

## Technical Advice under the CSD Regulation (ESMA/2014/1564)

### 2. Penalties for settlement fails

#### 2.1 Parameters for calculating the basic cash penalty

Q1: What are your views on the proposed basis for the cash penalty calculation?

We have no specific concerns with regard to the basis of the calculation. We agree that the amount should be based on the value of the securities independent from the value of the failing transaction and with the proposals surrounding partial deliveries.

Q2: What are your views on the proposed approach regarding the categories of financial instruments and the penalty rates? In particular, do you consider that these penalty rates could dis-incentivise trading in small caps? Please provide evidence to support your views.

We accept that the calculation and application of the penalty rates needs to be simple and that there should be a limited number of categories. We are, however, concerned that the categories do not address separately equities on SME growth markets or that are less liquid, and would suggest that the penalties should be more in line with those proposed for corporate bonds. Small cap stocks are generally less liquid and there is a fear that brokers might either have insufficient incentive to make a market where they cannot source the stock easily or otherwise build the cost of any anticipated penalties into the prices at which they will sell.

We are also concerned that the lack of any de minimis provision will lead to firms having to apply resources to the reconciliation and administration that are disproportionate to the amounts involved. Many market participants operate today on the basis of a global market best practice that claims arising from late settlement of a transaction should not be made where the amount of the claim is less than USD 500. We would urge that something comparable with this be included in the delegated act to be adopted by the Commission under Article 7(14) of CSDR.

#### 2.2 The increase or reduction of the basic amount of the penalty

Q3: What are your views on the proposed approach regarding the increase and reduction of the basic penalty amount?

We have no specific concerns to raise with regard to the proposed approach.

#### 2.3 Parameters for the calculation of cash penalties in the context of chains of interdependent transactions

Q4: What are your views on the proposed approach regarding the cash penalties in the context of chains of interdependent transactions?

We have no specific concerns to raise with regard to the proposed approach.

*The Investment Association is not responding to Questions 5-9, which concern the "substantial importance of a CSD"*