

**SVENSKA  
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EUROPEAN COMMISSION  
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Unit H1 – Banking and Financial conglomerates

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**The SSDA Response to the Public Consultation on the technical details of a possible EU Framework for bank recovery and resolution**

The Swedish Securities Dealers Association (SSDA, register id 7777147632-40) represents the common interest of banks and investment firms active on the Swedish securities market. The mission of SSDA is the maintaining of a sound, strong and efficient securities market in Sweden. SSDA promotes members' views with regard to regulatory, market and infrastructure related issues. It also provides a neutral forum for discussing and exchanging views on matters which are of common interest to its members. SSDA has a close cooperation with other trade associations in Sweden, the Nordic area and Europe.

The response of the SSDA is restricted to the suggestions in G12 regarding temporary suspension of rights and in G13 regarding temporary suspension of close-out netting. For all other issues we support the response provided by the European Banking Federation (EBF)

**General remarks**

There must be a clear exclusion for CCPs and payments and settlement systems from the rules regarding temporary suspensions of rights and close-out netting.

Furthermore, in the case of close-out netting, we are far from convinced that a temporary suspension would promote financial stability. In our opinion, the benefits of close-out netting for the financial markets as a whole clearly outweigh any disadvantages such netting could entail for a party. Any suspension of a close-out can have serious effects on the counterparties, third parties and the financial market as a whole.

There is very little explanation regarding the background of the above mentioned suggestions. There are also difficulties to properly understand the scope of those suggestion, in particular the effects on clearing, netting and settlement systems. According to the wording, the suggestion in G12 could cover all payment and delivery obligations. Does that include banks or investment firm's delivery obligations in securities settlement system or obligations to pay in payment system? How will such a proposal effect the operation of systems covered by the Settlement Finality Directive? Furthermore, the wording of the consultation seems to imply that the protection for systems covered by SFD is restricted to cases of partial transfer, is that the case<sup>1</sup>? Should the resolution authority in all other cases in a system be able to suspend all netting and settlement of transactions in which the bank or investment firm is party to?

Politicians, supervisors and market actors have all worked very hard and also very successfully to improve the protection of those systemic important systems. The starting point was the report from Group of Thirty in March 1989 Clearance and Settlement in the world's Securities Markets. The main legislation in this field in the EU is the Settlement Finality Directive (98/26/EC). The aim of the Settlement Finality Directive (SFD) is to reduce risks and among those in particular the legal risks in systems. In particular, the enforceability of transfer orders and netting (article 3 and 5) as well as collateral security (article 9) is protected by that directive. The SFD was recently changed (directive 2009/44/EC) to increase the protection of systems, in particular linked systems. Furthermore, the Commission has in the proposal regarding derivatives, central counterparties and trade repositories (EMIR) stressed the utmost importance of central counterparty (CCP) for the financial markets and also that those CCPs are safe and sound.

Against this background we are surprised that potential effects and impacts of the suggestions in G12 and G13 for those very important systems are not discussed at all. There is a severe lack of analysis of the consequences of those suggestions for the stability of the financial market. In reality there is no analysis at all. Furthermore, there is no discussion of the pros and cons for financial stability of the proposals. What will the effect of a stay for two days be for third parties outside the systems? How can CCPs cope with those problems a stay will create for the netting process? In short, there is in our opinion not sufficient ground to propose a legislation that probably will have severe effects on those systems.

#### **Question 42**

See general remarks. All obligations in clearing, netting and settlement systems should be excluded.

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<sup>1</sup> See heading regarding question in Box 50: Partial transfers: protection of trading, clearing and settlement systems (H5)

**Question 43**

We strongly disagree with the suggested suspension of close-out netting rights. This idea would undermine the concept of close-out netting.

Before considering such a special right of a resolution authority there must be an in-depth analysis of the effects and impacts of such a suspension on the parties involved and the financial market as a whole. Such analysis must take into account all difficulties to implement such a right of suspension world-wide and effects of a suspension limited to the EU.

If a right to suspend netting arrangements is introduced we are of the same opinion as EBF regarding what conditions should be considered. Furthermore we of course strongly support the proposal of EBF to exclude such counterparties as Central banks, CCPs and payment and securities settlement systems.

**Question 50**

As stated in the general remarks and in Q 42 we are of the opinion that the protection for clearing, netting and settlement systems should be general, not only in situation with partial transfer. In such a case the protection of SFD seems to be sufficient but has of course to be analyzed in depth, in particular in relation to netting systems like CCPs and links between systems.

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