

European Banking Authority consultation on
the CSD Regulation technical standards proposal

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A. Introduction

Clearstream welcomes the opportunity to comment on EBA's Consultation Paper "Draft Regulatory Technical Standards (in the following draft RTS) on prudential requirements for central securities depositories under Regulation (EU) No 909/2014 ('Central Securities Depositories Regulation' – CSD-R)" issued on 27 February 2015.

The Clearstream group of companies are headed by the Clearstream Holding AG which is the mother company of three (I)CSDs operating in Luxembourg and Germany. Due to the banking activities of two of these (I)CSDs, Clearstream Holding AG is classified as a financial holding company under Regulation (EU) No. 575/2013 (CRR) and is acting as the superordinated company for the Clearstream Holding group according to the German Banking Act.

The three (I)CSDs being part of the group are: Clearstream Banking S.A., Luxembourg (CBL), Clearstream Banking AG (CBF), Frankfurt/Main (both offering banking type of services and are currently authorised as credit institutions in the sense of CRR) and LuxCSD S.A., Luxembourg.

Already currently the banking type of services offered by the (I)CSDs of the group are limited to services being ancillary to the core (CSD) business. The banking activities are not only subject to the rules of CRR (and of directive 2013/36/EU [CRD IV] as implemented in national law) but also by other legislative frameworks which are either already in place or about to come into effective in the near future. This includes directive 2014/59/EU (BRRD), directive 2014/49/EU (DGSD), Council Regulation (EU) No 1024/2013 (SSM-regulation) and respective level 2 texts. Additionally, the implementation of directive 98/26/EC as amended is part of the legal framework for (I)CSDs. All the mentioned legal acts including their national implementations need to be taken into account when further specifying the prudential requirements under CSD-R.

B. Executive summary

- The International CSDs are unique European and global market infrastructures. They operate in over 50 currencies supporting extensive cross-border activities, and this in competition with other financial intermediaries internationally. The 2 CSDs are attracting a large number of international customers and they are unique in their business model. Both are domiciled in Europe and their competitive nature should not be deliberately weakened by EU regulation. International customers have the choice to move their assets to any other custodian bank acting on a global level. This would shift substantial business away from regulated market infrastructures into the non-regulated sphere of custodians outside of Europe. Which will finally result in the circumventing of the Settlement Discipline Regime and or CSDR provisions, which clearly cannot be in the interest of the EU Commission's legislative aims.
- ICSDs are gateways for foreign investment in European domestic securities and are unique European and global champions with a proven track record of dealing with extreme turmoil in financial markets (e.g. resolving post-9/11 operations, the Lehman bankruptcy without service interruption, without credit loss or liquidity strains). They are key market infrastructures in the

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area of collateral management and the (fixed income) repo markets. As systemically important financial market infrastructures, the ICSDs have since their creation employed strict risk policies.

- The CSD-R level-1 applies consistently a functional approach of regulation. For the sake of level-playing field concerns, these technical standards should equally apply across all institutions performing similar functions; otherwise it will result in an unequal competition situation where CSDs providing banking services will be severely disadvantaged against other competitors providing same banking services ancillary to settlement and not being subject to the same rules. "Same service , same rules" should consistently be applied.
- The EBA proposal on the CSD-R technical standards, is too closely inspired from the EMIR requirements. It is crucial to recognise the key differences in the business concepts and associated risks of CCPs and CSD when transferring rules of CCPs into CSDs. CSDs are much closer to specialised banks (such as custodian banks) than to CCPs. Failing to recognise this difference will lead to serious market disruptions.
- The CSD-R level-1 found a lengthy compromise under Art 54 by which all models for the provision of banking-type ancillary services would be subject to equivalent requirements, the level-2 text should adhere to this compromise found, and avoid setting overshooting requirements for the offering of banking services in relation to CSD activities. This may harm, if not prohibit, the future offering of banking type of ancillary services and create market disruptions.
- The implementation of custody risk capital charge should not come as an additional element on top of the banking framework used for "operational risk" capital charge. Normal bank use the same type of activities (i.e. having assets in custody at other custodians and using CSDs and CSD-links) and the necessary capital charge resulting from that is captured in the banking framework under "operational risk". An additional capital charge for that purpose is therefore charging twice and should be withdrawn.
- Strong credit ratings of CSDs providing banking services (AA for CBL), are evidence of its sound and very low risk profile. These ratings are higher than those of most European banks;
- The provision of intraday credit to participants is an integral part of the (I)CSDs' business model and the market benefits hugely from it. The additional costs to the market of a forced change in their business model and the costs to the market of liquidity fragmentation should be taken into account for this exercise.
- Clearstream is of the opinion that its collateral management policies, procedures and systems already ensure compliance with Article 59 (3) (a) through (e) of Regulation (EU) No. 909/2014 ("CSD-R") and are generally in line with the provisions of Article 18, paragraph 1 of the RTS.
- However, Articles 18 to 23 of the RTS introduce certain monitoring and reporting requirements that are incompatible with the current collateral management concept used by the (I)CSDs i.e. the pooling of collateral in the participants' accounts. In addition, Article 18 (1) (b) introduces a hierarchy of collateral which will require the development of a sequencing algorithm capable of allocating collateral according to pre-determined quality criteria. Such mechanism cannot be supported by the existing "collateral pool" concept and will require significant IT development. We are deeply concerned that the new requirements will force the (I)CSDs to identify and

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segregate (possibly from the participant's pledged account to another account) individual securities for the amount of the cash loan. In addition, we at Clearstream are concerned that, in order to maintain equivalent levels of settlement efficiency as those achieved today by the (I)CSDs, participants might have to immobilize at the (I)CSDs a significant amount of securities of the highest quality. This could worsen the already reduced supply of high-quality securities available for collateral purposes. On liquidity risk, we support the approach of the EBA to link the requirements for CSDs to the BCBS principles for the monitoring of intraday liquidity. However, CSD requirements that go beyond the requirements for banks are likely to cause significant issues for CSDs - and for the market - in two respects: First, CSDs may be unable to collect the required data from its correspondent banks and no tools may be available to process this data. Secondly, the draft RTS, if implemented, may impair the service offering of the CSD in certain currencies. If, for example, a CSD is required to provide real time information for exotic currencies, where this information is not available, and if the CSD is forced to establish committed credit lines to cover potential liquidity needs in these currencies, it may decide not to offer services in that currency.

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C. General comments

Overall, we support the approach of the EBA to link the capital requirements for CSDs to the extent possible and adequate to the general requirements for credit institutions as specified in CRR, to refer to the respective rules for CCPs under EMIR (regulation (EU) No 648/2012 and Commission Delegated Regulation (EU) No 152/2013), to incorporate the BCBS principles for the monitoring of intraday liquidity (BCBS 248) as well as to use in general the CPSS-IOSCO principles for Financial Market Infrastructures as a guideline. However, we do have some reservations towards the BCBS principles which our mother company Deutsche Börse AG already raised in the consultation process towards BCBS (we refer in this regard to our comments on the BCBS consultation on "Monitoring indicators for intraday liquidity management - BCBS 225"¹), we see the need to take the different roles of CSDs and CCPs into account when taking EMIR-rules as reference (we do want to point out that the German CCPs belong to Deutsche Börse Group and therefore we have taken the advantage to take their knowledge and experience with the EMIR capital rules into consideration) and we clearly disagree to going substantially beyond the principles laid down in the stated "reference" frameworks..

¹ <http://www.bis.org/publ/bcbs225/deutscheborsegr.pdf>

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It is crucial to understand key differences in the business concepts and associated risks of CCPs and CSD when transferring rules of CCPs onto CSDs. CSDs are much closer to specialised banks than to CCPs. Many differences between CCPs and CSDs with relevance for the current draft RTS can be summarised on a high level as follows:

| Topic | CCP | CSD |
|-----------------------------|--|---|
| Involvement in transactions | The CCP interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer | A CSD is not part of a trade transaction but rather taking care to fulfil settlement and to operationally safeguard and reach settlement finality |
| Ongoing position management | A CCP continues to be part of the position during the lifetime of the financial contract until its final settlement and takes multiple lines of defence in order to safeguard the other participants and itself from the consequences of the default of any participant. A default waterfall is used and the CCP remains partially at risk if the safeguards taken are not sufficient. As such, collateral taken needs to be carefully monitored with regards to market price movements. | The CSD is at no point in time part of the trade transactions. Once settled, there is no position left. In case a CSD is granting cash loans for settlement purposes or in prefunding custody events, the open position is short term, in principle only intraday. Settlement takes place in a variety of currencies and being short in one currency is often accompanied by being long in others. Available collateral value is usually big due to the possibility of using all or substantial parts of the proprietary assets deposited with the CSD as a pool of collateral. |
| Liquidity peaks | CCPs may be faced to pay out substantial amounts within dedicated settlement cycles which needs to be covered by the CCP due to its legal role as counterparty and may not be refunded (at the same time) by a (defaulting) counterparty. Necessary "liquidation" of collateral may take some time which make the "cover 2" requirement useful | CSDs are in general not obliged to pay on their own behalf at a certain point in time. If participants do not deliver sufficient funds, their settlement will not occur. In case settlement is performed out of (collateralised) cash credits, the CSD is using excess cash available from other sources and is not relying on a dedicated counterparty. |

We are agreeing to the approach of allowing internal models for the purposes of fulfilling CSD-R requirements. We furthermore agree to the inclusion of **custody risk** as part of the capital charges

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under the operational risk charge as specified by CRR and consequently **not adding additional elements on top of the banking framework** for that purpose. However, although the reference in Article 3 (1) (a) draft RTS and the header of Article 4 draft RTS are referring to “custody risk”, the text of Article 4 (1) draft RTS does not include custody risk. We think that this has been done by mistake and kindly ask to include “custody risk” in the wording of Article 4 (1) in the final version of the RTS.

However, as neither level 1 text nor the draft RTS clearly specify what is meant by custody risk, we currently understand this is seen as the operational risk related with the (sub-)custody to a third party including the operations of any CSD link. This understanding is based on the wording of the draft RTS in Recital 10 (which specifically argues that general **operational risk** is only covering the risk related to securities “owned” by the CSD itself but not related to the risk of custody at third parties. Note that we do in this context not understand what the term “owned” is targeting for and we have general doubt on the meaningfulness of Recital 10 as a whole) and the rules in Article 3 (1) (a) (including the naming of Article 4) which is clearly outspoken that custody risk is covered by the capital charge for operational risk under the banking framework.

We therefore clearly disagree to set up a dedicated capital requirement for the risk of sub-custody and custody for own securities as proposed in Article 5 draft RTS. We cannot see **any additional risk** coming from those services **in comparison with** custody / sub-custody of **a “normal” credit institution / investment firm** where **this is part of the capital charges for operational risk**. Especially in the case of using an AMA a CSD will have to include all business activities in the model and as such, we clearly see the risk of double charging for the same activity. In addition, for the proposed Standardised Approach we see the practical impossibility to derive a “relevant indicator” as (sub-)custody as such is only creating cost but no revenue. This is included in the relevant gross indicator for the general capital charges for operational risk. Consequently, we urge the EBA to drop the dedicated requirements for custody risk as proposed with Article 5 draft RTS (see also our reply to question 1 below).

Having said this we also want to point out that even if “custody risk” in the sense of being the risk of depositing own or participants assets with third party would looking to capture any other risk category (especially counterparty risk or legal risk) this would be again same risk as for any bank deposits with CSDs or other third parties and therefore be included in either the operational risk capital charge (legal risk) or the credit risk charge (counterparty risk) which consequently would not require a dedicated capital charge for CSDs in case the banking framework is used. Moreover, we clearly disagree on the existence of any financial risk as (i) client assets do not belong to the CSD, are segregated according to CSD-R rules and therefore any loss due to a default of any kind of custodian or a temporary blocking of access to these securities can only be related to operational risk including legal risk and (ii) the counterparty risk of an investment lies towards the issuer of the instrument and not towards any agent acting as any kind of custodian (again only operational risk including legal risk).

Business risk may result in a lower income or even a loss. While losses are to be covered from equity, lower income is covered out of income and not from equity. It is therefore questionable, why current or planned income cannot be taken into account – at least to some degree – to cover business risk. At least when determining the own estimates of business risk, the (planned) income of the year should be allowed to be used as a cover measure. In this line, Annex II point b clearly shows that income needs to be taken into account when covering business risk as a loss of 30 % of income still leaves 70 % of income and would not lead to any coverage by capital. As such, such a scenario would not make sense! (Similarly this is true for the planned contribution of pensions plans. They will impact current income first. However, the scenario cannot exclude to go beyond total current income).

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With regards to the additional requirements for CSDs being authorised to offer banking type of ancillary services, it is necessary to clarify the scope of the various rules. While Recital 13 and Article 9 draft RTS more or less clearly limit to exposures resulting from dedicated intraday credit provisioning to participants or other CSD users (i.e. in general cash credits only), the scope of the rules for (1) credit risk (Articles 11 to 29, especially Articles 12, 17, 18 – 20, 21 and subsequent draft RTS) and (2) Liquidity risk (Article 30 – 41, especially Article 31 (3) draft RTS) are not that precise. In our reading, item (1) is limited to credit risk coming from any kind of credit towards participants / clients of the CSD (see wording of Article 12 (b) “borrowing participant”; however, securities lending as principal may require dedicated treatment) and (2) is covering all kinds of liquidity risk regardless of the kind of counterparty. However, without the attempt to be complete, quite some open topics exist like:

- Regarding (2) Recital 16 of draft RTS is limiting the identification of liquidity risk to the providing of banking-type ancillary services and is asking for a distinction if appropriate. Liquidity management however cannot be done on a fully segregated product by product basis and in principle net liquidity position may be the result of the (various) banking activities and held in a treasury position which in itself is not a banking-type of ancillary services.
- Regarding (1) Article 12 (a) of draft RTS is looking for peaks and average intraday exposure monitoring of all banking-type of ancillary services not reflecting the same level of focus related to explicit “provision of intraday credit” as stated in Recital 13 and 14 of draft RTS and therefore this would include exposures during the day from overnight products.
- Regarding (1) Article 12 (c) of draft RTS (“other counterparties”) is yielding to include not just activities from the banking activities itself but also rather any other kind of activity and as such going beyond the scope assumed above. As this cannot be in scope of the credit activities as listed in (b) and (d) of section C of the Annex of CSD-R, we assume that Article 12 (c) goes beyond level 1 text.
- Regarding (1), Article 17 is restricted to credit limits to “participants” and is referring to Article 11 (1) which may or may not be contradicting depending on the targeted reach of Article 11 draft RTS.
- Regarding (1), Articles 18 to 20 seem to clearly focus on credits to participants and do not include collateral taken from collateralised money market investments

We therefore urge the EBA to clarify the respective scope, e.g. by stating the targets clearly in the Recitals for (1) and by updating Recital 16 related to (2).

While we see benefits for the general approach to calculate the capital surcharge for intraday credits based on a “peak” situation and using the general CRR rules for overnight exposures for that purpose, we disagree with a number of elements of the concrete proposal.

Our concerns centre to the following areas:

- (1) Peak intraday exposures at the (I)CSDs may last for a couple of minutes only and are not necessarily representative of the intraday credit-granting activities of the (I)CSDs. As a consequence, and in our opinion, “the highest intraday credit exposure” observed in the course of the “most recent calendar year” (as per Article 9 (1) a)) is not a valid proxy for the (I)CSDs credit granting activities and, hence, should not be used as a basis for the capital surcharge.
- (2) The intraday exposures may continue overnight and are in such cases technically included twice in the capital charge.
- (3) The calculation of the capital charge for credit risk based on CRR already includes risk weights and specifically haircuts. The haircuts foreseen in CRR take into account quality of the collateral, remaining maturity of the collateral and any potential currency mismatch. Moreover,

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the haircuts are using liquidation periods of up to 20 days and are in general substantially lower than the proposed 10 percent haircut for very short liquidation periods. As such, we disagree to such a flat haircut which is not taking care of the underlying market risks.

- (4) In addition to the flat and very high proposed haircut, the proposal foresees to use the complete CRR model, i.e. to have the CRR haircuts **on top** of the proposed haircut of 10 percent. We clearly reject the double haircutting here as it may lead the (I)CSDs to impose higher collateral costs on participants or, alternatively, reduce the provision of settlement liquidity.
- (5) Overall, we urge the EBA, **not to set** haircuts **in addition** or **instead** of the CRR haircuts but to foresee the **standard haircuts under CRR only** (which may exclude internal haircuts under the standardised method).
- (6) The proposed method to our understanding looks to **used** credits only and leaves aside any given line.
- (7) Should the definition of peak exposure refer to the maximum amount of intraday credit registered during the day at a specific point in time (total of all clients), this definition would assume the simultaneous default of all customers precisely at that point during the day. Conversely, should the definition of peak exposure refer to the sum of all peaks per individual client registered during the day, at multiple points in time, this definition would reconstruct a total exposure situation which, in reality, never occurred.
- (8) The combination of credit risk resulting from cash credits for settlement and related purposes with the credit risk for securities lending including commitments and guarantees related to this for the purpose of intraday credit risk capital charge does not seem to be appropriate. Securities lending activities may be intraday only. However, the purpose of Securities lending is not reduced to this purpose. As such, we clearly see the target of the rules in Article 54 (3) (d) and 54.4.e **respectively to be on cash credits only**. This needs to be clarified and clearly expressed in Article 9 of the draft RTS. Furthermore, already from a practical perspective, the possibilities to measure peak exposures intraday for the total of cash credits plus securities lending positions is practical impossible. We refer to our dedicated remarks on the securities lending business below.

Taking these concerns into account, we clearly see alternative measures to the proposed treatment as being superior. This includes measures based on granted (intraday) lines and general collateral criteria by using nevertheless to a large degree the general approach for Credit risk under CRR with some slight modifications (see our response to question 3).

Securities lending and related guarantees in scope of the allowed activities (Annex C (b)) and d) of CSD-R) will have varying values throughout the day which does not impact the liquidity situation of the CSD. As such, these impacts are not part of the **liquidity monitoring metrics** as proposed in the BCBS principles. Although, credit monitoring is done looking into all sources of credit, the total of cash credits and securities loans / guarantees and commitments for securities lending usually is not done in a combined manner but rather via dedicated systems with dedicated limits and using net values (after internal rules to recognise collaterals) for securities lending business. From an overall perspective to manage credit risk this approach seems us to be appropriate. Consequently, any approach to **monitor intraday credits** on the total outstanding including outstandings from securities lending and related guarantees / commitments is clearly rejected. Furthermore, securities lending outstandings are monitored mainly on a counterparty by counterparty modus net of collateral and not on a (gross) total exposure level over all counterparties. As such, the requirements in Article 12 draft RTS do not seem appropriate to this kind of business in our view.

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Overall the level of detail as requested in Article 12 (b) (but also (c) which we think should be dropped in its entirety, see above) in our mind goes by far beyond reasonable control metrics especially as in general settlement cash credit lines are covered by collateral pools which are in principle even substantially larger than the actual portion needed. As such, any artificial combination of cash lend by currency with any given collateral does not show actual risk situation and does not take into account the possibility of using remaining bits of the collateral pool in case market price movements reduce the collateral / market value of current "allocated" collateral portions.

The provisions for intra-day credit and liquidity management, measurement and monitoring go way beyond general rules for banks. This is true also for the collateral management. While we understand the need for a sound framework for this, we nevertheless want to point out that we are talking on short-term if not intraday risk only. As such, market developments with only mid- to long-term impacts to the value of collateral are irrelevant. Due to the short term nature of the credit business, CSDs or the linked credit institutions can react on very short notice on market developments. Furthermore, there is a high turnover of the collateral as the securities deposited with the CSD for general business purposes are used as collateral for the underlying transactions and in general the loans granted by CSDs do not have a different purpose. As such, the requirements need to be clearly adapted to a reasonable level. This is also true with regards to reporting obligations as the related positions will be outdated very quickly as they do last in general only minutes. A too detailed reporting therefore is creating enormous effort but no real added value.

On **collateral and other equivalent financial resources**, Article 18 (1) (d) of the draft RTS requires CSDs to "monitor on near real-time basis the credit quality, market liquidity and price volatility of each security....". Considering the very strict eligibility requirements imposed by Articles 18, 19 and 20, the need for "real-time" monitoring appears disproportionate. In addition, the RTS would need to provide further clarification on the concept of "market liquidity" and on which metrics will be required to be monitored.

The financial industry is currently preparing solutions to comply with the requirements on **intraday liquidity monitoring** set out in BCBS 248. For any requirements out of the RTS going beyond the scope of BCBS 248, there is a risk that the industry will not deliver a solution, making it impossible for CSDs to comply. It is therefore of critical importance that the requirements of the RTS are in line with the BCBS 248 requirements. While the European banking regulators have not yet published any guidance on the applicability of the BCBS 248, nor incorporated into EU legislation the provisions of BCBS 248², the provision proposed by EBA in the draft RTS seem to go far beyond these global BCBS 248 requirements. In the same context, an implementation of the RTS requirements before BCBS 248 (and their national transposition) may mean that the industry is not yet prepared to provide the required information. To ensure that CSDs are able to comply, the implementation date must be aligned with the bank requirements or a sufficiently long transition period must be available.

(Uncommitted) money market credit lines provided by cash correspondent banks, depositories and money market counterparties form a major source of liquidity for CSDs, in particular for intraday liquidity management. Not taking these into account in the context of Article 31 (2) (b) draft RTS distorts the actual liquidity situation of a CSD. We consider it appropriate to take such credit lines into account, while applying conservative haircuts for stress testing, in particular when stressing an impairment in the credit quality of the CSD or a market disruption event. Uncommitted credit lines are explicitly

² It is our understanding that EBA will work on these provisions earliest in 2016

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included in the qualifying liquidity sources under BCBS 248. Beside our strong demand to include such uncommitted interbank credit lines, it is doubtful if sufficient committed credit lines can be received. Committed credit lines cause additional regulatory charges for solvency, large exposure and also LCR purposes which make the banks currently reluctant to grant such lines (We are not arguing on commercial terms. However, the cost of such lines would have to be recharged to the markets and would make settlement for end-investors more expensive). In addition, under stressed market conditions counterparties may – despite legal commitments – not want or not be in the position to fulfil their commitments and as such, the credit lines are to a substantial degree not “safer” due to the commitments received.

Payment obligations of the CSD, as long as they are not time specific, are due at the end of the business day. An execution of such payments not immediately but at a later point during the same day does not give rise to claims by customers and is therefore not considered critical. The concept of a dedicated expectation on the timing of expected payments during the day is artificial (Article 31 (1) (b) and (c), draft RTS). Treasury management targets to have sufficient funds to cover all expected and foreseeable cash outflows during the day. Delaying the execution of a payment which is due on that date - but not at a certain time - to a later point in time on the same day is neither a breach of legal obligations nor a liquidity shortage. We therefore ask to clarify that any expected outgoing payment which is not due at a dedicated time is expected to be paid out by the end of the day.

The requirement to hold assets covering the default of the two largest participants (“**Cover 2**”, Article 35 (4) and 35 (11)(a) draft RTS) seems to be adopted from EMIR. While this makes sense for a CCP, who guarantees the fulfilment of all obligations of the defaulting participant, there is no such obligation for a CSD. In case of a customer default, the CSD would simply not execute any further settlement transactions for the defaulted customer. We therefore do not think that a “Cover 2” requirement should be applicable for a CSD.

The implementation of the proposed rules requires significant conceptual and IT effort. We expect that implementation will take at least 24 months and therefore urge the regulators to foresee a respective transitional period.

Finally, on the overall provision of Banking Services by CSDs this regulation is building CSDs as strongholds of the most stringent regulatory requirements and most heightened systemic risk protection models. We fear that this protection will work as a new barrier for new entrants for the provision of such banking services.

As anticipated during the CSD-R legislative process, to this dates no credit institution has succeeded in its attempt to reach the status of “designated credit institution to provide any banking-type ancillary services” as from Article 54(4) of the CSD-R, and CSDs will find it very unlikely to receive such ancillary banking services from an authorised third party. For the sake of barrier-building, further flexibility should be allowed from the EBA RTS to allow to those CSDs wishing to provide banking services to other CSDs in compliance with Art 54 to any CSDs wishing to receive such services.

D. Responses to the questions for consultation

1. What are the practical impediments of calculating capital requirements for custody risk as set out in this article? (Article 5 draft RTS)

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The proposed approach refers to a capital charge for **operational risk**. The method proposed would require splitting the total business into pre-defined business lines and allocating all income to any one of those. The business lines are fully pre-described in Article 317 (4) CRR which does not include a business line “third party custody” but rather refers to “Agency services”.

As such, all custody service income would have to be allocated to that business line. This, however, would put the income from custody for clients a second time under capital charge which cannot be intended. Moreover, third party custody is not creating income but rather cost. All in all, the proposed method does not seem to fit at all. It further needs to be noted, that the BCBS has already proposed to withdraw the current standard method as is has not demonstrated to correctly reflect the various business lines.³ We therefore reject the proposal.

More generally, we reject to add a dedicated charge for custody risk in whatever form on top of its coverage within the general framework of the operational risk capital charge. To our understanding derived from the consultation paper itself, even EBA in general agrees to this approach for client custody. Consequently, a separate charge for any (sub-)custody with third parties does not make sense:

- Any income from own securities is included in the relevant indicator for the Basic Indicator and Standardised Approach and the risks related to the investments are to be captured appropriately under the AMA.
- Any income from client custody business is to be captured NET⁴ for the relevant indicator under the Basis Indicator or Standardised Approach. Moreover, under certain conditions as specified in Article 316 (1) CRR even some outsourcing expenses can be used to reduce the relevant indicator in addition.
- Any related risk for (sub-)custody of assets is to be captured under the AMA.

All in all, this demonstrates that an additional charge is not justified. The level 1 requirements to include (not just) operational risk but also legal and custody risk in our mind is immanently embedded in the operational risk charge of the banking framework and as such does not require any add on for CSDs.

In addition to the general comments made above and the answers to the specific question raised, we do want to comment on dedicated topics regarding Articles 1 to 5 the EBA draft RTS proposal as follows:

Capital definition (Recital 4 / Article 2)

The proposed regulation refers – like the delegated regulation (EU) No. 152/2013 – with regards to the capital requirements for “investment risk” to the capital rules for credit (and market) risk as defined in the regulation (EU) No. 575/2013 (CRR) and also defines operational risk based on CRR rules. However, CRR defines capital and in addition positions to be deducted from capital. Consequently, either the same capital definitions should be used and therefore the treatment of the required capital deductions would be the same or a dedicated treatment of such items under the “investment risk” should be given. Furthermore, Article 46 (4) of CSD-R foresees an element of deduction from capital on its own which needs to be incorporated in the framework. For the majority of CSDs capital may only consist of paid-in capital, retained earnings and reserves and neither additional capital components nor (complex)

³ BCBS: Consultative Document - Operational risk –Revisions to the simpler approaches, BCBS 291

⁴ Commission expenses which are related e.g. to sub-custody are allowed to be deducted. As such, the general CRR approach is even contradicting the aim of EBA in this regards.

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deductibles are to be recognised. As such we clearly favour an approach to use the capital definitions from CRR only modified by a rule to reflect Article 46 (4) CSD-R for all CSDs.

We therefore propose to reword Recital 4 / Article 2 as follows:

Recital 4:

(4) [Definition Capital] The definition of capital in this Regulation should follow the definition provided in Regulation (EU) No 648/2012 (EMIR). Such a definition appears to be the most suitable in relation to the regulatory requirements given that the definition of capital in Regulation (EU) 648/2012 was specifically designed for market infrastructures. However, the CSDs authorised to provide banking services under Regulation (EU) No 909/2014 are required to meet capital requirements under this Regulation and own funds requirements under Regulation 575/2013 at the same time. They are required to meet the own funds requirements provided for in Regulation EU (EU) (No,) 575/2013. As it is foreseen to use the banking framework of that regulation to define the capital requirements for market and credit risk (to cover the category of investment risk) as well as those for operational risk (to cover the categories of operational, legal and custody risks), it seems to be adequate to also cover those risks with instruments that meet the definition of capital of that regulation. For CSDs not being authorized to provide banking services under Regulation (EU) No. 909/2014 the use of the capital definition given under Regulation (EU) No. 648/2012 (EMIR) which is subscribed capital, retained earnings and reserves, should not deviate substantially from the definition of capital given under Regulation (EU) No. 575/2013. However, Regulation (EU) No. 575/2013 gives the option to include further instruments in the capital definition. Moreover, the handling of certain positions which are to be deducted in the banking framework would be properly applied for all CSDs. As such, the definition of Regulation (EU) No. 575/2013 seems to be adequate also for CSDs not being authorised to provide banking services. CSDs authorised to provide banking services under Regulation (EU) No. 909/2014 would have only one set of capital definition to be fulfilled. Finally, for any type of CSD a deduction from capital needs to be foreseen in order to reflect Article 46 (4) of Regulation (EU) No. 909/2014 in case this is to be applied. However, they should be allowed to meet the additional capital requirements of this Regulation with instruments meeting the requirements of either Regulation.

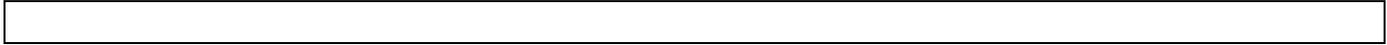
Article 2 - Definition of capital of a CSD

1. For the purposes of Article 1, and without prejudice to the requirements of Article 1.46(4) of Regulation (EU) No 909/2014, a CSD shall hold capital instruments that meet all of the following conditions:

- (a) they are subscribed capital within the meaning of Article 22 of Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions;*
- (b) they have been paid up, including the related share premium accounts;*
- (c) they fully absorb losses in going concern situations;*
- (d) in the event of bankruptcy or liquidation, they rank after all other claims.*

2. A CSD authorised in accordance with point (a) of Article 54(2) of Regulation (EU) No 909/2014 to provide banking-type ancillary services may, for the purposes of paragraph 1, hold capital instruments that qualify as own funds instruments as referred to in point 119 of Article 4(1) of Regulation (EU) No 575/2013. The amount of any investment which falls in scope of Article 46 (4) of Regulation (EU) No. 909/2014 and which is not deducted from the capital according to the definition of Regulation (EU) No. 575/2013 shall be deducted from the capital.

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**Capital requirements for operational, legal and custody risk
(Recitals 9 and 10, Articles 3- 5)**

We clearly **agree** to the usage of the operational risk capital charge method as derived from the banking framework. CSD-R does not give a definition of “operational risk” but adds the need to cover also legal and custody risk to the requirements. Delegated Regulation (EU) No. 152/2013 includes under similar considerations the “legal” risk as part of the operational risk capital charge for CCPs. We therefore also clearly agree to the same for legal risk in the draft RTS for CSDs.

Related to the custody risk and potentially sub-categories of custody risk, the draft RTS however is not following a consistent approach and we clearly disagree to the approach proposed. The management of any (potentially) additional risk of CSD links is part of the respective rules on CSD-links (Articles 50 to 52 CSD-R and related provisions in the ESMA RTS). However, we do not regard risks from CSD-links to be different from those of general sub-custody. Any “normal” credit institution or investment firm subject to CRR / Basel III offering custody services is using sub-custody and finally holds the client assets in custody with the CSD at the upper end of the custody chain. As there is no dedicated capital charge for this sub-custody, we cannot see a different treatment for the same activity being performed by a CSD. The same argument is true also for the custody of proprietary assets of any credit institution or investment firm. Any such risk is covered in the Basic Indicator Approach (BIA) or with dedicated risks if deemed necessary in the Advanced Measurement Approach (AMA).

In the BIA as well as in the Standardised Approach (TSA) revenues are used as relevant indicator and even some external costs (e.g. commission expenses like the ones for sub-custody and custody for own securities) **are deducted** from the relevant indicator. It is therefore the custody margin which is included in the relevant indicator.

In summary, already the banking framework is covering any risk of third party custody and this should not be added once more. **Custody risk is – like legal risk – part of the operational risk capital charge under CRR.** consequently, we disagree to **adding additional elements on top of the banking framework** for that purpose. However, although the reference in Article 3 (1) (a) draft RTS and the header of Article 4 draft RTS are referring to “custody risk”, the text of Article 4 (1) draft RTS does not include custody risk. We think that this has been done by mistake and kindly ask to include “custody risk” in the wording of Article 4 (1) in the final version of the RTS. Moreover, we clearly disagree to set up a dedicated capital requirement for the risk of sub-custody and custody for own securities (see above) as proposed in Article 5 draft RTS.

The Basel Committee (BCBS) is currently discussing the introduction of floor rules for the advanced / internal approaches based on the relevant standardised methods.⁵ BCBS d306 is proposing a general floor for model based approaches based on the standardised approaches of the same risk category. With regards to operational risk that would be the Basic Indicator Approach (BIA). The Basel Committee has not proposed yet any level of the floor and also has not come up with a final framework as the BCBS d306 consultation only closed on 27 March 2015 and has received various comments raising strong concerns. While we in general oppose these floor rules and rather urge regulators to calibrate the internal models⁶, we clearly oppose an introduction of a floor by the draft RTS being different from the BCBS ones in case introduced. Any floor finally set by the BCBS is supposed to be

⁵ BCBS: Consultative Document – Standards - Capital floors: the design of a framework based on standardised approaches, d306

⁶ See our reply to the BCBS consultation <http://www.bis.org/bcbs/publ/comments/d306/deutscheborse.pdf>

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taken over by the EU banking framework (CRD / CRR), which is currently proposed to be used for CSDs as well. As such, in case any floor is implemented, it will be applicable for CSDs as well. Furthermore, the current Basel I floor which is – correctly – not proposed to be put in place for CSDs had been designed to take care that the “new” Basel II rules for differentiated credit risk and newly introduced operational risk (at the time in 2004) do not fall short compared to former rules (Basel I) for credit risk only. Therefore, it does not make sense to introduce a floor on operational risk in order to comply with non-existing past rules for credit risk for CSDs. As such, for the reasons explained above we clearly favour to remove Article 4 (5) from the proposed RTS.

In this context, it is to be noted that due to a market wide increase of legal and compliance matters, we observe a sharp increase of capital charges under the AMA for these types of risk. Contrary, due to the low levels of interest, net interest income is become less a driver for the relevant indicator under both the BIA and the TSA. These two movements clearly contribute to disproportionate levels of capital requirements for CSDs under the AMA compared to the BIA. However, even without these current drivers, the AMA for CSDs is leading to far higher requirements than the BIA would. In the case of Clearstream’s the two CSDs and the Financial Holding Group falling currently in scope of CRR, a rough calculation of BIA as comparison to the current AMA shows – based on different allocation consequences between the two methods – levels of 30 to 45 % under BIA compared to the current AMA capital charge. As such, the introduction of the mandatory operational requirement to calculate the BIA capital charge while the AMA will most likely generate much higher capital charges seems not to be justified.

Finally, we do want to point out that currently both the BIA and the TSA are under review by the BCBS and a proposal to merge the two towards a modified BIA only has been issued in 2014. We also expect a review of the AMA in the near future. As such, any modification / addition to the banking framework may have to be revised once the new rules are implemented in the EU which could be avoided by refereeing to the complete banking framework only.

As such, we propose the following amendments to the Recitals and the draft Articles:

Recital 10

(10) [custody risk] Like for legal risk, also custody risk is covered within the banking framework of Regulation (EU) No. 575/2013. There is no material difference in the risk of a credit institution or investment firm putting client securities or proprietary securities under custody with a third party including a CSD. Also these securities may be deposited via a CSD link and their settlement may also take place using the CSD-links. Consequently, no dedicated charge for custody risk in addition to the operational risk charge under the banking framework is proposed. While operational risk generally covers risks relating to securities owned by the same CSD, specific provisions are necessary as concerns custody risk as these refer to the risk of custody of securities in another CSD or in an intermediary in the case of indirect links.

Article 3 - Level of capital requirements for a CSD

1. For the purposes of Article 1, a CSD shall hold capital **as defined in Article 2**, together with retained earnings and reserves, which shall be at all times more than or equal to the sum of:
(a) the CSD’s capital requirements for operational, legal and custody risks, referred to in point (a) of Article 47(1) of Regulation (EU) No 909/2014, calculated in accordance with Article 4;
(b) the CSD’s capital requirements for custody risks, referred to in point (a) of Article 47(1) of

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Regulation (EU) No 909/2014, calculated in accordance with Article 5 where it has its securities or its clients' securities under custody by another CSD or an intermediary within a CSD link;
(b) the CSD's capital requirements for investment risks, referred to in point (a) of Article 47(1) of Regulation (EU) No 909/2014, calculated in accordance with Article 6;
(c) the CSD's capital requirements for business risks, referred to in point (a) of Article 47(1) of Regulation (EU) No 909/2014, calculated in accordance with Article 7;
(d) the CSD's capital requirements for winding-down or restructuring its activities, referred to in point (b) of Article 47(1) of Regulation (EU) No 909/2014, calculated in accordance with Article 8.

No changes for paragraphs 2 to 4.

Article 4 *Level of capital requirements for operational, legal and custody risks*

1. For the purposes of point (a) of Article 3(1), a CSD shall calculate its capital requirements for operational, ~~and legal~~ **and custody** risks, in accordance with paragraphs 2 to 4~~5~~.
2. 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 with permission to use the Advanced Measurement Approaches ('AMA') as referred to in Articles 321 to 324 of Regulation (EU) No 575/2013, ~~may~~ **shall** calculate its capital requirements for operational, ~~and legal~~ **and custody** risks in accordance with the provisions of that Regulation relating to the AMA.
3. 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 using the Standardised Approach ('TSA') as referred to in Articles 317 to 319 of Regulation (EU) No 575/2013, ~~may~~ **shall** calculate its capital requirements for operational, ~~and legal~~ **and custody** risks in accordance with the provisions of that Regulation relating to TSA.
4. A CSD that is not authorised in accordance with Article 54(2) of Regulation (EU) No 909/2014 or a CSD that is authorised in accordance with point (a) of Article 54(2) of Regulation (EU) No 909/2014 but which does not have permission to use either the AMA as referred to in Articles 321 and 324 of Regulation (EU) No 575/2013, or TSA as referred to in Articles 317 to 320 of that Regulation, shall calculate its capital requirements for operational, ~~and legal~~ **and custody** risks in accordance with the provisions of the Basic Indicator Approach as referred to in Articles 315 and 316 of that Regulation.
5. A CSD that calculates its capital requirements for operational and legal risk in accordance with the AMA, as referred to in paragraph 1, shall hold capital which shall be at all times more than or equal to 80% of the capital that would be required in accordance with the Basic Indicator Approach referred to in Articles 315 and 316 of Regulation (EU) No 575/2013.

Article 5

Level of capital requirements for custody risks

For the purposes of point (b) of Article 3(1), a CSD shall calculate its capital requirements for custody risks where it has its securities or its clients' securities under custody by another CSD or an intermediary within a CSD link. It shall do so in accordance with the methodology referred to in Articles 317 to 319 of Regulation (EU) No 575/2013 on the standardised approach for operational risk.

Article to be deleted.

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2. Is the level of capital requirements as proposed in these draft RTS adequate to capture all the risks arising from the activities of a CSD? Are they proportionate for all the CSD's business models? Please justify your answer.

We **agree in general** to the proposed elements of the draft RTS with the following exceptions:

- (1) The introduction of a capital charge for custody risk limited to items given to third parties in (sub-) custody does not make sense. The general CRR approaches towards operational risk cover in our view custody risk in full. (see above)
- (2) We see the need to cover business risk not only with capital but also with (expected) income. At least with regards to the estimation of business risk impact, the related (expected) income needs to be deducted from the gross estimated risk costs.
- (3) We disagree to the proposed floor to capture the capital requirements for winding down or restructuring. Here once more the alignment with the EMIR rules for CCPs does not seem to be appropriate. Especially for smaller CSDs the floor of 6 months operation cost for winding down or restructuring may be too high and EBA should consider lowering this. Especially in markets where more than one CSD is available, the period of 6 months seems to be too pessimistic. We however acknowledge the limitation of the level 1 text in this regards. In addition, we doubt that continuing for the full period of restructuring or winding with the average cost of the past is also too pessimistic as the changed business is supposed to be as a general rule of thumb less costly (strategic costs and IT development is supposed to be reduced and general operations in a supposed declining business is also supposed to be lower). As such, the cost base as of the 4th month (in case winding down / restructuring is supposed to take that long) should be assumed to be lower than 100 % of the past (e.g. 80 %).
- (4) The proposed floor on operational risk charges when using the AMA is rejected as it does not make sense to introduce it at all and especially not for CSDs only in advance of any (possible different) floor for banks which is currently in discussion.

All in all, it needs to be noted that currently CSDs not operating under a banking license in general have limited rules for capital requirements. Often only a minimum amount is fixed (sometimes as a portion of annual costs) without setting any risk related requirement. As such, EBA needs to consider a phase-in approach for such CSDs not offering banking type of ancillary services currently to implement the necessary tools for the calculation of the requirements and its fulfilments. We propose to have a phase in period of 30 months at least. During that period a simple approach to calculate the capital requirement based on total cost or the volume of assets under custody is proposed. This simple ratio should be fulfilled at least with 60 % at the point in time the application is filled, with at least 80 % six month after application is granted and in full one year after application is granted. Such an approach would allow smaller CSDs to collect any needed capital with sufficient lead time. Of course the application should clearly indicate how the CSD is (a) going to increase the level of capital based on the interim rule in case it falls short at the time of application and (b) how and when it is going to implement the necessary calculation tools. The tools have to be available for calculation purposes at least 18 months after application is granted in order to give additional 12 months for any needed additional capital measure on top of the interim rules.

In addition to the general comments made above and the answers to the specific question raised, we do want to comment on quite a few items in more detail and raise some questions on dedicated topics regarding Articles 6 to 8 of the EBA draft RTS proposal as follows:

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Capital requirements for investment risk (Recital 11, Article 6):

In general a CSD does not take assets of its clients onto its balance sheet on a trustee basis. Securities taken as collateral or into custody are not shown in the balance sheet of a CSD and remain in the ownership of the clients. However, CSDs offering banking services are taking cash deposits in order to perform settlement and custody activities and all CSDs (may) take to a small extent also cash as collateral for various purposes (though securities collateral is the majority of any collateral taken). Any such client cash taken as deposit or collateral is placed by the CSDs **in their own name** and never "on behalf" of the clients as cash becomes part of the CSDs assets and is not segregated as a client position. In case a CSD would act as a trustee for its clients, it would not bear the underlying investment risk. As such, the wording of Recital 11 needs to be adjusted accordingly. In addition, also loans to clients/Participants and other assets should be subject to the "investment risk". Regardless of the authorisation to offer banking type of ancillary services, a CSD should be allowed to use all available methods for Credit Risk Mitigation as offered by CRR.

As such, Recital 11 and Article 6 (2) of the draft RTS should be amended accordingly.

Recital 11

*(11) [investment risk] A CSD may also face investment risks on the assets that it owns and those **that are the counter value of participants' deposits or collateral or from loans of any kind under the allowed banking services towards the participants or any other exposure.** ~~it holds on behalf of its participants.~~ Investment risk is the risk of loss faced by a CSD when it invests its own or its participants' resources, such as collateral. Directive ~~EG/2013/36/EC~~ ('CRDIV'), Regulation (EU) No 575/2013 ('CRR') and Regulation (EU) No 152/2013¹⁰ [Capital requirements for CCPs] should be an appropriate benchmark for the purpose of establishing capital requirements to cover credit risk, counterparty credit risk and market risks that may arise from the investments of a CSD. In particular, counterparty credit and market risks are not expected to be the major sources of risk for CSDs and the complexity of the investments allowed by the requirements on the investment policy under Regulation (EU) No 909/2014 justify the use of advanced methods provided for in Regulation (EU) No 575/2013. For the purposes of this Regulation, capital requirements for investment risk means the sum of the capital requirements for credit risk and counterparty credit risk and market risk stemming from the CSD's investments of the assets that it owns and those **coming from the investment of participants' deposits or collateral or resulting out of loans towards participants as well as any other exposure as defined in Regulation (EU) No. 575/2013.** ~~that it holds on behalf of its participants.~~*

Article 6

(no changes for paragraphs 1, 3 and 4. Paragraph 2 should be rephrased as follows:)

2. For the calculation of a CSD's risk-weighted exposure amounts for credit risk, as referred to in point (i) of paragraph 1(a), the following shall apply:

*(a) where the CSD is not authorised in accordance with point (a) of Article 54(2) of Regulation (EU) No 909/2014 to provide banking-type ancillary services, the CSD shall apply the Standardised Approach for credit risk referred to in Articles 107 to 141 **in combination with Article 192 to 241 on Credit Risk Mitigation** of Regulation (EU) No 575/2013;*

*(b) where a CSD is authorised under point (a) of Article 54(2) of Regulation (EU) No 909/2014 to provide banking-type ancillary services but does not have permission to use the Internal Ratings Based Approach (IRB) referred to in Articles 142 to 191 of Regulation (EU) No 575/2013, the CSD shall apply the Standardised Approach for credit risk referred to in Articles 107 to 141 **in combination with Article 192 to 241 on Credit Risk Mitigation** of that Regulation;*

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(c) where a CSD is authorised in accordance with point (a) of Article 54(2) of Regulation (EU) No 909/2014 to provide banking-type ancillary services and has a permission to use the IRB Approach, the CSD shall apply the IRB Approach for credit risk provided for in Articles 142 to 191 of Regulation in combination with Article 192 to 241 on Credit Risk Mitigation (EU) No 575/2013.

Capital requirements for business risk (Recital 12, Articles 7, Annex II):

As stated in Recital 12 draft RTS, business risk can lead to reduced revenues or increased cost and subsequently in a reduced net income which may lead even to a loss. However, only in case the business risk is severe or net income is very low, a loss to be borne by equity may be the consequence. As such, a large portion or even all of the business risk is covered by current income and any floor to be covered by equity seems to be more than artificial (in this regards our criticism is already valid for the respective rules on CCPs in Delegated Regulation (EU) No. 152/2013). As such, this clearly needs to be stated in Recital 12 draft RTS and no floor should be introduced in Article 7 draft RTS.

Our argumentation is further substantiated also in the scenarios proposed in Annex II which refer to “a loss of 30 % income” (note, it is not clear what is meant by “income” and this should be further specified. We believe here gross revenues are in scope), “unexpected increase of funding cost of 10 %” etc. which all may or may not be covered in full or parts out of current / forecasted income.

Beside (i) Delegated Regulation (EU) No. 2015/488 as regards to own funds requirements for investment firms based on fixed overheads for the purpose of Article 97 (4) CRR and (ii) Article 4 (2) of Delegated Regulation (EU) No. 152/2013 for CCPs, Article 7 draft RTS is introducing yet another definition of an “appropriate cost base” for more or less the same purpose. We clearly urge the EBA and the EU Commission to come up with a consistent and coherent approach across all areas of capital requirements (i.e. at least CRR, CSD-R and EMIR). As we disagree to have a capital floor for business risk, also the definition of “annual gross expenses” needs to be removed from Article 7 draft RTS and needs to be included in Article 8 draft RTS instead. We therefore propose a unique approach to be implemented consistent for all financial market regulations as an adjustment to Article 8 draft RTS as specified below (in the proposed rewording of Article 8). As such, we clearly favour a definition which is not referencing to IFRS as IFRS does not specify certain categories of expenditure but to refer to directive 86/635/EC which does define categories of expenditure – to our understanding – to a sufficient degree. Such an approach would be in line with the general approach of Article 316 CRR for the relevant indicator for operational risk.

As such, we propose the following changes to the draft RTS:

Recital 12

*(12) [business risk] Business risk should refer to the risk that a CSD assumes due to potential changes in general business conditions that are likely to impair its financial position as a consequence of decline in its revenues or an increase in its expense **resulting in a decline in net revenue and potentially in a net loss which would have to be covered by its capital** and that result in a loss that should be charged against its capital. Given that the level of business risk is highly dependent on the individual situation of each CSD and can be caused by various factors, the **business risk calculation and any possible** capital requirement of this Regulation should be based on a CSD’s own estimate and the methodology used for such an estimate should be proportional to the scale and complexity of the CSD. A CSD should develop its own estimate **of the amount of business risk to be covered by income based on the lower of prior year net result and forecasted current year net result and any resulting net loss to be covered by capital** required against business risk under a set of stress scenarios provided in this*

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Regulation in order to cover the risks that are not already captured by the methodology used for covering the operational risk. When a CSD produces its own estimates, a minimum level of capital should be introduced in order to ensure a prudent level of the capital requirements.

Article 7 - Capital requirements for business risk

1. For the purposes of point (d) of Article 3(1), the capital requirements of a CSD for business risk shall be the higher of the following:

(a) the sum of all estimates resulting from the application of paragraph 2 exceeding the net income after tax of the last audited financial year;

(b) the sum of all estimates resulting from the application of paragraph 2 exceeding the expected net income after tax for the current financial year 25% of the CSD's annual gross operational expenses.

Where a CSD has not completed business for one year from the date it starts its operations, a CSD shall use the expected net income after tax as projected in its business plan in order to determine any needed capital to cover business risks exceeding the expected income.

2. For the purposes of point (a) of paragraph 1, a CSD shall:

(a) calculate an estimate of the amount capital required to cover for all the losses resulting from applying each of the business risk scenarios referred to in Annex II of this Regulation;

(b) document the assumptions and the methodologies used to estimate the expected losses referred to in point (a);

(c) shall review and update the scenarios referred to in Annex II at least annually.

3. For the purposes of point (b) of paragraph 1, the following shall apply:

(a) the CSD's annual gross operational expenses shall consist of at least total personnel expenses including wages, salaries, bonuses and social costs; total general administrative expenses, and, in particular, marketing and representation expenses; insurance; other employees' expenses and travelling; real estate expenses; IT support, telecommunications; postage and data transfer; external consultancy and other services; tangible and intangible assets' depreciation and amortisation; impairment and disposal of fixed assets and be determined in accordance with one of the following:

(i) the International Financial Reporting Standards (IFRS) adopted pursuant to Regulation (EC) No 1606/200212;

(ii) Council Directives 78/660/EEC13, 83/349/EEC14 and 86/635/EC15;

(iii) generally accepted accounting principles of a third country determined to be equivalent to IFRS in accordance with Commission Regulation (EC) No 1569/200716 or accounting standards of a third country the use of which is permitted in accordance with Article 4 of that Regulation;

(b) the CSD shall use the most recent audited information from their annual financial statement;

(c) Where a CSD has not completed business for one year from the date it starts its operations, a CSD shall apply gross operational expenses projected in its business plan.

Paragraph 3 is proposed for deletion and included in an appropriate manner under Article 8.

As regards Annex II (p.68) on business risk scenarios, whereas we agree with the requirement for regular stress tests of business risks, we are of the opinion that the stress scenarios outlined in Annex II are too prescriptive and do not address the main business risk drivers of (II)CSDs. Consequently, this requirement will create additional workload for the CSDs having to perform such tests without tangible benefit in terms of risk management.

Moreover, we are not convinced that predefined business risk scenarios are the most appropriate means to calculate capital requirements for business risk, and we believe that a more flexible

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approach, similar to that in EMIR, which prefers the adoption of reasonably foreseeable adverse scenarios relevant to the CSD's business model, as approved by the competent authority, could be more efficient and proportionate.

Capital requirements for winding-down or restructuring (Recitals 6 – 8, Article 8):

As during a restructuring or wind-down of a CSD quite some expenses (IT-development, strategic initiatives, declining activities) may well lead to (substantial) decreased cost, the wording of Recital 6 is in our mind wrongly only indicating in an upwards direction but not taking (the more likely) downwards development of costs into account. The wording therefore should be adjusted.

Furthermore, as CSDs are in general not parties of any given settlement transaction, there is no need to close out pending transactions / open (derivative) positions for CSD's participants like in the case of a CCP. As such, the winding down / restructuring process for CSDs is totally different from those of any CCP. Consequently also the minimum winding down period should in principle be lower compared to CCPs. Especially within the T2S environment, participants should be in a position – also taking their mandatory business continuity and restructuring plans into account – to move their assets quickly via free of payment transactions to another CSD in case of a winding down event. As it is the duty of the CSD to develop a proper restructuring / winding down plan and it also needs to determine in this plan an appropriate schedule for its implementation in case needed, we do not see the need to define any minimum timeframe for the capital charge. The plans as such are in addition subject to review and agreement of the relevant authority.

However, a timespan of at least 6 months is referred to in CSD-R itself. In order to reflect our arguments above, EBA therefore should at least consider reducing the cost basis for any month beyond a three month period to 80 % of the general cost basis and take into account even lower percentages for longer winding down periods – if applicable - as also income will flow during that period. Furthermore, the timespan for winding-down or restructuring **is not strictly depending** on the services provided but mainly on the volumes of assets under custody, number of participants and securities administered at the upper tier of the custody chain. Finally, it is also dependent on the possibilities of alternative CSDs being able to offer same kind **of core services**. Any additional service which does not belong to the core CSD activities may also be stopped without the mandatory need of (immediate) replacement by another services provider.

While we agree on some common guidelines for the estimation of the winding-down or restructuring period and the underlying scenarios, we disagree to set too detailed requirements.

We recommend sorting the Recitals in the sequence of the topics raised in the legal text itself. Therefore we propose to shift Recitals 6 to 8 after Recital 12.

Subsequently, we propose a re-wording as follows:

Recital 6

*(6) [wd-restructuring expenses] In order to ensure that a CSD would be able to organise an orderly winding-down or restructuring of its activities if required, a CSD should hold capital together with retained earnings and reserves that are sufficient at all times to withstand operational expenses over a period of time during which the CSD is able to reorganise its critical operations, including by recapitalising, replacing management, revising its business strategies, revising cost or fee structures and restructuring the services that it provides. **During the winding-down or restructuring of its activities the cost of a CSD are impacted by these activities. Most likely lower cost due to reduced level of***

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activities, reduced IT-development and strategic activities will have a bigger impact than additional cost of the restructuring or winding-down activities. Given that during the winding-down or restructuring of its activities, a CSD still needs to continue its usual operations and even though the actual expenses during a wind-down or restructuring of the operations of a CSD may be significantly higher than the gross annual operational expenses because of the restructuring or wind-down costs, As the concrete direction of the development of the cost cannot be predicted as a general rule and revenues are expected to continue to flow to some extent, the use of the gross annual operational expenses as a benchmark for calculating the capital required should nevertheless be an appropriate approximation of the actual expenses during the winding-down or restructuring of the operations of a CSD. However, as a general rule it is expected that the longer the process takes, the higher is the likelihood of reduced cost which has been taken into account.

Recital 7

(7) [wd-restructuring period] Since the time necessary for an orderly winding-down or restructuring strictly depends mainly on the size of core CSD services provided by any individual CSD and on the market environment in which it operates, in particular on the possibility that another CSD can take on part or all of its core services, the number of months required for winding-down or restructuring of its activities should be based on the CSD's own estimate. However, this timeline should not be lower than a conservative minimum number of months required for winding-down or restructuring introduced by Regulation (EU) No 909/2014 in order to ensure a prudent level of the capital requirements.

Recital 8

(8) [wd-restructuring scenarios] Notwithstanding the need for each CSD to elaborate scenarios for winding-down or restructuring of CSD's activities adapted to their business model, a detailed set of common minimum requirements should limit the discretion on the definition of such scenarios in order to obtain a harmonised approach.

Article 8 - Capital requirements for winding-down or restructuring

1. For the purposes of point (e) of Article 3, a CSD shall calculate its capital requirements for winding-down or restructuring by applying the following steps in sequence:

(a) estimate the time span required for winding-down or restructuring for at least all of the stress scenarios referred to in Annex I, consistently with the plan referred to in Article 47(2) of Regulation (EU) No 909/2014 rounded to full months;

(b) determine the relevant period for the capital requirements by the longer period of

(i) the time span referred to in point (a);

(ii) six months.

(c) divide the CSD's annual gross operational expenses, determined in accordance with paragraph 2 Article 7(3), by twelve ('monthly gross operational expenses');

(d) multiply the monthly gross operational expenses resulting from point (c) by

(i) 100 % for the first 3 months of the period determined in point (b)

(ii) 80 % for the 4th to 9th month of the period determined in point (b)

(iii) 50 % for the 10th to 12th month of the period determined in point (b)

(iv) 0 % as of the 13th month of the period determined in point (b)

(e) add up the components calculated in point (d)

the longer between (i) and (ii);

(i) the time span referred to in point (a);

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(iii) six months.

2. For the purposes of point (c) of paragraph 1, the following shall apply:

(a) the CSD's annual gross operational expenses shall consist of the elements 8 to 14 of Article 27 of Council directive 86/635/EC.

(b) in case the CSD is not subject to setting up accounts in line with that directive, its expenses shall be mapped to the above stated categories of that directive.

(c) the CSD shall use the most recent audited information from their annual financial statement;

(d) Where a CSD has not completed business for one year from the date it starts its operations, a CSD shall apply gross operational expenses projected in its business plan.

3. What are the operational or practical impediments 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?

As explained in section C of our comprehensive response to the consultation, there are several open questions which are in our mind not properly specified in the proposed approach. Furthermore, we see a lot of weaknesses in the approach and overall we clearly see a tendency to massively overcharge capital needs for intraday credits.

As such, we do not agree to the proposed approach.

In case the approach is implemented nevertheless, CSDs already operating today need to get an appropriate phase in time to be compliant with the massive operational requirements and the additional capital needed. In this case, we propose a similar phase in approach as proposed in question 2 with regards to the capital charges for smaller CSDs as follows:

- Grant a general phase in time of 30 months after granting the authorisation for full compliance with the rules.
- Put in place an interim add on of 50 % of the capital charge for overnight credit risk to be reached latest by 6 months after granting the authorisation and 100 % of the capital charge for overnight credit risk to be reached latest by 12 months after granting the authorisation.
- Put an obligation to start calculating the capital requirements not later than 18 months after granting the authorisation.
- Request a clear plan with the application on how the requirements will be implemented and how capital shortages – if any – will be filled.

Moreover, we would prefer a totally different approach to calculate credit risks from intraday credits as explained further along this document.

We believe that such a model is reflecting the intraday credit risk, is generating a reasonable level of capital charge and it is also reflecting the collateralisation appropriately. Furthermore it has the benefit of being easier to implement than the complex proposal of EBA. However, also this method will need some time for implementation.

We therefore propose also in this case a phase in approach:

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- Implementation and fulfilment latest 12 months after granting the authorisation.
- Additional capital surcharge of 50 % on the capital requirements for (overnight) credit risk to be reached latest 6 months after granting the authorisation.

In addition to the general comments made above and the answers to the specific question raised, we do want to comment on dedicated topics regarding Articles 9 to 13 of the EBA draft RTS proposal as follows:

Capital surcharge for intraday credits (Recital 13 -15, Article 9)

Article 54 (3) (d) and Article 54 (4) (e) CSD-R respectively ask for an capital surcharge to cover the risk including credit and liquidity risk for the provision of intra-day credits to the participants in its securities settlement systems or other users of CSD services. It is important to note, that only risks coming for (a) the provision of intra-day credits and (b) coming from the active offering of a CSD in our reading of the text are covered by this rule and any other exposure which is not subject to these two conditions is not in scope. In practise this is focussing on if not limited to cash credits towards participants including advances for custody payments.

The view expressed above is reflected in Recital 13 draft RTS but not taken over in full in Article 9 draft RTS.

Furthermore, CSD-R does not define on what basis the capital surcharge for the intraday credit risk is to be calculated. Therefore, EBA has some freedom in the way the rules are defined.

Currently, intraday credits provided to participants are managed by CSD using collateral pools per client (or even per dedicated accounts of a client, i.e. there may be several loans and collateral pools per client).

Credits are granted giving maximum external communicated amounts and (higher) internally approved lines. Their usage is however limited to the collateral value of eligible collateral (market value less haircuts defined on internal rules).

The respective exposure of a given client is monitored real time against the limits and the collateral value which needs any time at least to be equal to but in general exceeds the exposure value substantially. In order to assess this, only the total collateral value of the dedicated collateral pool is assessed and no dedicated allocation of specific collateral occurs and also no structural requirements on the content of the pool (of in principle high liquid assets) exist. As such, the mandatory collateral allocation of Article 18 (1) (a) draft RTS ("maintain collateral segregated from the other securities of the borrowing participant") in combination with Article 18 (1) (b), 19 and 20 draft RTS (clear sequence of collateral used and limitation for other collaterals only in cases where the highest quality is not available any longer) of the draft RTS⁷ would not allow using the total collateral pool any longer but require dedicated collateral (with only the value necessary to cover the current exposure and therefore losing the collateral value of available collateral exceeding the allocated portion). We reject such an approach (see our comments to Articles 18 and subsequent draft RTS) as impact on the calculation of

⁷ Also the measurement of credits in combination with related collateral as required in Article 12 (b) and c have the same result and as such should be reworded in order not to measure the combination but only total coverage by category.

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the intraday credit risk capital surcharge is severe. This is true for technical considerations but also with regards to the result of the calculation as such.

In addition, the calculation of the capital charge for credit risk based on CRR already includes risk weights and specifically haircuts. The haircuts foreseen in CRR take into account quality of the collateral, remaining maturity of the collateral and any potential currency mismatch. Moreover, the haircuts are using liquidation periods of up to 20 days and are in general substantially lower than the proposed 10 percent haircut for very short liquidation periods. Especially for the short term duration (intraday only) the standard liquidation period of 5 days would be most appropriate and would be by far lower. As such, we disagree to such a flat haircut which is not taking care of the underlying market risks.

In addition to the flat and very high proposed haircut, the proposal foresees to use the complete CRR model, i.e. to have the CRR haircuts on top of the proposed haircut of 10 percent, which represent a double haircut we clearly reject. In our opinion, this 10% add-on is excessive since: haircuts already incorporate credit, market and liquidity risk factors – among others – and on average, far exceed the proposed stress factor. Therefore, we are of the opinion that the stress factor should be eliminated. Should the collateral stress factor be applied as proposed, it may force CSDs to further increase the haircuts applied to collateral securities, which will have a negative impact on participants – either by higher collateral costs or by reduced settlement efficiency.

While we see benefits for the general approach to calculate the capital charge for intraday exposures based on a “peak” situation and using the general CRR rules for overnight exposures for that purpose, we disagree to a number of elements of the concrete proposal. On top of that, the definition of “peak exposure” lacks clarity in at least the following elements:

1. Should exposures or risk weighted exposures be used?
2. Should exposures / risk weighted exposures be used prior or after taking credit risk mitigation into account?
3. How are “peak exposures” taking the difficulties of clearly timing in- and outflows into account (we refer in this regards to our comments on the BCBS consultation on “Monitoring indicators for intraday liquidity management - BCBS 225”⁸)? Based on the ability of cash correspondents to deliver an exact time stamp of any payment (i.e. an income payment to the account of the CSD’s participant), the exact timing of settlements and the related cash flows (the technical settlement and the legal settlement may occur at different times with up to several hours difference), the different technical cycles to process cash movements (real time, near time, rapid batch, few daily batches only) of CSDs counterparties, the real cash position of a client may not be derived properly. While for credit monitoring and measurement the current book position is usually taken into account, for a capital charge in principle only the real legal risk should be considered. This is difficult – if at all – to be determined at any given time during the day (however, can be easily derived as per end of any given day). In this context we also want to mention back valuations and corrections as well as cancelations of payments.
4. Is this the value of the peak credits used by all clients (total of all clients) at any given point during the day or the total of all peaks per clients (total peaks) of that day?

⁸ <http://www.bis.org/publ/bcbs225/deutscheborsegr.pdf>

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We see an alternative measure to the proposed treatment as being superior although simpler. This is based on granted / approved (intraday) lines and general collateral criteria by using nevertheless to a large degree the general approach for credit risk under CRR with some slight modifications. This approach is similar to the one used for exposures to investment funds (Article 132 (5) CRR) when looking through based on the mandate as well as the conversion of off balance sheet items base on Credit Conversion Factors (CFFs) as defined in Article 111 (1) in conjunction with Annex I and Article 166 (8) of CRR respectively:

Total amount of [approved] [cash] credit lines being available for intraday usage are converted into exposures using the credit conversion factor for committed but unconditionally cancellable credit lines (currently 0 % as per Article 111 (1) in combination with Annex I and Article 166 (8) (a) CRR respectively; however, we propose to use 5, maximum 10 % for the time being as a floor).

Apply haircuts according to CRR Article 224 on collateral expected (market value to be assumed in the amount of the line granted, no access market value corresponding to haircuts taken to be assumed) according to the internal rules for collateral eligibility whereby the lowest quality and longest maturity is to be assumed and a 5 day liquidation period is to be assumed (note: The EBA proposal does not take undrawn lines into account. We regard this as being appropriate as lines which are not properly collateralised will not allow to be drawn and lines which are collateralised should receive a net exposure value close to zero or even zero).

As collateral taken will have internally set haircuts, the real market values will exceed the credit lines given. As such, we propose not to apply any cross currency haircut.

It is to be noted, that overnight drawn lines will receive in addition the standard capital charge for credit risk. (double counting accepted in this approach but also included in the EBA approach).

We believe that such a model is reflecting the intraday credit risk consistent with the generic requirement as set in the level 1 text, is generating a reasonable level of capital charge and it is also reflecting the collateralisation appropriately. Furthermore it has the benefit of being easier to implement than the complex proposal of EBA. However, also this method will need some time for implementation.

It is to be noted that counterparty risk weights are given for any kind of counterparty in the CRR. As such, the dedicated mentioning of certain counterparties in Recital 15 in our understanding does not make sense. A general reference to the CRR should be sufficient for that purpose.

While the EBA proposal is referring to the most recent calendar year⁹, an approach based on authorised credit lines could capture most recent data and would be far closer to current situations also with regards to collateral arrangements.

Following our proposal, the relevant Recitals and Articles should be modified, based on two possible options as follows:

⁹ It may be difficult to use peak data of the previous year as of 1 January of the next one. A more practical approach would be needed here to comply with the requirement..

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Recital 13

*(13) [Recitals on Article 54 CSD-R: Capital surcharge] The additional capital surcharge for risks related to banking-type ancillary services should cover all of the risks related to the provision of intraday credit to participants or other CSD users. Where overnight or longer credit exposures result from the provision of intraday credit, the corresponding risks should be measured and addressed with the methodologies already provided by the Regulation (EU) No 575/2013, which is well adapted for this purpose. Intraday credit risks, however, require a special treatment since they are not explicitly covered by the Regulation (EU) No 575/2013 or other Union legislation concerning the banking sector. The methodology to cover specifically intraday credit risk should be sufficiently risk sensitive to take into account the quality of the collateral, the credit quality assessment of the participants and the **possible exposure at default**. ~~actual-observed intraday exposure~~. At the same time, the methodology should give the proper incentives to the providers of banking-type ancillary services, including the incentive to collect the highest quality of collateral, **limit the extent of intraday credit offering to a reasonable level** and select creditworthy counterparties. Notwithstanding the obligation for the providers of banking-type ancillary services to properly assess and test the level and value of collateral and the haircuts, the methodology used to determine the additional capital surcharge for intraday credit risk should consider the case that a sudden decrease in the value of the collateral exceeds estimates and results in partially uncollateralised residual credit exposures **As intraday credits are very short time and exact measurement is difficult if possible at all due to operational processes and differences in actual bookings compared to the legal status and timing of transactions, the capital surcharge for intraday credit risk is derived from the estimated intraday exposures based on credit lines approved by the CSD management and taking credit conversion factors into account. Collateral is linked to the approved lines using lowest allowed regulatory quality of the collateral and taking market values in the amount of the approved lines in same currency into account. Regulatory haircuts are applied on these market values using longest possible remaining maturity and 5 days liquidation period. By doing so, the approach of credit conversion factors of article 111 in conjunction with Annex I CRR is combined with the mandate based look through approach for investment funds of article 132 (5) CRR is followed.***

Recital 15

*(15) Given that Regulation (EU) No 575/2013 establishes, in Title II of Part Three the risk weights to be applied to exposures **to any kind of counterparty** the European Central Bank, as well as to central governments and central banks of Union Member States, the same risk weights should apply to the intraday credit exposures assuming that those exposures are end-of-day exposures. Similarly, the rules on credit risk mitigation as defined in the same Title of Regulation (EU) No. 575/2013 should apply.*

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 **the current authorised credit lines usable for intraday credit exposures towards its participants**, over the most recent calendar year, the date with the highest intraday credit exposure ~~(peak exposure)~~ resulting from providing the services set out in Section C of Annex 1 of Regulation 909/2014 **('maximum contingent exposures')**;*

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(b) it shall assume that all the collateral collected in relation to the peak exposure, after the application of the haircuts, loses 10% of its market value it shall transform the authorized lines as per (a) into exposure values using the credit conversion factors of Article 111 (1) of Regulation (EU) No. 575/2013. In case of credit lines being unconditionally cancellable at any time by the institution without prior notice the credit conversion factor shall not be lower than 5 % ('assumed intraday exposure');

(c) it shall estimate the market value of collateral for collateralized exposures using the collateral agreements made with the participant related to the dedicated loans or the collateral policy in case the loan is granted based on internal decision but without an client agreement assuming a general market value of the collateral being the amount of the authorized loan in the same currency ('collateral market value');

(d) it shall derive the collateral characteristics assuming lowest allowed collateral quality and longest allowed remaining maturity and a liquidation period of 5 days. The level of collateral quality is derived from the percentage of the volatility adjustments as defined in article 224 of Regulation (EU) No. 575/2013 whereby a higher volatility adjustment is translated into a lower collateral quality ('collateral quality').

*(e) it shall calculate for the assumed intraday exposure the own funds requirements for credit risk in accordance with paragraph 2 assuming that those exposures are end-of-the-day exposures **and taking the collateral market value and collateral quality as defined in (c) and (d) into account for the purpose of paragraph 3 sentence 2 ('capital surcharge')**.*

2. For the calculation of the capital surcharge referred to in paragraph 1, institutions shall apply one of the following approaches:

(a) 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;

(b) 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 **assumed intraday exposure** outstanding amount of the 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.*

In case our proposal for an alternative treatment is not followed we propose to modify the respective rules as stated below in order to overcome at least the major deficits. In this case it is crucial that no allocation algorithm is pre-determines as currently understood by us in the context of Articles 18-20 draft RTS:

Alternative Recital 13

(13) [Recitals on Article 54 CSD-R: Capital surcharge] The additional capital surcharge for risks related to banking-type ancillary services should cover all of the risks related to the provision of intraday credit to participants or other CSD users. Where overnight or longer credit exposures result from the provision of intraday credit, the corresponding risks should be measured and addressed with the methodologies already provided by the Regulation (EU) No 575/2013, which is well adapted for this purpose. Intraday credit risks, however, require a special treatment since they are not explicitly covered by the Regulation (EU) No 575/2013 or other Union legislation concerning the banking sector. The methodology to cover specifically intraday credit risk should be sufficiently risk sensitive to take

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into account the quality of the collateral, the credit quality assessment of the participants and the actual observed intraday exposure. At the same time, the methodology should give the proper incentives to the providers of banking-type ancillary services, including the incentive to collect the highest quality of collateral, and select creditworthy counterparties. Notwithstanding the obligation for the providers of banking-type ancillary services to properly assess and test the level and value of collateral and the haircuts, the methodology used to determine the additional capital surcharge for intraday credit risk should consider the case that a sudden decrease in the value of the collateral exceeds estimates and results in partially uncollateralised residual credit exposures

Alternative Recital 15

*(15) Given that Regulation (EU) No 575/2013 establishes, in Title II of Part Three the risk weights to be applied to exposures **to any kind of counterparty** the European Central Bank, as well as to central governments and central banks of Union Member States, the same risk weights should apply to the intraday credit exposures assuming that those exposures are end-of-day exposures. Similarly, the rules on credit risk mitigation as defined in the same Title of Regulation (EU) No. 575/2013 should apply.*

Alternative 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 date with the highest intraday gross credit exposure **to all its participants in all currencies at any given time** ('peak exposure') resulting from providing **intraday credit as part of** 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 exposure, after the application of the haircuts, loses 10% of its market value;*
- (b) it shall calculate for the assumed intraday exposure the own funds requirements for credit risk in accordance with paragraph 2 assuming that those exposures are end-of-the-day exposures ('capital surcharge').*

2. For the calculation of the capital surcharge referred to in paragraph 1, institutions shall apply one of the following approaches:

- (a) 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;*
- (b) 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 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.

Finally, EBA should also duly consider a proper time for implementations of these proposal in this RTS by the inclusion of dedicated and reasonably adapted "transitional Articles".

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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 provide by those cash correspondents (Article 14)?

The financial industry is currently preparing solutions to comply with the requirements on intraday liquidity monitoring set out in BCBS 248. Once these are in place, we expect to be able to have a near time view on our positions with our key cash correspondents. An important feature of BCBS 248 is a materiality threshold, which we think is critically important. While we expect our key cash correspondents to be able to provide real time transaction data, providers in less developed markets (without corresponding regulatory requirements) may not be able or willing to provide the required data.

In addition to the general comments made above and the answers to the specific question raised, we do want to comment on quite a few items in more detail and raise some questions on dedicated topics regarding Articles 10 to 17 of the EBA draft RTS proposal as follows:

- There is to our knowledge no requirement in the CSD-R or the (draft) ESMA technical standard requiring monthly meetings of the risk committees. As such, we disagree to the requirement of sending monthly reports to the risk committees for review as requested in Article 11 (4) as well as Article 33 (2) of the draft RTS. We consider in addition, that the frequency should be proportionate to the business of the CSD and / or the credit institution nominated in accordance with point (b) of Article 54 (2) CSD-R. Moreover, Article 11 (1) – (3) draft RTS do not specify any frequency of that report. However, based on the wording in Article 11 (2) draft RTS the frequency of at least annually may be assumed. We therefore propose to include an additional sentence to add that the policy should also define the frequency of the report to be prepared which should be subject to the risk profile of the CSD and should be “at least quarterly”. Subsequently, the reference to the timing (“monthly”) can be completely taken out form Article 11 (4) of the draft RTS.
- With regards to the measurement on monitoring of overnight credit risk, the question arises if the data to be used and stored is to be value date corrected or not. We propose to leave this to the discretion of the CSD.
- In certain jurisdictions, collateral can only be taken based on written agreements. As any written agreement contains a certain level of commitment, in this circumstance we cannot agree to the term “granting only uncommitted credit lines” as a **granting** of a line in such circumstances would always contain a commitment.

As such, we kindly ask to rephrase Recital 21 as follows:

Recital 21
As a result, a CSD-banking service provider should be permitted to grant committed lines only on the basis of unconditional revocability at any time to borrowing participants in the course of ...

In this context, we strongly oppose to the limitation of granting only uncommitted credit lines as requested by Article 16 (c) draft RTS. We however propose to refer to the need to grant only credit lines which can be cancelled unconditionally at any time.

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- Credit limits for secured credits – which is the standard towards participants as also required by Article 59 (3) (c) CSD-R – are only valid up until the amount of available collateral value (i.e. market value less haircut). As such, Article 17 (e) (ii) in this context is not meaningful as the credit limit does not need to be reduced if it is “dynamically” capped on the collateral value of collateral available.

5. [What might be the practical, legal or operational impediments to the methodology set out in this Sub-section? \(Article 18\)](#)

The participant decides on the securities being made available for collateralisation purposes. In general only those securities can be used by the CSD based on its eligibility criteria for collateral purposes. Usually the use of collateral is depending on a written agreement. As such, this should exclude participants’ client assets (unless the use is for the purpose of the participants’ clients) and may be limited only to a part of the whole portfolio of participants’ assets. Therefore it needs to be clarified how the status of “all securities in the account of the borrowing participant” is to be determined. We ask to change this to “all securities of the borrowing participant being available for collateral purposes ...”. Furthermore, the sequence of Article 19 (1), 19 (2), 20 (1) and 20 (2) in its current form is not clear.

Article 18

Clearstream is of the opinion that its collateral management policies, procedures and systems already ensure compliance with Article 59 (3) (a) through (e) of Regulation (EU) No. 909/2014 (“CSD-R”) and are generally in line with the provisions of Article 18 (1) 1 of the draft RTS.

However, Articles 18 to 23 of the draft RTS introduce certain monitoring and reporting requirements that are incompatible with the current collateral management concept used by the (I)CSDs i.e. the pooling of collateral in the participants’ accounts. In addition, Article 18 (1) (b) draft RTS introduces a hierarchy of collateral which will require the development of a sequencing algorithm capable of allocating collateral according to pre-determined quality criteria. Such mechanism cannot be supported by the existing “collateral pool” concept and will require significant IT development.

According to Clearstream’s current collateral management system, when Clearstream extends a cash loan to a participant, the amount required to fully secure the loan is reduced from the participant’s collateral pool (after a haircut has been applied to the market value of the securities comprising the pool). Conversely, when a cash loan is repaid, the equivalent amount is made available as collateral to the participant. If the participant has not enough collateral to secure the cash loan, the transaction fails. This flexible methodology – which was designed taking into account the role of Clearstream as a securities settlement system – ensures that no particular security is segregated or blocked from the collateral pool of the participant. As a result, as long as the participant has a sufficient collateral value in the account(s) pledged to Clearstream, it is free to deliver any security from the pool.

As an example, assume that a participant has a collateral pool valued at 1,000€ (after haircuts) and that the pool is comprised of 500€ of German government bonds, 250€ (equivalent) of UK Gilts and €250 (equivalent) of US Treasury bills. Should the participant require a loan of, say, 700€, Clearstream’s collateral management system would reduce the value of the participant’s collateral pool to 300€. However, no specific security would be blocked from the participant’s account. This means the participant would be able to sell / deliver up to 300€ of a combination of the securities – at the participant’s choice – as long as the amount sold / delivered is equal to or lower than 300€. The

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operational flexibility provided by the concept of “collateral pool” is highly valued by participants and ensures very high levels of settlement efficiency.

We are deeply concerned that the new requirements will force the (I)CSDs to identify and segregate (possibly from the participant’s pledged account to another account) individual securities for the amount of the cash loan. This will require significant IT development to re-design the (I)CSDs collateral system. In addition, we at Clearstream are concerned that, in order to maintain equivalent levels of settlement efficiency as those achieved today by the (I)CSDs, participants might have to immobilize at the (I)CSDs a significant amount of securities of the highest quality. This could worsen the already reduced supply of high-quality securities available for collateral purposes¹⁰.

As the proposed way is deviating from current processes, technical implementation is necessary which takes approx. 24 month time to be implemented. As such, the draft RTS needs to foresee for existing CSDs a phase-in solution to be compliant with the requirements. We would strongly suggest EBA to consider adding an Article with transitional provisions that would consider the implementation times for the different provisions.

Firstly the requirement under Article 18 (1) (c) (ii) draft RTS in our understanding does not make sense. In case all collateral as referred to in Article 19 and 20 draft RTS are used (requirement of Article 18(1) (b)(ii) draft RTS) this includes collateral as defined in Article 20(2) draft RTS and as such, they are not available in addition as they are already used. We kindly ask the EBA to look into that text and clarify the intention. Possibly, Article 18 (1) (b) (ii) should only refer to Article 20(1) instead of Article 20.

In particular, Article 18(1)(d) of the RTS requires CSDs to “monitor on near real-time basis the credit quality, market liquidity and price volatility of each security....”. Considering the very strict eligibility requirements imposed by Articles 19 and 20 draft RTS, the need for “real-time” monitoring appears disproportionate. In addition, the RTS would need to provide further clarification on the concept of “market liquidity” and on which metrics will be required to be monitored. Alternatively, and considering the difficulty in establishing one or more metrics for the monitoring of market liquidity, the EBA could consider deleting the requirement for the monitoring of “market liquidity”, as we propose in our review of Article 18 hereunder.

Article 19

As mentioned above, Clearstream does not agree with the quality-driven hierarchy of collateral introduced by Article 18 draft RTS and further detailed by Articles 19 and 20 draft RTS. In Clearstream’s opinion, there should be one eligibility criteria which must be sufficiently flexible to accommodate the complexity of the (I)CSDs businesses, which include the safe-custody and settlement of a wide range of debt and equity instruments, issued by private and public-sector institutions, in a variety of jurisdictions and across many currencies. The segregation of collateral in different “quality buckets” will require a substantial investment to develop new collateral management and reporting systems. Furthermore, from a market liquidity perspective, this fragmentation of collateral will contribute to further increase the attractiveness of (and, consequently, the demand for) high-quality (particularly top-rated government) securities at the expense of other securities.

¹⁰ The availability of high-quality securities for collateral purposes has been under pressure due to a number of factors including policy actions from central banks (e.g. Quantitative Easing); new regulations (e.g. LCR which requires banks to hold to a sufficient stock of high quality, liquid assets against 100% of potential cash outflows); increased margin requirements at CCPs; among others.

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In Clearstream's opinion, Article 19 draft RTS is confusing: it is not clear why the text separates between "financial instruments considered as highly liquid collateral bearing minimum credit and market risk" (as per paragraph 1 of Article 19 draft RTS) and "transferable securities and money market instruments [shall be] considered as highly liquid collateral bearing minimum credit and market risk" (as per paragraph 2 of Article 19 draft RTS). Once again, this artificial segregation of securities will create enormous monitoring and reporting challenges for unclear reasons and benefits.

Specifically, Article 19 (1) of the draft RTS introduces an excessively high number of conditions (a total of eight) for a security to be considered as "Highly liquid collateral with minimum credit and market risk". We oppose, in particular, to the following conditions:

- On 19 (1) condition (a): it is not justified to exclude securities issued by highly-rated private institutions from the first-tier of collateral.
- On 19 (1) condition (b): currently, Clearstream relies on external assessments of the credit quality of issuers of collateral. Securities issued by institutions which do not have an external credit rating are not eligible as collateral. The requirement for CSDs to prepare their own assessment of credit and market risk of securities accepted as collateral will require a significant expansion of the credit and risk departments of those institutions. This requirement appears disproportionate, particularly given that only governments and central banks are eligible issuers, as per condition (a).
- On 19 (1) condition (c): we consider the provisions therein relating to the average time-to-maturity of highly liquid collateral, as not being appropriate and on top of that being unclear content wise. Firstly it is unclear to whom this requirement is being addressed to, as the reference to "the banking services provider's portfolio" in our mind does not make sense. It is our understanding that the provisions of this Article 19 (1) (c) relate to the financial instruments which are being provided as collateral by the participant. Hence the reference should be – if at all – to the total amount of collateral delivered by any given counterparty.

Nevertheless, the text is confusing and appears hardly practical to be implemented – as it would entail the requirement for the CSDs to dynamically calculate the average time-to-maturity of the portfolio of securities pledged by participants to ensure it is two years or less. Moreover, the requirement raises the question whether the requirement would apply to portfolios pledged by individual participants or the total collateral portfolio of all participants. Or whether the requirement encompass "securities settled in the trade" i.e. securities which have been purchased but not yet paid for by the participants. In addition, condition (c) assumes that medium- and long-term securities are not liquid, which is not accurate.

Furthermore, (negative) impacts of longer maturities due to higher risks of price fluctuations can be sorted out / managed by adequate haircuts. However, at the time of taking the collateral the structure of the total collateral pool may not be known and it may be subject for changes which could subsequently make collateral less liquid just due to the fact, that short term maturity collateral has been withdrawn. It is obvious, that liquidity of any given security cannot rely on the composition of a collateral pool as it is the market and not the collateral pool that defines the liquidity of any given security.

Having said the above, should the Article 19 (1) (c) draft RTS, actually propose restricting the investment portfolio of the CSD to an average time-to-maturity of not more than two years. Then EBA should consider, similarly to the comments we have provided to ESMA, that given the extremely high quality requirements and the experienced scarcity of available securities, such a requirement would make it virtually impossible for CSDs to maintain an appropriate investment portfolio. The investment portfolio is used to build the necessary (and much required) liquidity buffer

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of a CSD. We understand that the main consideration for this restriction was based on liquidity considerations. We do not see any evidence in the market that securities with a time-to-maturity of more than two years are less liquid. If the restriction cannot be removed completely, we suggest extending the average time-to-maturity restriction to at least five years. Also here, the time to maturity of the investments of CSDs cannot be compared with the EMIR-requirements of a CCP which have a completely different liquidity requirement. As such, it seems to be unreasonable to limit the investment possibilities with a focus on liquidity and not coming from a market risk view (which we tend to refuse). Furthermore, in combination with the discussed prohibition (via the ESMA RTS on CSD-R) for hedging the portfolio, this is reducing the investment options substantially especially in times like the current one where government issue rather long term debt in order to capture the favourable interest levels.

In the light of the above, we are proposing the deletion of such requirement.

Furthermore, still on the same Article 19 (1) draft RTS we have the following remarks:

- On 19 (1) condition (g) requires price data on these securities to be “publicly available on close to a real time basis”. The latter part of the requirement i.e. “close to a real time basis” is problematic for debt instruments.
- On 19 (1) condition (h) requiring on the same day basis liquidation of collateral appears to be conflicting with the T+2 settlement rules as implemented with CSD-R for on-exchange trades. It therefore needs to be clarified that the same-day basis refers to the liquidation trade but not for the settlement which can be done within the timeframe for settlement of on-exchange transactions as defined by the CSD-R. Moreover the requirement is redundant in view of condition (f) of this same Article and, in particular, on the face of the liquidity requirements introduced by the RTS.

With regards to Article 19 (2) draft RTS, the conditions for transferable securities and money market instruments to be considered as “highly liquid collateral with minimum credit and market risk” are very much the same as those outlined above and, hence, our comments also apply to those conditions. However, we have the following remarks on condition (h):

- Condition (h) (ii): it is unclear the reason why a CSD could not accept as collateral securities issued by an institution that is a CSD-banking service provider or an entity that is part of the same group as a CSD-banking service provider. Would this condition mean that instruments issued by Deutsche Börse could not be accepted as collateral by any CSD in Europe because Deutsche Börse owns a CSD / (I)CSD? Please clarify.
- Condition (h) (iii): Clearstream operates a network of agent banks (securities depositories and cash correspondent banks) which includes some of the largest global banks. Does this condition mean that Clearstream would not be allowed to accept as collateral securities issued by those banks even if there is no correlation between the participant pledging the collateral and the agent banks? This appears an excessive and disproportionate measure on top of already very conservative and restrictive measures.
- From the wording of Article 19 (1) and 19 (2) draft RTS it is unclear how the two rules are placed in relation to each other.

Article 20 draft RTS creates another two categories of collateral: the so-called “highly liquid assets – HLA” (paragraph 1) and “securities settled in the trade” (paragraph 2). As mentioned above, Clearstream opposes the segmentation of collateral as proposed in the RTS due to increased complexity in monitoring and reporting – which shall attract not only additional costs but also new, unnecessary operational risks – as well as the likelihood that this segmentation will have a significant adverse impact in settlement efficiency.

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Furthermore, Article 20 (1) draft RTS makes reference to Article 18 (1) (b) (i) draft RTS – which, in turn, makes reference to the requirements of Article 19 draft RTS. In our opinion, the text is extremely confusing. Additionally, the Article establishes that CSDs can accept as collateral “securities settled in the trade” provided they have both 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 of these instruments within 5 days;
- (ii) sufficient qualifying liquid resources as referred to in Article 34 that allow covering the time gap for liquidating such collateral in case of default of the participant.

We consider this requirement disproportionate and strongly oppose to its maintenance.

To summarise:

- Article 19 (1) draft RTS sets out eight conditions for a security to be considered as “Highly liquid collateral with minimum credit and market risk”.
- Article 19 (2) draft RTS, on the other hand, outlines another eight conditions for transferable securities and money market instruments to be considered as “highly liquid collateral with minimum credit and market risk”.
- Article 20 (1) draft RTS establishes another four conditions (which come on top of the conditions already set in Article 19 draft RTS) for financial instruments to be considered “highly liquid assets”.
- Article 20 (2) draft RTS sets out three conditions (which also come on top of the conditions already set in Article 19 draft RTS) for financial instruments to be considered “securities settled in the trade”.

Clearstream does not see any benefit on the proposed segmentation of collateral and proposes the EBA to strongly re-consider the collateral eligibility requirements along simpler lines.

Accordingly, Clearstream proposes to amend Article 18 to avoid the requirement for different hierarchies of collateral and to merge paragraphs 1 and 2 of Article 19, as follows:

Amended Article 18

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, a CSD-banking service provider shall, in particular:

- (a) maintain the collateral referred to in point (c) of Article 59(3) of Regulation (EU) No 909/2014, segregated from the other securities of the borrowing participant;*
- (b) accept collateral that is highly liquid as referred to in Article 19.*
- (c) monitor 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 without a significant market impact, in accordance with Article 23.*

Amended Article 19

For the purposes of point (b) of Article 18 (1), financial instruments shall be considered as highly liquid collateral, where they are instruments that meet all of the following conditions:

- (a) the financial instruments have been issued by an issuer that has low credit and market risk based on an adequate internal assessment by the CSD-banking service provider, employing a defined and*

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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) they are denominated in one of the following currencies:

(i) a currency in 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 securities settlement system;

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

(d) they have 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;

(e) price data on these instruments are publicly available;

(f) they are not issued by 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.

In addition to the general comments made above and the answers to the specific question raised, we do want to comment on quite a few items in more detail and raise some questions on dedicated topics regarding sub-section 4 on Articles 20 to 23 of the EBA draft RTS proposal as follows:

Article 20

On Article 20 draft RTS, the reference made by Article 20 (2) to point (ii) of Article 18 (d) is unfortunately wrong as such clause does not exist. We think it was EBA intention to perhaps refer to Article 18 (1) (c) (ii). We also do not understand the phrase "securities settled in the trade" in the introduction sentence of Article 20(2) draft RTS as this is not referred to in the conditions of that provision, for which further clarification should be provided.

Article 21

On the topic of collateral valuation, Article 21 (2) draft RTS requires eligible collateral to be valued "on a real-time basis or on a near to real-time basis". Clearstream is of the opinion that, taking into consideration the extremely conservative requirements as outlined in Articles 18, 19 and 20 (for eligibility), Article 22 (haircuts) and Article 23 (concentration limits), the requirement for valuation "on a real-time basis or on a near to real-time basis" is unnecessary. In addition, and assuming that "real-time" market prices are available, it is somewhat inconsistent that the RTS requires "real-time" mark-to-market for the best quality securities and, on the other hand, accepts that less quality securities are marked to model. At Clearstream, securities are revalued three times a day through a process which does not interfere with the (I)CSD's core settlement system. The requirement for "real-time or on near to real-time" valuation will require significant IT developments and, in our opinion, will bring limited practical benefit to the safety of our collateral management practices.

Article 22

With regards to the requirements of Article 22 (4) of the draft RTS we disagree to the requirement to take the country of issuance of the assets into account as this may or may not have an impact and as such in general is not per se a differentiating factor. For example issuance in country A may be combined with trading on an exchange in country B etc.

We therefore urge the EBA to take out this as a mandatory criterion.

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Article 22 (5) makes reference to Article 22 (3) (b). We believe this is a mistake and the reference should have been possibly intended to paragraph 4. Furthermore, paragraph 9 requires daily review of haircuts – this appears inconsistent with the need to avoid pro-cyclicality under paragraph 7 and particularly unnecessary, given the strict requirements already imposed by paragraph 4.

Article 23

Also for Article 23 (3) of the draft RTS we disagree with levels proposed for the concentration limits. Due to the limitations proposed to classify for high quality liquid assets, some concentration will be the consequence anyway which cannot be penalised as this would be contradictory. As such, type of issuer and type of asset do not make sense as there will be a high concentration on government debt instruments in any case. In addition, the country of issuer for the same reason as already stated above seems not to be an eligible criterion. Furthermore, the settlement currency is totally inadequate as the draft RTS at various places requires that the currencies must match. With e.g. a high degree on EUR settlement and loans, the concentration in EUR currency for the collateral is a logic consequence. We therefore strongly demand to reduce the number of categories. Furthermore, we disagree to the conditions (h) and (i) as this does not make sense in the light of the arguments raised above.

Article 23 (5) draft RTS creates a requirement which is not compatible with the current concept of “collateral pool” as mentioned earlier in the context of this response.

6. What are the practical impediments of the implementation of this Article 24?

According to Article 59 (3) (c) of Regulation (EU) No. 909/2014 (“CSD-R”), a CSD authorised to provide banking type ancillary services “... shall fully cover corresponding credit exposures to individual borrowing participants using collateral and other equivalent financial resources”. Article 24 of the EBA/CP/2015/02 (the “CP”) establishes the conditions by which commercial bank guarantees provided by a financial institution referred to in Article 39 (2) of the CP may be considered as “other equivalent financial resources”.

The following aims at providing a more detailed analysis of the practical impediments for the implementation of the nine conditions as proposed by Article 24 (2):

- Condition (a) establishes a dynamic cap on bank guarantees (the amount of the guarantee cannot exceed 1% of the settlement values of the securities settlement system over one year period). In Clearstream’s view, the maximum amount of a bank guarantee accepted as collateral should not be subject to specific regulation but rather left to the discretion of the management of the CSD offering banking services. However, should the EBA believe it is required to establish a cap on the amount of bank guarantees, such cap should be established as a proportion of the shareholders’ equity of the CSD (e.g. 25% of own funds). In addition, from a practical point of view, it is not clear whether the “one year period” is counted from a calendar year perspective or on a rolling basis. The latter will dramatically increase the complexity for the monitoring of the condition.

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- Conditions (b), (c), (d) and (g) appear acceptable¹¹.
- Condition (e) requires the bank guarantee to 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”. Reference made to “the period of liquidation of the portfolio of the defaulting borrowing participant providing it” appears out of context. Which portfolio of the “defaulting borrowing participant” is to be liquidated? If a participant provides a bank guarantee to secure its obligations, it is assumed it has no securities pledged to the CSD. Additionally, the requirement that the bank guarantee is provided “free of any regulatory, legal or operational constraint” is already implicitly included under condition (d). In Clearstream’s opinion, the text of condition (e) is unclear. We suggest it is shortened to read “it can be honoured on demand”.
- Condition (f) (i) requires that the bank guarantee is not issued by “an entity that is part of the same group as the borrowing participant covered by the guarantee”. In Clearstream’s view, this restriction is unnecessary as long as the CSD considers the credit exposure on the issuer of the guarantee in the aggregation of the credit exposure it has on the consolidated group. As a matter of fact, most bank guarantees accepted by Clearstream are issued by sound banks on behalf of a bank subsidiary which has not sufficient proprietary assets deposited at Clearstream to secure its credit limits. Considering the very small financial impact such guarantees pose to the solvency and liquidity positions of the CSDs, we believe this restriction should be lifted.
- Condition (h) requires the bank guarantee to be backed by collateral that meets three additional conditions. At Clearstream, we believe condition (h) is virtually impossible to be satisfied. The requirement of securing the issuer’s credit risk with additional collateral imposes a third line of defence vis-à-vis the risk of the borrowing participant: the bank guarantee covers the risk of the borrowing participant’s default and the collateral covers the credit risk of the issuer. As a result of this requirement, the CSD would benefit from two credit enhancements to cover the same risk (a cash loan to the borrowing participant). The requirement will make the issuance of a bank guarantee extremely expensive as the issuer will have to price in not only the applicant’s risk but also the cost of posting additional collateral to the beneficiary.
- Condition (i) is redundant given the requirement (as outlined in condition (e)) that the bank guarantee is issued on demand.

Based on the above considerations, Clearstream proposes that:

- (1) The text of Article 24 draft RTS explicitly exempts from its scope stand-by letters of credit issued by a syndicate of banks on behalf of an operator of a securities settlement system in favour of another operator of a securities settlement system.
- (2) The EBA aligns Article 24 (2) with Article 24 (3) draft RTS, which is simpler to understand and, from an operational point of view, to implement.

Therefore, we propose Article 24 (2) should read as follows in its amended form:

¹¹ Condition (g) requires the bank guarantee not to be “subject to significant wrong-way risk”. However, by definition, any bank guarantee shows a certain degree of correlation (“wrong-way risk”) with CSD’s participants – which are also banks. The extent of such correlation, however, depends on the level of interconnectedness between the issuer of the guarantee and the applicant (i.e. the “borrowing participant”), which can manifest itself in terms of ownership structure, geography (e.g. same country of domicile), business concentration (e.g. commercial real estate lending), among others. The decision on whether the degree of correlation between the issuer and the applicant is deemed “significant” should be made by the CSD’s management.

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Article 24 (2)

2. For the purposes of paragraph 1, commercial bank guarantees provided by a 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 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;

(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;*

(c) it is irrevocable, unconditional, and the issuer cannot rely on any legal or contractual exemption or defence to oppose the payment of the guarantee;

(d) it is honoured within one day.

In addition to the general comments made above and the answers to the specific question raised, we do want to comment on quite a few items in more detail and raise some questions on dedicated topics regarding Articles 24 to 29 of the EBA draft RTS proposal as follows:

- It does not make sense to add overnight credit exposures of the previous day to intraday exposures of the subsequent day as requested by Article 26 (4) (b) of the draft RTS. Any overnight exposure will form part of the intraday exposure the next day but should not be added as this would include that exposure twice. Moreover, any incoming fund is offsetting any cumulated open exposure and in principle, the incoming funds cannot be allocated to the any dedicated open exposure but to only to the total net open exposure. As such, we kindly ask to change the wording to “that the amount of overnight credit not yet reimbursed is included in the intraday exposures of the next day”.
- We disagree to the requirement in Article 27 (c) draft RTS to have on a mandatory basis a guarantee from the paying agent of issuer agent in case custody payments are advanced. The obligation for the issuer (via its agents) to pay custody proceeds to the holders is established by the Terms and Conditions of the issue. There is no other contractual mechanism such as a guarantee required for intermediaries in the custody chain to make decision to advance custody payments or not. When it comes to the CSD layer, It is to the discretion of the CSD and in the interest of the receiving participant(s) and of the overall market settlement efficiency that such payments may be advanced subject to proper rules, including but not limited to sufficient counterparty credit worthiness and collateralisation. As such, it is the CSD deciding to advance and this decision cannot be made dependent on the intermediary (cash provider) to deliver a guarantee. In general any advance for custody payments should be linked to the legal enforceable right to cancel the payment and to recall the funds credited instead.
- We disagree to reporting frequencies of more frequent than daily as this is only giving a snap shot which is outdated the moment it is sent. As such it is not adding value at all. Therefore we consider the proposal in Article 28 (4) draft RTS as being over demanding and ask to change from “at least daily” to “at least weekly, but not more frequent than daily”. The same is true related to Article 40

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(4) of the draft RTS.

- It needs to be clarified, why Article 29 of the draft RTS is necessary on top of part 8 of CRR and how the two are linked. We rather recommend to ask for disclosure within the CRR disclosure report and to add the additional elements which are not already part of the CRR requirements. The same aspect is to be clarified with regards to Article 41 of the draft RTS.

7. To what extent do CSD-banking service providers hold their intraday liquidity buffers independently to other liquidity risk buffers, such as the Liquidity Coverage Ratio? If this is not currently done, are there any obstacles to ensuring this? Can CSD-banking services 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?

Besides the liquidity risk concerns resulting from the above question 7, our response to this question also includes other concerns regarding Articles 30 to 42 of the draft RTS.

The Liquidity Coverage Ratio (LCR) under CRR has been designed to ensure that financial institutions have the necessary assets on hand to withstand short-term liquidity disruptions. Effectively, financial institutions are required to hold an amount of highly-liquid assets equal to or greater than its net cash flows over a 30 day period (having at least 100% coverage).

In addition to the LCR regulatory requirements, one of the core reasons why financial institutions would build a liquidity buffer is to be able to withstand intraday liquidity disruptions, which may only last a few minutes or at least in most of the cases not extend beyond intraday.

In case of intraday liquidity disruptions, a financial institution would naturally utilize the entire liquidity buffer at its disposal to fix its intraday liquidity issue.

The artificial distinction of liquidity pools for LCR (30-day horizon) and for the RTS (intraday/overnight) is neither useful from a pure liquidity risk management view nor required under CRR or CSD-R.

Liquidity risk of a CSD is only derived from its banking activities. As such, two different and cumulative liquidity pools for the same liquidity risk do not make any sense at all.

Therefore only an integrated liquidity management to fulfil all internal and regulatory requirements with the same pool of liquid assets is in our view an adequate approach.

Article 31

Further on the Section 1 on Measurement of intraday liquidity risks and more specifically on the Article 31 draft RTS on the Measurement of intraday liquidity risks , we would like to raise the following concerns:

An important feature of BCBS 248 is a materiality threshold, which we think is critically important. BCBS 248 suggests considering a currency as “significant”, if the aggregate liabilities in this currency amount to 5% or more of the bank’s total liabilities. While we expect our key cash correspondents in the major economies to be able to provide real time transaction data, providers in less developed markets (without corresponding regulatory requirements) may not be able or willing to provide the required data, although only counterparties of a high quality (credit and operational) are selected.

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Forcing real-time data delivery on (cash) transactions in less developed currencies may cause service providers to no longer offer services in that currency. Consequently, certain markets may no longer be accessible. Overall, this would possibly put European CSDs in a situation where certain markets could no longer be served although they are overall not material, function well and have not added to any significant risk in the past. This may nevertheless push major clients out to operate with other counterparties which can offer such markets. A consideration of all (currently at Clearstream around 50) currencies in the "real-time" monitoring may place a significant burden on a CSDs IT capacity. As a (I)CSD usually covers currencies from across the world, the time zone difference will make it extremely difficult to ensure a "real-time" monitoring even for remote "exotic" currencies.

Article 31 (1) (a): Liquidity flows are mainly determined by customers' settlement activity and cash management, which cannot be predicted prior to the customer cash deadline. We therefore propose to measure daily gross liquidity flows rather than expected flows.

Article 31 (1) (c): We do not understand what the "range of potential net funding shortfalls" could be. As all payments – with the exception of time-critical payments – are due at the end of the day, there can only be a potential shortfall at the end of the day.

Article 31 (2): The required metrics can only be calculated ex post. It should be clarified, what "on an ongoing basis" means.

Based on the arguments raised above we propose the following amendments to the EBA draft RTS:

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, **for which the aggregate liabilities denominated in that currency amount to 5% or more of the CSDs total liabilities**, the CSD-banking service provider shall carry out all of the following:

(a) measure ~~expected~~ daily gross liquidity inflows and outflows;

(b) ~~anticipate the intraday timing of these flows~~;

(c) forecast the ~~range of potential~~ net funding shortfalls that may arise at **the end of the 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 a **daily ongoing** basis at least the following metrics **for material currencies** on a currency by currency basis: {...}

(b) total available intraday qualifying liquid resources at the start of the business day, broken down into all of the following: {...}

(v) committed **and uncommitted** lines of credit, letters of credit, or similar arrangements, including those extended intraday to 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) secured by other equivalent financial resources, as referred to in Article 24

{...}

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Further on the Section 2 on the Monitoring Liquidity Risks (page 53) , and more specifically on the Article 33 on the Monitoring intraday liquidity risks, we would like to raise the following concerns.

Article 33

Article 33 (2): The data requested under Article 33 (2) (b) – (d) go beyond the scope of BCBS 248. Whereas the concepts of “objectives” and “risk appetite” may make sense in connection with credit risk, the sole objective for liquidity risk management is to fulfil all payment obligations.

Article 33 (3): The requirement goes beyond the scope of BCBS 248. This comparison can only be delivered ex post, rather than “on a near to real-time basis”. In addition, there should be a materiality threshold, as we expect that correspondent banks in less developed currencies will not provide near to real-time information.

Based on the arguments raised above we propose the following amendments to the EBA draft RTS:

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| <p>Article 33 - Monitoring intraday liquidity risks <i>(...) 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:</i></p> <p><i>(a) the metrics referred to in Article 31;</i></p> <p><i>(b) the intraday objectives referred to in Article 35;</i></p> <p><i>(c) the agreed risk appetite of the CSD-banking service provider;</i></p> <p><i>(d) a contingency funding plan that details the remediation process to be actioned where a funding shortfall arisesthe agreed risk appetite is breached.</i></p> <p><i>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 capacity, and available collateral on a near to real-time basis for each material currency offered by the securities settlement system for which it acts as settlement agent.</i></p> <p><i>4. For the purposes of paragraph 1, and in terms of documentation, the CSD-banking service provider shall:</i></p> <p><i>(a) maintain for a period of at least ten years a record of the intraday liquidity exposures for each material settlement currency offered by any securities settlement system for which it acts as settlement agent; (...)</i></p> |
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Further on the Section 3 on the Managing Liquidity Risks (page 54 onwards), we would like to raise the following concerns on the following specific articles:

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Article 35

The requirements of Article 35 draft RTS go beyond the scope of BCBS 248. The scope of the draft requirements overall seems excessive, given that the focus is on intraday liquidity risk.

Article 35 (2) (b) The haircuts referenced in Article 22 do not properly reflect the low risk inherent in the (highest quality) collateral a CSD has at hand. Concentration limits do not make sense for liquidity risk management purposes as long as assets are central bank eligible and there is no cap on usage of the central bank credit facilities.

Article 35 (2) (c) The requirement goes beyond the scope of BCBS 248.

Article 35 (4) The requirement to hold assets covering the default of the two largest participants ("Cover 2") seems to be adopted from EMIR. While this makes sense for a CCP, who guarantees the fulfilment of all obligations of the defaulting participant, there is no such obligation for a CSD. In case of a customer default, the CSD would simply not execute any further settlement transactions for the defaulted customer. We therefore do not think that a "Cover 2" requirement should be applicable for a CSD.

Art. 35 (5) and (10). As we understand that Article 35 is supposed to govern liquidity risk, we fail to see the connection to financial risk. Due to the very conservative investment policies applied by CSDs, and given the very short placement tenors, a move in market prices, market volatility and price correlation are not expected to pose a material risk on the CSDs liquidity position. The only events that we expect to put stress on the CSDs liquidity position are a deterioration of the CSDs credit standing ("idiosyncratic" event) or an unavailability of money market credit lines ("market disruption" event). A stress test comparing the peak liquidity need with the available liquidity (stressed for a partial unavailability of liquidity providers) could add value.

Art. 35.6. A reasonable test could be a comparison at the end of the day of the peak liquidity need with the available liquidity sources, which could be stressed for a decline in collateral value or unavailability of liquidity providers.

Art. 35 (13) (a) Liquid assets are used in the regular course of business of the CSD. They should not be considered a "contingency" funding source.

Art. 13 (b) We consider the outlined possible conflict in Article 35 (13) (b) draft RTS to remove a hedge as a clear indication that EBA considers hedging interest rate risk on investments as being a legitimate approach of investing excess liquidity. As such, we strongly urge the EBA to align with ESMA to allow for such strategies subject to fulfilment of all liquidity needs under the currently discussed draft RTS. Our current understanding of the ESMA proposal would be that such hedges would not be allowed for CSDs.

Based on the arguments raised above we propose the following amendments to the EBA draft RTS:

Article 35 - Managing intraday liquidity risk

(...) 2. For the purposes of paragraph 1 and for each **material** 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;

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(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;

(...)

4. 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 ~~the wo~~ participants, including ~~its~~their parent undertaking and subsidiaries, to which it has the largest liquidity exposure.

5. 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.~~

(...)

10. 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. 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 ~~the wo~~ participants, including ~~its~~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;

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(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 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 liquid assets in a separate account under the direct management of the liquidity function ~~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

(Uncommitted) credit lines granted by cash correspondent banks and depositories are a key liquidity source for CSDs. In contrast to lines granted by money market counterparties, these lines have proved highly reliable, even in stressed conditions. Not taking those into account distorts the liquidity position of the CSD.

Based on the arguments raised above we propose the following amendments to the EBA draft RTS:

Article 36- 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 following qualifying liquid resources:

(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 CSD-R] that are readily available and convertible into cash with prearranged and highly reliable funding arrangements as referred to in Article 39;

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

Article 37

In general, the scope and consequences of the proposed stress testing seems excessive and likely to place an unmanageable burden on CSDs.

Article 37(2) All liquidity providers are banks whose core business is extending credit and who are subject to prudential supervision. A requirement to obtain confidence that the bank is able to manage its liquidity risk should rather be in scope of the prudential supervision than allocated to individual borrowers. We rather propose to get confidence in the availability of the granted credit lines by establishing a regular testing schedule of these lines.

Article 37(3) The likelihood of a breach in stress tests depends on the calibration of the stress tests. Countermeasures should rather be addressing the insufficiency of actual liquidity needs (or early warning indicators) rather than stress test results.

Article 37(4) There should be a distinction between a liquidity shortfall against actual liquidity needs and a shortfall against stress scenarios. Depending on the severity and applied confidence level of stress tests, the likelihood and practical implications of breaches may vary significantly.

Article 37(6) Several of the proposed stress tests seem either unmanageable or not relevant, e.g. price movements are not expected to have a material impact on the liquidity position. In order to have a manageable framework of stress tests, they should focus on the most significant risk factors, which are in our opinion a deterioration of the CSDs credit standing ("idiosyncratic" event) or an unavailability of money market credit lines ("market disruption" event).

Based on the arguments raised above we propose the following amendments to the EBA draft RTS:

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 currency 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~~ regular testing, that each liquidity provider is able to fulfil its obligation stemming from the liquidity arrangements of its minimum required qualifying liquid resources established in accordance with Article 36 has sufficient information to understand and to

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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.

(...) 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:

(a) the default, in isolation or combined, of at least ~~the~~ ~~wo~~ participants of the CSD-banking service provider, including ~~its~~ ~~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;~~

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(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

Article 38(1) Unlike for CCPs, there is no obligation for a CSD to support settlement of a defaulted customer.

Article 38(3) and (6) It is not possible to anticipate customers' settlement. "Potentially uncovered liquidity shortfalls" are only expected to arise very short term intraday. It seems impractical to set up an ad hoc reporting on these frictional issues to the risk committee and the competent authority.

Based on the arguments raised above we propose the following amendments to the EBA draft RTS:

Article 38 - Unforeseen and potentially uncovered liquidity shortfalls

1. For the purposes of Article 30 (c), the CSD-banking service provider shall 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 CSD-banking 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:

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(a) how a CSD-banking service provider shall have to access cash deposits or overnight investments of cash deposits;

(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

Article 39(6) The key sources of CSD's liquidity are customer cash and (uncommitted) money market credit lines. For both, no "arrangements" exist. Committed credit lines, for which there would be an "arrangement" are a supplementary source of liquidity, which is not required to manage liquidity in every market the CSD operates in. It will be difficult to define concentration limits on customer cash.

Based on the arguments raised above we propose the following amendments to the EBA draft RTS:

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

(...) 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;

(...) 14. The CSD-banking service provider shall be able to demonstrate it is capable of entering into transactions with the purpose of accessing and liquidating non cash assets referred to in Articles 19 and 20(1) in an orderly manner, even under stressed market conditions on a same-day basis through pre-arranged and highly reliable arrangements established in accordance with point (i) of Article 59(4).

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In addition to the general comments made above and the answers to the specific question raised, we do want to comment in more detail and raise some questions on dedicated topics regarding Articles 40 to 41 and the annexes of the draft RTS proposal as follows:

- We disagree to the proposed business risk scenarios s proposed in Annex II of the draft RTS to a substantial degree:
 - a. CSDs are virtually completely funded by equity. Funding cost for equity cannot really change in the P&L but only in budget assuming a certain dividend expectation.
 - b. Reduction of income only matters in case current (expected) or past year income is taken into account to cover business risk.
 - c. Same argument is true related to higher contribution for pension plans.
 - d. Long client balances can only reflect to cash deposits. These can only occur, in case the CSD offers banking type of services. Even here, the impact beyond a reduction of current (net) interest income is hardly to measure and to be covered by current income.
 - e. Same is true for short client balances.
- It needs to be clarified, why Article 41 and 29 of the draft RTS is necessary on top of part 8 of CRR and how the two are linked. We rather recommend to ask for disclosure within the CRR disclosure report and to add the additional elements which are not already part of the CRR requirements.

Article 42

While Article 42 draft RTS is placed as section 6 of Title III, Chapter II, we believe such a rule would have its more appropriate place just after Titles I to III, and are therefore suggesting it should be placed as Title IV.

Moreover, Article 42 draft RTS does not contain any rule for its phasing in, and looking into the massive intervention into IT systems the current proposal (but also an adjusted approach) will bring to the CSDs. We strongly believe there is room for an inclusion of transitional provisions and phasing-in arrangements.

This consists of the following elements:

1. Phasing in rules for CSDs that currently do not fall under the capital rules of CRR or national rules adopting the CRR rules to them with regards to the capital requirements.
2. Phasing in rules for CSDs offering banking type of ancillary services with regards to the capital surcharge for the provision of intraday credits to their participants
3. Phasing in rules for CSDs offering banking type of ancillary services with regards to dedicate rule for credit risk.
4. Phasing in rules for CSDs offering banking type of ancillary services with regards to dedicated rules for liquidity risk.

As such, we propose to amend Article 42 along these lines and make the following proposal as a starting point:

Amended Article 42

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

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2. A CSD which is not subject to the capital requirements under Regulation (EU) No. 575/2013 or under the rules of that Regulation subject to national law at the time when this Regulation enters into force shall be allowed on its request to fulfil instead of the provisions of Articles 3 to 8 up until 30 months of the date when this Regulation enters into force the following provisions:

- (a) Capital as defined in Article 2 needs to be at least 120 % of annual gross operational expenses as defined in Article 8 (2) at the date of applying for authorisation as a CSD.*
- (b) Capital as defined in Article 2 needs to be at least 160 % of annual gross operational expense as defined in Article 8 (2) latest 6 months after the date the authorisation as a CSD is granted.*
- (c) Capital as defined in Article 2 need to be at least 200 % of annual gross operational expenses latest one year after the date the authorisation as a CSD is granted.*
- (d) Any tools needed to fulfil the requirements of Articles 3 to 8 needs to be available latest 18 months after the authorisation as a CSD is granted.*
- (e) Any CSD applying for the exemptions of this paragraph need to justify the exemption with a clear implementation plan on (i) the necessary implementation of the respective calculation tools and (ii) a capital plan to explain how capital measures if necessary are to be fulfilled.*

3. A CSD which intends to offer banking-type of ancillary services or a credit institution designated under Article 54 (2) (b) CSD-R shall be exempted on its request from the full application of Article 9 up until 30 months of the date when this Regulation enters into force subject to the fulfilment of the following provisions:

- (a) A capital surcharge of 50 % of the capital charge for overnight credit risk as per the 31 of December of last calendar year is added to the overall capital charges.*
- (b) The available capital as defined in Article 2 need to be sufficient to cover also the capital surcharge as defined in (a) not later than 6 months after the authorisation to offer banking-type of ancillary services is granted.*
- (c) The capital surcharge as defined in (a) is set to 100 % one year after the authorisation as a CSD is granted and is to be fulfilled as of that day.*
- (d) The CSD must be in a position to calculate the capital surcharge as defined in Article 9 not later than 18 months after the authorisation as a CSD is granted.*
- (e) Any CSD applying for the exemptions of this paragraph need to justify the exemption with a clear implementation plan on (i) the necessary implementation of the respective calculation tools and (ii) a capital plan to explain how capital measures if necessary are to be fulfilled.*

4. A CSD which intends to offer banking-type of ancillary services or a credit institution designated under Article 54 (2) (b) CSD-R shall be exempted on its request partially or in full from the requirements of Articles 11 to 28 up until 30 months of the date when this Regulation enters into force subject to the fulfilment of the following provisions. The competent authority may extent the exemption on request of the CSD up until 30 months after granting the authorisation as a CSD:

- (a) The CSD delivers an implementation plan for the full compliance with the provisions he asked for exemption.*
- (b) The competent authority is convinced by the plan and its realisation seems to be feasible and deviation form the rules does neither put an undue risk to the financial markets nor creates an undue competitive advantage.*
- (c) The competent authority discloses its decision for exemption to the Commission and the CSD discloses the exemptions within the public disclosure as requested by Article 29.*

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5. A CSD which intends to offer banking-type of ancillary services or a credit institution designated under Article 54 (2) (b) CSD-R shall be exempted on its request partially or in full from the requirements of Articles 30 to 40 up until 30 months of the date when this Regulation enters into force subject to the fulfilment of the following provisions. The competent authority may extend the exemption on request of the CSD up until 30 months after granting the authorisation as a CSD:

(a) The CSD delivers an implementation plan for the full compliance with the provisions he asked for exemption.

(b) The competent authority is convinced by the plan and its realisation seems to be feasible and deviation from the rules does neither put an undue risk to the financial markets nor creates an undue competitive advantage.

(c) The competent authority discloses its decision for exemption to the Commission and the CSD discloses the exemptions within the public disclosure as requested by Article 41.

We hope our comments are seen as a useful contribution to the discussion and final issuance on the respective guideline is reflecting our comments made.

Eschborn

27 April 2015

Mathias Papenfuß
Member of the Executive Board

Jürgen Hillen
Executive Director