has prearranged funding arrangements***~~;

(c) ~~***by way of deviation from point (b),***~~ where collateral can be liquidated ***or monetised*** by the CSD-banking service provider with the central bank to which the CSD banking service provider has access to routine credit, the haircuts applied by the central bank may be considered as the minimum haircut floor, provided that the central bank has no restrictions on the amount that can be provided as part of the routine credit.

3. For the purposes of paragraph 1, the methodology for calculating the haircuts shall acknowledge the possibility that the collateral may need to be liquidated under stressed market conditions and shall take into account the time required to liquidate it.

4. For the purposes of paragraph 1, the methodology for the calculation of the haircuts shall require the application of a haircut that is proportionate to ~~***all of***~~ the following :

(a) the type of asset;

(b) the level of credit risk associated with the financial instrument;

(c) the country of issuance of the asset;

(d) the maturity of the asset;

(e) the historical and hypothetical future price volatility of the asset under stressed market conditions;

(f) the liquidity of the underlying market, including bid/ask spreads, ***where available***;

(g) the foreign exchange risk, if any;

(h) ~~***the wrong-way risk due to the correlation between the participant's creditworthiness and the collateral posted;***~~

(i) ~~***the characterisation of a collateral as other collateral as referred to in Article 20***~~.

5. The assessment referred to in point (b) of paragraph 3 shall be confirmed by an internal assessment of the CSD-banking service provider, based on a defined and objective methodology that does not rely fully on external opinions.

6. No collateral value shall be assigned to securities provided by an entity that belongs to the same group as the borrower.

7. ~~***For the purposes of paragraph 1, the CSD-banking service provider shall ensure that the haircuts avoid any pro-cyclicality.***~~

8. For the purposes of paragraph 1, the policies and procedures on haircuts shall be independently validated at least annually and applicable haircuts shall be benchmarked with the central bank issuing the relevant currency, and other sources, where available.

9. For the purposes of paragraph 1, the haircuts applied shall be reviewed at least on a daily basis.

Article 23

Collateral concentration limits

1. For the purposes of point (f) of Article 18(1), a CSD-banking service provider shall have in place policies and procedures on collateral concentration limits. In particular, a CSD-banking service provider shall comply with the requirements of paragraphs 2 to 9.
2. For the purposes of paragraph 1, a CSD-banking service provider shall ensure that the policies referred to in paragraph 1 include:
   (a) policies and procedures that it shall follow where any breach of the concentration limits occurs;
   (b) the risk mitigation measures to be applied where the concentration limits defined in the policies are exceeded;
   (c) the timing of the expected implementation of measures under point (b).
3. For the purposes of paragraph 1, the concentration limits within the collateral portfolio shall be set at least for all of the following:
   (a) individual issuers considering the group structure;
   (b) country of the issuer;
   (c) type of issuer;
   (d) type of asset;
   (e) ***~~settlement currency~~***;
   (f) collateral with credit, liquidity and market risk above minimum levels;
   (g) the eligibility of the collateral for the CSD-banking service provider to have access to routine credit at the central bank of issue;
   (h) each borrowing participant;
   (i) ***~~all borrowing participants~~***.
4. For the purposes of paragraph 1, the concentration limits shall be determined in a conservative manner taking into account all relevant criteria, including:
   (a) financial instruments issued by issuers of the same type in terms of economic sector, activity, geographic region;
   (b) the level of credit risk of the financial instrument or of the issuer ***~~based upon an internal assessment by the CSD-banking service provider, employing a defined and objective methodology that does not rely fully on external opinions and~~*** that takes into consideration the risk arising from the establishment of the issuer in a particular country;
   (c) the liquidity and the price volatility of the financial instruments.
5. For the purposes of paragraph 1, a CSD-banking service provider shall ensure that no more than 10 % of its intraday credit exposure ***at the level of a borrowing participant*** is guaranteed by any of the following:

(a) a single credit institution;

(b) a third country financial institution that is subject to and complies with prudential rules that are at least as stringent as those referred to in Directive 2013/36/EU and Regulation (EU) No 575/2013;

(c) a~~n~~ ***commercial*** entity that is part of the same group as the institution referred to in either (a) or (b).

6. For the purposes of paragraph 1, and where calculating the limits provided for in paragraph 3, a CSD-banking service provider shall include its total exposure to an issuer, that comprises the amount of the cumulative credit lines, deposit accounts, current accounts, money-market instruments, and reverse repurchase facilities utilised by the CSD-banking service provider~~.~~

7. For the purposes of paragraph 1, and where determining the concentration limit for a CSD-banking service provider's exposure to an individual issuer, the CSD-banking service provider shall aggregate and treat as a single risk its exposure to all financial instruments issued by the issuer or by a group entity, explicitly guaranteed by the issuer or by a group entity~~***, and to financial instruments issued by undertakings whose exclusive purpose is to own means of productions that are essential for the issuer's business.***~~

8. For the purposes of paragraph 1, a CSD-banking service provider shall, at all times, monitor the adequacy of its concentration limit policies and procedures and, at least annually and whenever a material change occurs that affects its risk exposure, review its concentration limit.

9. CSD-banking service provider shall inform the borrowing participants of the applicable concentration limits and of any amendment to these limits pursuant to paragraph 8.

Article 24

Other equivalent financial resources

1. For the purposes of Article 18(2), other equivalent financial resources shall be considered to be the financial resources or the credit protection referred to in paragraphs 2~~***, and***~~ 3, **4 and 5**.

2. For the purposes of paragraph 1, commercial bank guarantees provided by a ***single*** financial institution referred to in Article 39(2) ~~***or a syndicate of such financial institutions,***~~ may be considered as other equivalent financial resources subject to the following conditions:

(a) ~~***it is issued to guarantee a settlement value of a participant that is below 1% of the settlement values of the securities settlement system over one year period;***~~

(b) it has been issued by an issuer that has low credit risk based on an adequate internal assessment by the CSD-banking service provider, employing a defined and objective methodology that does not rely fully on external opinions and that takes into consideration the risk arising from the establishment of the issuer in a particular country; (c) it is denominated in one of the following currencies:

(i) a currency the risk of which the CSD-banking service provider is able to adequately manage;

(ii) a currency in which the CSD-banking service provider settles transactions in the securities settlement system, ***~~within the limit of the collateral required to cover its exposures in that currency~~***;

(d) ***according to its terms*** it is irrevocable, ***and*** unconditional, ***and it is valid and enforceable under the relevant law*** ***~~the issuer cannot rely on any legal or contractual exemption or defence to oppose the payment of the guarantee;~~***

(e) it can be honoured, on demand, within the period of liquidation of the portfolio of the defaulting borrowing participant providing it free of any regulatory, legal or operational constraint; (f) it is not issued by:

(i) an entity that is part of the same group as the borrowing participant covered by the guarantee;

(ii) an entity whose business involves providing services critical to the functioning of the CSD-banking service provider, unless that entity is an EEA central bank or a central bank issuing a currency in which the CSD-banking service provider has exposures;

(g) it is not subject to significant wrong-way risk;

(h) it is fully backed by collateral that meets the following conditions:

(i) it is not subject to wrong way risk based on a correlation with the credit standing of the guarantor or the borrowing participant, unless that wrong way risk has been adequately mitigated by a haircut applied to the collateral;

(ii) the CSD-banking service provider has prompt access to it and it is bankruptcy remote in case of the simultaneous default of the borrowing participant and the guarantor;

(iii) the suitability of the guarantor has been ratified by the ***~~management body~~*** ***risk committee*** of the CSD-banking service provider after a full assessment of

the issuer and of the legal, contractual and operational framework of the guarantee in order to have a high level of comfort on the effectiveness of the guarantee, and notified to the relevant competent authority in accordance with Article 60(1) of Regulation (EU) No 909/2014;

(i) ~~*__it is honoured within the period of liquidation of one day.__*~~ ***The CSD banking service provider has sufficient qualifying liquid resources as referred to in article 34 that allow covering the time gap for honouring the bank guarantee.***

3. For the purpose of paragraph 1, commercial bank guarantees provided by a syndicate of financial institutions may be considered as other equivalent financial resources subject to the conditions (a) to (g) and (i) of paragraph 2.

~~***3.***~~ ***4.*** For the purposes of paragraph 1, bank guarantees issued by a central bank may be considered as other equivalent financial resources subject to the following conditions:

(a) they are issued by an EEA central bank or a central bank issuing a currency in which the CSD-banking service provider has exposures;

(b) it is denominated in one of the following currencies:

(i) a currency the risk of which the CSD-banking service provider is able to adequately manage;

(ii) a currency in which the CSD-banking service provider settles transactions in the securities settlement system, ~~***within the limit of the collateral required to cover its exposures in that currency;***~~

(f) ***according to its terms*** it is irrevocable, ***and*** unconditional, ***and it is valid and enforceable under the relevant law*** ~~***the issuer cannot rely on any legal or contractual exemption or defence to oppose the payment of the guarantee;***~~

(j) ~~***it is honoured within the period of liquidation of one day.***~~ ***The CSD banking service provider has sufficient qualifying liquid resources as referred to in article 34 that allow covering the time gap for honouring the bank guarantee.***

5. ***The CSD banking services provider's capital as defined in accordance with Articles 3 to 9 can be considered as other equivalent financial resource.***

Sub-section 5

Potential residual credit exposures

Article 25

Potential residual credit exposures

1. The policies and procedures referred to in Article 11(1) shall ensure that any potential residual credit exposures are managed, including in the situations where the post-liquidation value of the collateral and other equivalent financial resources are not sufficient to cover the credit exposures of the CSD-banking service provider.

Such policies and procedures shall:

(a) specify how potentially uncovered credit losses are ~~***allocated***~~ ***absorbed***, including the repayment of any funds that a CSD-banking service provider may borrow from liquidity providers;

(b) include an ongoing assessment of evolving market conditions that allow identifying issues related to the post-liquidation value of the collateral or of other equivalent financial resources that may develop into a potential residual credit exposure;

(c) specify that the assessment referred to in point (b) shall be accompanied by a procedure setting out:

(i) the measures that shall be taken to address the identified issues related to the post-liquidation value of the collateral or of other equivalent financial resources

(ii) the timing of such measures;

(iii) the update of the credit risk management framework as a result of the issues related to the post-liquidation value of collateral.

2. The risk committee of the CSD-banking service provider and, where relevant, the risk committee of the CSD shall be informed of any risks that may cause potential residual credit exposures. The relevant competent authority in accordance with Article 60(1) of Regulation (EU) No 909/2014 shall also be promptly informed of such risks.

3. The market developments affecting intraday credit risk exposures shall be analysed and reviewed every six months and reported to the risk committee of the CSD-banking service provider and, where relevant, to the risk committee of the CSD.

Sub-section 6

Reimbursement procedures and sanctioning rates

Article 26 – no comments

Sub-section 7

Other specific credit risks

Article 27

Cash lending to pre-finance corporate actions

For the purposes of point (g) of Article 11(1), where a CSD-banking service provider lends cash to pre-finance corporate actions, it shall ensure in particular that:

(a) the corresponding credit exposures are fully collateralised ***or covered by other financial resources*** in accordance with Subsection 4;

(b) collateral is subject to appropriate haircuts in accordance with Article 22;

(c) ~~***irrevocable intraday guarantees from paying agents or issuer agents are established before lending the cash.***~~

Sub-section 8

Reporting of credit risk

Article 28

Reporting to authorities on intraday risk management

1. For the purposes of Article 11(1)(h), a CSD-banking service provider shall report to the competent authority referred to in Article 60(1) of Regulation (EU) No 909/2014.
2. For the purposes of paragraph 1, a CSD-banking service provider shall comply with all of the following reporting requirements:
   (a) it shall submit a qualitative statement that details how credit risks, including intraday are measured, monitored and managed, with at least an annual frequency;
   (b) it shall notify the competent authority referred to in Article 60(1) of Regulation (EU) No 909/2014 of any material changes to how credit risks, including intraday, are measured, monitored, and managed, immediately after the material changes take place;
   (c) it shall submit the metrics referred to in Article 12 on a monthly basis ***at an aggregate level.***
3. For the purposes of paragraph 1, ***where reporting in paragraph 2 reveals a shortcoming in the*** CSD-banking service provider***'s compliance with*** ~~***does not meet, or expects not to meet the***~~ requirements of this Regulation~~***, including during times of stress, it shall immediately notify the competent authority referred to in Article 60(1) of Regulation (EU) No 909/2014 and***~~ it shall submit without undue delay ~~***that***~~ ***to the*** competent authority ***referred to in Article 60(1) of Regulation (EU) No 909/2014*** a plan for the timely return to compliance.
4. For the purposes of paragraph 3, and until compliance is restored, the CSD-banking service provider shall report the items referred to in paragraph 2, as appropriate, at least daily by the end of each business day unless the competent authority referred to in Article 60(1) of Regulation (EU) 909/2014 authorise a lower reporting frequency
   and a longer reporting delay, based on the individual situation of the CSD-banking service provider and the scale and complexity of its activities.

Sub-section 9

Public disclosure ***Article***

29 – no comments

CHAPTER II

Liquidity risk

Article 30 – no comments

Section 1

Measurement of intraday liquidity risks

Article 31

Measurement of intraday liquidity risks

1. For the purposes of Article 30(a), and for each currency offered by any securities settlement system for which it acts as settlement agent, the CSDbanking service provider shall carry out all of the following ***for purposes of day-to-day liquidity measurements***:
   (a) measure expected daily gross liquidity inflows and outflows;
   (b) **~~anticipate~~** **project** the intraday timing of these flows;
   (c) forecast the range of potential net funding shortfalls that may arise at different periods during the day.
2. For the purposes of achieving the objectives of paragraph 1, the CSD-banking service provider shall, in particular, put in place effective operational and analytical tools to identify and measure on an ongoing basis at least the following metrics on a currency by currency basis:
   (a) daily maximum intraday liquidity usage, calculated using the largest positive net cumulative position and the largest negative net cumulative position;
   (b) total available intraday qualifying liquid resources at the start of the business day, broken down into all of the following:
      (i) cash deposited at a central bank;
      (ii) cash deposited at other creditworthy financial institutions;
      (iii) highly liquid collateral with minimal credit and market risk referred to in point (d) of Article 59(3) of Regulation (EU) No 909/2014 further specified in Article 19, or investments compliant with [ESMA delegated act on Investment policy according to Article 46 of the CSDR], that are readily available and convertible into cash on a same day basis using prearranged and highly reliable funding arrangements, with financial institutions or central banks where a CSD-banking service provider has access to routine credit including under stressed market conditions, taking into account appropriate stressed valuations and appropriate haircuts as referred to in Article 22;
      (iv) highly liquid collateral but with credit or market risk that are too high to qualify as highly liquid collateral with minimal credit and market risk in accordance with Article 19 but eligible at a central bank of the Union, where the CSD-banking service provider has access to routine credit at that central bank as referred to in Article 20(1) and 36;
      (v) **~~committed~~** lines of credit, letters of credit, or similar arrangements, including those extended intraday to the CSD-banking service provider;
   (c) total value of all of the following:

(i) ***~~obligations settled each day, including those for which there is a time specific intraday deadline;~~***

(ii) ***~~obligations required to settle positions in other payment and securities settlement systems;~~***

(iii) obligations related to market activities, such as the delivery or return of money market transactions or margin payments;

(iv) other payments critical to reputation of the CSD-banking service provider;

(d) ***~~total value of intraday credit lines extended to participants, broken down into all of the following:~~***

(i) ***~~those used at peak usage;~~***

(ii) ***~~those secured by the highly liquid collateral with minimal credit and market risk referred to in Article 19;~~***

(iii) ***~~those secured by the high liquid assets referred to in Article 20(1);~~***

(iv) ***~~those secured by other collateral referred to in Article 20(2);~~***

(v) ***~~those secured by other equivalent financial resources, as referred to in Article 24.~~***

3. For the purposes of point (a) of Article 30, and for each currency offered by any securities settlement system for which it acts as settlement agent, a CSDbanking service provider shall monitor the liquidity needs stemming from each entity towards which the CSD-banking service provider has a liquidity exposure, and in particular, ***~~all of~~*** the following, ***where relevant***:

(a) settlement banks;

(b) payments systems;

(c) securities settlement systems;

(d) *nostro* agents;

(e) custodian banks;

(f) liquidity providers;

(g) CSDs with interoperable links.

Article 32

Measurement of overnight liquidity risks

For the purposes of point (a) of Article 30, in relation to overnight liquidity risks, the CSD-banking service provider shall compare on an ongoing basis its liquidity needs against its qualified liquid resources***~~, as these result by the use of overnight credit~~*** for each currency offered by the securities settlement system for which it acts as settlement agent.

Section 2

Monitoring Liquidity Risks

Article 33

Monitoring intraday liquidity risks

1. For the purposes of point (b) of Article 30, in relation to intraday liquidity risks, the CSD-banking service provider shall comply with the requirements of paragraphs 2 to 4.
2. For the purposes of paragraph 1, the CSD-banking service provider shall establish and maintain a report on the intraday liquidity risk that it assumes which shall be reviewed monthly by the risk committee of the CSD-banking service provider and, where relevant, in cooperation with the risk committee of the CSD, which shall include, at least:
   (a) the metrics referred to in Article 31;
   (b) the intraday objectives referred to in Article 35;
   (c) the agreed risk appetite of the CSD-banking service provider;
   (d) a contingency funding plan that details the remediation process to be actioned where the agreed risk appetite is breached.
3. For the purposes of paragraph 1, the CSD-banking service provider shall have effective operational and analytical tools to monitor its intraday liquidity positions against expected activities and available resources based on balances, remaining intraday ~~credit~~ ***liquidity*** capacity, and available collateral on a near to realtime basis for each currency offered by the securities settlement system for which it acts as settlement agent.
4. For the purposes of paragraph 1, and in terms of documentation, the CSDbanking service provider shall:
   (a) maintain for a period of at least ten years a record of the intraday liquidity exposures, ***as recorded at relevant regular intervals,*** for each settlement currency offered by any securities settlement system for which it acts as settlement agent;
   (b) ***~~shall~~*** monitor its intraday liquidity exposures on an ongoing basis against the maximum intraday liquidity exposure on record.

Article 34

Monitoring overnight liquidity risks

For the purposes of Article 30b), in relation to overnight liquidity risks, the CSDbanking service provider shall:

(a) maintain, for a period of at least ten years, a record ***~~of the liquidity risks created by the use~~*** of overnight ***~~credit~~*** ***liquidity exposures*** , ***as recorded at relevant regular intervals,*** for each ***settlement*** currency offered by any securities settlement system for which it acts as settlement agent;

(b) monitor the ***overnight*** liquidity ~~***risk***~~ ***exposures*** ~~***created by the overnight credit extended***~~ against the maximum liquidity exposure ~~***created by the overnight credit extended***~~ on record.

Section 3

Managing Liquidity Risks

Article 35

Managing **day-to-day** *intraday liquidity risk*

[Remark: This article should apply to day-to-day intraday liquidity management only. All elements in the below article that apply in stress events only should be regrouped in article 37 as suggested below – we have suggested which paragraphs should move but have not proposed the actual amendments]

1. For the purposes of Article 30(c), a CSD-banking service provider shall comply with the requirements referred to in paragraphs 2 to 12.

2. For the purposes of paragraph 1 and for each currency offered by any securities settlement system for which it acts as settlement agent, the CSD-banking service provider shall:

   (a) arrange to acquire sufficient intraday funding to meet its intraday objectives;

   (b) manage and mobilise collateral necessary to obtain intraday funds, taking into account haircuts in accordance with Article 22 and concentration limits in accordance with Article 23;

   (c) manage the timing of its liquidity outflows in line with its intraday objectives;

   (d) ***[note: this paragraph should be moved to Article 37 to ensure qualifying liquidity sources are regrouped] have arrangements in place to deal with unexpected disruptions to its intraday liquidity flows, including the temporary failure or inability of its largest liquidity provider unless largest liquidity provider for the currency offered is a central bank of issue.***

3. For the purposes of paragraph 1, the liquidity risk framework of the CSDbanking service provider shall take account of cross-border and cross-currency exposures where relevant.

4. ***[note: this paragraph should be moved to Article 37] For the purposes of paragraph 1, and for the purpose of meeting its minimum liquid resource requirement, a CSD-banking service provider shall identify the risks to which it would be exposed following the default of at least two participants, including their parent undertaking and subsidiaries, to which it has the largest liquidity exposure.***

5. ***[note: this paragraph should be moved to Article 37] For the purposes of paragraph 1, and for risks specified in paragraph 2(d), the CSD-banking service provider shall specify***

extreme but plausible conditions, including those identified in Article 37(4) where relevant and based at least on one of the following:

(a) ***a range of historical scenarios, including periods of extreme market movements observed over the past 30 years, or as long as reliable data have been available, that would have exposed the CSD-banking service provider to the greatest financial risk, unless the CSD-banking service provider can argue that recurrence of a historical instance of large price movements is not plausible;***

(b) ***a range of potential future scenarios, founded on consistent assumptions regarding market volatility and price correlation across markets and financial instruments, drawing on both quantitative and qualitative assessments of potential market conditions, including disruptions and dislocations or irregularities of accessibility to markets, as well as declines in the liquidation value of collateral, and reduced market liquidity where non-cash assets have been accepted as collateral.***

6. ***[note: this paragraph should be moved to Article 37*] *The scenarios referred to in paragraph 3, shall also take into account:***

(a) ***the design and operation of the CSD-banking service provider, including all entities listed in Article 31(3) and linked financial markets infrastructures or other entities that may pose material liquidity risk to the CSD-banking service provider, and where applicable cover a multiday period;***

(b) ***any strong relationships or similar exposures between the participants of the CSD-banking service provider, including its parent undertaking and subsidiaries, and an assessment of the probability of multiple defaults and the effects among its participants that such defaults may cause;***

(c) ***their impact on the CSD-banking service provider's cash-flows and on its counterbalancing capacity and survival horizon, and whether the modelling reflects the different impacts that an economic stress may have both on the CSD-banking service provider's assets and its inflows and outflows.***

7. For the purposes of paragraph 1, the CSD-banking service provider shall review the procedures referred to in paragraphs 2 to 4 at least annually, taking into account all relevant market developments as well as the scale and concentration of exposures.

8. ***[note: this paragraph should be moved to Article 37*]*For the purposes of paragraph 1, the set of historical and hypothetical scenarios used to identify extreme but plausible market conditions shall be reviewed by the CSD-banking service provider, and, where relevant in consultation with the risk committee of the CSD, at least annually and more frequently where market developments or the operations of the CSD-banking service provider affect the assumptions underlying the scenarios that require an adjustment to such scenarios***.

9. For the purposes of paragraph 1, any changes to the overall liquidity risk framework shall be reported to the management body.

10. ***[note: this paragraph should be moved to Article 37]For the purposes of paragraph 1, the liquidity risk framework shall consider, quantitatively and qualitatively, the extent to which extreme price movements could occur simultaneously in multiple identified markets. The framework shall recognise that historical price correlations may breakdown in extreme but plausible market conditions. A CSD-banking service provider shall also take into account any of its external dependencies in its stress testing.***

11. ***[note: this paragraph should be moved to Article 37]For the purposes of paragraph 1, the CSD-banking service provider shall consider how the intraday monitoring metrics referred to in Article 31(2) shall be used to calculate the appropriate value of intraday funding required, and shall develop an internal framework to assess a prudent value of liquid assets which are deemed sufficient for its intraday exposure, including, in particular all of the following:***

    (a) ***the default of at least two participants, including their parent undertaking and subsidiaries, to which it has the largest intraday liquidity exposure;***

    (b) ***the timely monitoring of liquid assets, including the quality of the assets, their concentration and their immediate availability;***

    (c) ***appropriate policy on monitoring market conditions that can affect the liquidity of the intraday buffer;***

    (d) ***the value of the intraday buffer, valued and calibrated under stressed market conditions, including the scenarios referred to in Article 37(4).***

12. For the purposes of paragraph 1, the CSD-banking service provider shall ensure that ***the responsibility for liquidity management is clearly and unambiguously allocated within the CSD-banking service provider*** ~~***its liquid assets are***~~ ~~***under the control of a specific***~~ ***("***liquidity management function***")***.

13. For the purposes of paragraph 1, the liquidity risk framework of the CSD banking service provider shall include appropriate governance arrangements relating to the amount and form of total liquid resources the CSD-banking service provider maintains, as well as relevant adequate documentation and, in particular one of the following:

    (a) placement of ~~***the***~~ ***its*** liquid assets ~~***in a separate account***~~ under the direct management of the liquidity function ~~***to facilitate their use***~~ ~~***with the sole intent of using them***~~ as a source of contingent funds, including during stress periods;

    (b) establishment of internal systems and controls to give the liquidity management function effective operational control to monetise the holdings of liquid assets at any point in the stress period and to access the contingent funds without directly conflicting with any existing business or risk management strategies, such that no assets are included in the liquidity buffer where their sale without replacement throughout the stress period would remove a hedge and would create an open risk position in excess of the internal limits of the CSD-banking service provider;

(c) a combination of points (a) and (b), where such a combination ensures a comparable result.

Article 36 ***[note: we believe this article should come before Article 35]***

Qualifying liquid resources

For the purposes of point (c) of Article 30, a CSD-banking service provider shall control, manage, and mitigate corresponding liquidity risks, including intraday liquidity risks, in each currency using ***~~the~~*** ***globally recognised*** qualifying liquid resources ***including but not limited to***:

(a) cash deposited at a central bank of issue;

(b) cash deposited at creditworthy financial institutions;

(c) committed ***and uncommitted*** lines of credit, letters of credit, or similar agreements;

(d) highly liquid collateral with minimum credit and market risk referred to in Article 19 or investments compliant with [ESMA delegated act on Investment policy according to Article 46 of CSDR] that are readily available and convertible into cash with prearranged and highly reliable funding arrangements as referred to in Article 39;

(e) the collateral referred to in Article 20(1) that is eligible ***as collateral with*** ***~~for pledging to~~*** a central bank, where the CSD-banking service provider has access to routine credit at that central bank.

Article 37

Stress testing liquid financial resources

1. For the purposes of Article 30(c), a CSD-banking service provider shall determine and test the sufficiency of its liquidity resources ***~~at a~~*** ***for each*** currency ***except for currencies for which the competent authority has given an exemption as representing immaterial volumes*** ***~~level~~*** by regular and rigorous stress testing that meets all of the following requirements:

   (a) is conducted on the basis of the scenarios referred to in Article 35(3) and (4), as well as the specific scenarios identified in paragraph 6;

   (b) includes intraday scenarios regular testing of the CSD-banking service provider's procedures for accessing its liquid resources from a liquidity provider;

   (c) complies, in particular, with the requirements of paragraphs 2 to 6.

2. For the purposes of paragraph 1, the CSD-banking service provider shall obtain a high degree of confidence, at least through rigorous due diligence and stress testing, that each liquidity provider of its minimum required qualifying liquid resources established in accordance with Article 36 has sufficient information to understand and to manage its associated liquidity risk, and that it has the capacity to perform as required under a prearranged funding arrangement as referred to in point (d) of Article 59(4) of Regulation (EU) No 909/2014.

3. For the purposes of paragraph 1, the CSD-banking service provider shall have rules and procedures to address the insufficiency of qualifying liquid financial resources highlighted by its stress tests.

4. For the purposes of paragraph 1, where the stress tests result in breaches to the agreed risk appetite referred to in point (c) of Article 33(2), the CSD-banking service provider shall:

   (a) report to both its own risk committee and, where relevant, to the risk committee of the CSD the results of the stress tests;

   (b) where breaches cannot be restored by the end of the day, the CSD-banking service provider shall review and adjust its contingency plan referred to in point (d) of Article 33(2) accordingly;

   (c) have rules and procedures for using the results and analysis of its stress tests to evaluate and adjust the adequacy of its liquidity risk management framework and liquidity providers.

5. For the purposes of paragraph 1, the stress testing scenarios used in the stress testing of liquid financial resources shall consider the design and operation of
the CSD-banking service provider, and include all entities that may pose material liquidity risk to it.

6. For the purposes of paragraph 1, the stress testing scenarios used in the stress testing of liquid financial resources shall consider a wide range of relevant extreme but plausible scenarios, covering short-term and prolonged, and institution specific and market-wide stress, including ***where relevant***:

   (a) the default, in isolation or combined, of at least two participants of the CSD-banking service provider, including their parent undertaking and subsidiaries, to which the CSD-banking service provider has the largest liquidity exposure;

   (b) the missed receipt of payments from participants on a timely basis;

   (c) the temporary failure or inability of one of the CSD-banking service's liquidity providers, custodian banks, *nostro* agents, or any related infrastructure, including interoperable CSDs;

   (d) simultaneous pressures in funding and asset markets;

(e) the reduction of secured and unsecured wholesale funding, broken down by the factors set out in Article 23(3) on concentration limits;

(f) the correlation between funding markets;

(g) the diversification across different funding tenors, in particular where the funding provider has call options;

(h) foreign exchange convertibility and access to foreign exchange markets;

(i) market-wide credit or liquidity stresses which result in the reduction in the value of liquid assets;

(j) shifts in other market factors, such as price determinants and yield curves, multiple defaults over various time horizons;

(k) adverse changes in the reputation of a CSD-banking services provider and the impact of any external opinion on such reputation;

(l) relevant peak historic price volatilities as recurrent events;

(m) changes in the settlement volume;

(n) IT failures, legal constraints or human errors.

Article 38

Unforeseen and potentially uncovered liquidity shortfalls

1. For the purposes of Article 30(c), the CSD-banking service provider shall ***for each currency except for currencies for which the competent authority has given an exemption as representing immaterial volumes*** establish explicit rules and procedures to effect same-day, and where appropriate, intraday and multiday timely settlement of payment obligations following any individual or combined default among its participants and shall address unforeseen and potentially uncovered liquidity shortfalls with the view to avoiding unwinding, revoking, or delaying the same-day settlement of payment obligations by meeting, in particular, the requirements of paragraphs 2 to 6.

2. The rules and procedures referred to in paragraph 1 shall require that the CSDbanking service provider has access to cash deposits or overnight investments of cash deposits, and a process in place in order to replenish any liquidity resources that it may employ during a stress event, so that it can continue to operate in a safe and sound manner.

3. The rules and procedures referred to in paragraph 1 shall include requirements for both of the following:

   (a) an ongoing analysis of evolving liquidity needs to allow the identification of issues that may develop into otherwise unforeseen and potentially uncovered liquidity shortfalls, including a plan for the renewal of funding arrangements in advance of their expiry;

   (b) a regular testing of the rules and procedures themselves.

4. The requirement referred to in paragraph 1 shall be accompanied by a procedure setting out how the identified potential liquidity shortfalls shall be addressed without undue delay, including, where necessary, by updating the liquidity risk management framework.

5. The rules and procedures referred to in paragraph 1 shall also detail all of the following:

   (a) how a CSD-banking service provider shall have to access cash deposits ***at a central bank*** or ***~~overnight investments of cash deposits~~ at a creditworthy financial institution***;

   (b) how a CSD-banking service provider shall execute same-day market transactions;

   (c) how a CSD-banking service provider shall draw on prearranged liquidity lines.

6. The rules and procedures referred to in paragraph 1 shall include a requirement for the CSD-banking service provider to report any liquidity risk that has the potential to cause previously unforeseen and potentially uncovered liquidity shortfalls to:

   (a) the risk committee of the CSD-banking service provider and, where relevant, to the risk committee of the CSD;

   (b) the relevant competent authority in accordance with Article 60(1) of Regulation (EU) No 909/2014, in the manner provided in Article 40.

Article 39

Arrangements for the timely liquidation of collateral or investment using prearranged funding

1. For the purposes of Article 30(c), and in relation to arrangements relating to the timely liquidation of collateral or investment using prearranged funding for liquidity risk, a CSD-banking service provider shall comply with the requirements of paragraphs 2 to 13.

2. For the purpose of point (e) ***of Article 59(4) of Regulation (EU) No 909/2014*** , creditworthy financial institutions shall include one of the following:

   (a) a credit institution authorised in accordance with Article 8 of Directive 2013/36/EU that the CSD-banking service provider can demonstrate to have low credit risk based on an internal assessment, employing a defined and objective methodology that does not rely fully on external opinions;

   (b) a third country financial institution that meets all of the following requirements:

      (i) is subject to and complies with prudential rules considered to be at least as stringent as those set out in Directive 2013/36/EU and Regulation (EU) No 575/2013;

      (ii) has robust accounting practices, safekeeping procedures, and internal controls;

      (iii) has low credit risk based on an internal assessment carried out by the CSD-banking service provider, employing a defined and objective methodology that does not rely fully on external opinions;

(iv) takes into consideration the risk arising from the establishment of that third country financial institution in a particular country.

3. Where a CSD-banking service provider wishes to establish a prearranged funding arrangement with a creditworthy financial institution as referred to in paragraph 2, it shall, ***for each currency except for currencies for which the competent authority has given an exemption as representing immaterial volumes,*** consider as candidate financial institutions only those that have at least access to credit from the central bank issuing the currency of the prearranged funding arrangements, either directly or through entities of the same group.

4. Once a prearranged funding arrangement has been established with one of the institutions referred to in paragraph 2, the CSD-banking service provider shall monitor the creditworthiness of these financial institutions on an ongoing basis by applying both of the following:

   (a) by subjecting those institutions to regular, independent assessments of their creditworthiness;

   (b) by assigning and regularly reviewing internal credit ratings for each financial institution with which the CSD has established a prearranged funding arrangement.

5. The CSD-banking service provider shall closely monitor and control the concentration of its liquidity risk exposure to each financial institution involved in a prearranged funding arrangement, including its parent undertaking and subsidiaries.

6. The CSD-banking service provider's liquidity risk management framework shall include a requirement to establish concentration limits, which shall in particular provide that:

   (a) the concentration limits are established by currency;

   (b) at least two arrangements for each major currency are put in place unless the CSD-banking service provider has direct access to the central bank of issue of the currency concerned;

   (c) the CSD-banking service provider is not overly reliant on any individual financial institution considering all currencies;

7. The CSD-banking service provider shall continuously monitor and control its concentration limits towards its liquidity providers and it shall implement policies and procedures to ensure its overall risk exposure to any individual financial institution remains within the concentration limits determined in accordance with paragraph 6;

8. The CSD-banking service provider shall review its policies and procedures concerning applicable concentration limits towards its liquidity providers at least annually and whenever a material change occurs and affects its risk exposure to any individual financial institution.

9. In the context of its reporting to the relevant competent authority in accordance with Article 38, the CSD-banking service provider shall inform the competent authority of:

   (a) any significant changes to the policies and procedures concerning concentration limits towards its liquidity providers determined in accordance with this Article;

(b) cases where it exceeds a concentration limit towards its liquidity providers set out in its policies and procedures, as referred to in paragraph 6.

10. When a concentration limit towards its liquidity providers is exceeded, the CSDbanking service provider shall remedy the excess without undue delay following the risk mitigation measures referred to in paragraph 5.

11. The CSD-banking service provider shall ensure that the collateral agreement allows it to have prompt access to its collateral in the event of the default of a client, taking into account at least the nature, size, quality, maturity, and location of the assets provided by the client as collateral.

12. **[Note: we assume that this paragraph refers to a 2+2 situation].** Where the ***relevant account*** ***~~assets~~ used for the financial collateral arrangement[4] in which the*** ***~~as collateral~~ CSD banking service provider accepts the collateral is*** ***~~are in the securities accounts~~*** maintained by another entity than the CSD-banking service provider, the CSD-banking service provider shall ensure that all of the following conditions are met.

(a) it has real-time visibility of the assets ***provided to it*** ***~~used~~*** as collateral;

(b) ***The collateral is segregated from the other securities of the borrowing participant*** ***~~The third party entity meets sufficient prudential standards, including segregation of the CSD-banking service provider's assets used as collateral from other assets;~~***

(c) the arrangements with that third party entity ***give the CSD-banking service provider sufficient comfort that the collateral provided to it is subject to adequate asset protection*** ***~~prevent any losses of assets to the CSD-banking service provider.~~***

13. The CSD-banking service provider shall take all reasonable steps in advance to establish the enforceability of its claim to financial instruments provided as collateral.

14. The CSD-banking service provider shall be capable of accessing and ***~~liquidating~~*** ***realising*** noncash assets referred to in Articles 19 and 20(1) on a same-day basis through prearranged and highly reliable arrangements established in accordance with point (i) of Article 59(4).

Section 4

Reporting of Liquidity Risks

Article 40

Reporting to authorities on intraday risk management

1. For the purposes of Article 30(d), a CSD-banking service provider shall report to the relevant competent authority in accordance with Article 60(1) of Regulation (EU) No 909/2014.

2. For the purposes of paragraph 1, a CSD-banking service provider shall comply with all of the following reporting requirements:

[4] Relevant account and financial collateral arrangement in the meaning of the Financial Collateral Directive.

(a) it shall submit a qualitative statement that details how liquidity risks, including intraday are measured, monitored and managed, with at least an annual frequency;

(b) it shall notify the relevant competent authority of any material changes to how liquidity risks, including intraday, are measured, monitored, and managed, immediately after the material changes take place;

(c) it shall submit the metrics referred to in Article 31(2) on a monthly basis ***at an aggregate level***.

3. For the purposes of paragraph 1, where ***reporting in paragraph 2 reveals a short-coming in the*** the CSD-banking service provider***'s compliance with ~~does not meet, or expects not to meet~~*** the requirements of this Regulation, ***~~including during times of stress, it shall immediately notify the relevant competent authority and~~*** it shall submit without undue delay to the relevant competent authority ***referred to in Article 60 (1) of Regulation (EU) No 909/2014*** a plan for the timely return to compliance.

4. For the purposes of paragraph 3, and until compliance is restored, the CSD-banking service provider shall report the items referred to in paragraph 2, as appropriate, at least daily by the end of each business day unless the relevant competent authority authorise a lower reporting frequency and a longer reporting delay, based on the individual situation of the CSD-banking service provider and the scale and complexity of its activities.

Article 41, 42– no comments

Annex I

Recovery, w~~W~~inding-down or restructuring scenarios

1. ***CSDs shall identify scenarios that threaten their viability and their ability to provide critical services as a going concern.***

2. A scenario where the CSD is unable to raise new capital to comply with the requirements laid down in Article 47(1) of Regulation (EU) No 909/2014 shall be considered as triggering the restructuring of a CSD ('restructuring') where the events described in the scenario would still lead the CSD to continue to operate a securities settlement system as referred to in point (3) of Section A of the Annex to Regulation (EU) No 909/2014 and to provide at least one other core service listed in Section A of the Annex to Regulation (EU) No 909/2014.

3. A scenario where the CSD is unable to raise new capital to comply with requirements laid down in Article 47(1) of Regulation (EU) No 909/2014 shall be considered as triggering the winding-down of its operations ('winding down') where the events described in the scenario would render the CSD unable to meet the definition of Article 2(1) of the Regulation (EU) No 909/2014.

4. The scenarios referred to in Article 8(a) shall include the following assessments:

   (a) in the case of a restructuring, the CSD shall assess the expected number of months needed for ensuring the orderly restructuring of its operations ***where feasible. Where the duration of the wind-down may be dependent on third parties, the elements that would impact such duration;***

   (b) in the case of a winding-down, the expected number of months needed for the winding-down***, where feasible. Where the duration of the wind-down may be dependent on third parties, the elements that would impact such duration.***

5. The scenarios shall be commensurate with the nature of the business of the CSD, its size, its interconnectedness to other institutions and to the financial system, its business and funding model, its activities and structure, its size and any identified vulnerabilities or weaknesses of the CSD. The scenarios shall be based on events that are exceptional but plausible.

6. When designing the scenarios, a CSD shall meet ~~***each of***~~ the following requirement~~***s***~~:

   (a) the events foreseen in the scenario would threaten ~~***to cause the restructuring of the CSD operations***~~ ***the viability of the CSD and, as such, would require the CSD to envisage taking steps to recover, restructure or, if recovery and/or restructuring fails, to wind down its operations***;

   (b) ~~***the events foreseen in the scenario would threaten to cause the windingdown of the CSD operations.***~~

7. ~~***The plan ensuring an orderly restructuring or winding-down of the CSD's activities referred to in point (b) of Article 47(2) of Regulation (EU) No 909/2014***~~ ***In designing scenarios for the purpose of recovery, restructuring or orderly wind-down planning the CSD should consider at least*** ~~***shall include all***~~ the following scenarios ('idiosyncratic events'), ***where relevant***:

   (a) the failure of significant counterparties;

   (b) damage to the institution's or group's reputation;

   (c) a severe outflow of liquidity;

   (d) adverse movements in the prices of assets to which the institution or group is predominantly exposed;

   (e) severe credit losses;

   (f) a severe operational risk loss.

8. ***In designing scenarios for the purpose of recovery, restructuring or orderly wind-down planning,*** ~~***the CSD plan ensuring an orderly restructuring or winding down of the CSD's activities referred to in point (b) of Article 47(2) of Regulation (EU) No 909/2014***~~ ***the CSD shall at least consider*** ~~***shall include all***~~ the following scenarios ('system-wide events'), ***where relevant***:

(a) the failure of significant counterparties affecting financial stability;

(b) a decrease in liquidity available in the interbank lending market;

(c) increased country risk and generalised capital outflow from a significant country of operation of the institution or the group;

(d) adverse movements in the price of assets in one or several markets; (e) a macroeconomic downturn.

Annex II

Business risk scenarios

The scenarios referred to in Article 35(2) for the calculation of the regulatory capital for business risks shall be***, where relevant***:

(a) the CSD's external rating downgrade of three notches by all the rating agencies that provide solicited ratings of the CSDs;

(b) an unexpected increase of funding costs of 10%;

(c) an unexpected reduction of income of 30%;

(d) 10% higher than planned cash contributions for pension plans;

(e) an unexpected reduction of long clients' balances of 10%;

(f) an unexpected reduction in short clients' balances of 10%.