EACH Response to the European Commission Inception Impact Assessment on CSDR Review

The European Association of Clearing Houses (EACH) has represented the interests of Central Counterparties (CCPs) in Europe since 1992. CCPs are financial market infrastructures that significantly contribute to safer, more efficient and transparent global financial markets. EACH currently has 19 Members from 15 different European countries. EACH is registered in the European Union Transparency Register with number 36897011311-96.

EACH appreciates the opportunity to provide comments to the European Commission’s *inception impact assessment* on the review of the central securities depositories regulation (CSDR).

EACH Members welcome the CSDR review process as a way to ensure that the objectives of the CSDR are met in a more proportionate, effective and efficient manner. In line with what is indicated in the inception impact assessment, we believe that a fully considered review of CSDR would lead to simplification and increased transparency of legislation and a reduction of unnecessary administrative burden.

As indicated in our CSDR Review *consultation response* (See table 1 on page 2), there are several provisions in the CSDR Settlement Discipline Regime (SDR) which are inaccurate, redundant and unnecessarily burdensome. A number of them are just not implementable because of their technical inaccuracy and some would also increase operational risk within the EU CSDR SDR.

EACH, in line with many other market associations as indicated in their responses to the CSDR public consultations, agrees that the current implementation date of the CSDR SDR of 01 February 2022 will not give the market any time to implement the changes that are needed from the CSDR Review considering the legislative review and approval timeline will most probably extend past or close to this date.

Consequently, and considering the objectives of the CSDR review, EACH urges the European Commission to:

- Agree with ESMA to further delay the implementation of CSDR SDR beyond February 2022; and,
- Review the current CSDR SDR in line with stakeholder comments; ensuring that SDR is also implemented as one legislation.

We strongly request the European Commission to consider that any other alternative to the above, such as clarification through Q&As, would from our point of view not address the
concerns expressed in this document and would fail to ensure a more efficient and robust CSDR SDR.

**Table 1 – Concrete suggestions to reduce inaccuracies, redundancies and unnecessary burdens in the CSDR SDR**

<table>
<thead>
<tr>
<th>Issue</th>
<th>Legal Basis</th>
</tr>
</thead>
<tbody>
<tr>
<td>Removing the unnecessary duplicative penalties collection and distribution system</td>
<td>CSDR SDR RTS Article 19</td>
</tr>
<tr>
<td>Classifying CCPs, rather than Clearing Members, as Receiving Parties</td>
<td>Article 7(11)</td>
</tr>
<tr>
<td>Clarification of CSDR provisions to ensure CCPs can continue providing the crucial function of netting to continue having efficient and safer markets</td>
<td>CSDR RTS Articles 5(3) and 5(4), (a), (b), (c) and (e)</td>
</tr>
<tr>
<td>Clarifying CSDR provisions to ensure correct treatment of instruments traded on SME Markets</td>
<td>CSDR SDR RTS Article 7(3) second paragraph</td>
</tr>
<tr>
<td>Clarifying the treatment of triparty transactions</td>
<td>CSDR SDR RTS Article 13(1)(d)</td>
</tr>
<tr>
<td>Clarifying the rules of applying buy-in rules by ensuring a level playing field between the cleared and the uncleared space</td>
<td>CSDR Article 7(5)</td>
</tr>
<tr>
<td>Avoiding double charging of penalties</td>
<td>Commission Delegated Regulation (EU) 2018/1229 – RTS Article 16</td>
</tr>
<tr>
<td>Addressing the impact of penalty rates for Bonds in the context of negative interest rates</td>
<td>CSDR Article 7(14)</td>
</tr>
</tbody>
</table>

1 Please refer to annex 1: Visualised – the problem of and solution to CSDR SDR RTS Article 19.
Annex 1: Visualised – the problem of and solution to CSDR SDR RTS Article 19

**Option 1** – The process of collection and distribution of cash penalties if both CSDR RTS Articles 17 and 19 are applied

1. CSD identifies penalties
2. If the CSD participant is a CCP
   - CSD confirms whether penalties are linked to a CCP as a participant
   - CSDS charge and collect penalties
3. CSDS deposit penalties in dedicated account
4. CSDS distribute penalties to receiving participants
5. At least 11 different steps are needed leading to:
   - Unnecessary complexity
   - Increased operational risk

If the CSD participant is not a CCP
6. CSDS charge and collect penalties
7. CSDS deposit penalties in dedicated account
8. CSDS distribute penalties to receiving participants
9. CCPs report to CSDs on penalties collected and distributed

**Figure 1** - SDR RTS with articles 17 & 19 – unnecessarily burdensome

**Option 2** – The process of collection and distribution of cash penalties if CSDR RTS Article 17 is applied for all transactions

1. CSD identifies penalties
2. CSDS charge and collect penalties
3. CSDS deposit penalties in dedicated account
4. CSDS distribute penalties to receiving participants
5. Only 5 different steps are needed leading to:
   - Reduced complexity
   - Reduced operational risk

**Figure 2** - SDR with article 19 removed, and article 17 is applied for all transactions – a simpler more proportionate, effective and efficient alternative.
Clearing member A has failed to deliver 100 shares to the CCP who has failed to deliver 100 shares to clearing member B.

Each party has a security account in the CSD and a linked cash account in the payment system.

The cash penalty collected from the failing clearing member and paid to the receiving clearing member goes through their cash accounts in the payment system in the same way as for the cash settlement of the trade.

---

Figure 3 - how a comprehensive penalties system under article 17 would work - explained

---

-END-