



European Securities and
Markets Authority

ESMA REGULAR USE

The Chair

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Director, Investment & Capital Markets,
The Investment Association**

Ref: Joint Trade Association Letter regarding Implementation of the CSDR Settlement Discipline Regime (22 January 2020)

Dear Madam, Dear Sirs,

I am writing to you in reply to your letter dated 22 January 2020 concerning the implementation of Regulation (EU) No 909/2014 (CSDR) and of the Commission Delegated Regulation (EU) 2018/1229 (RTS on settlement discipline), in which you raise concerns over two of the main features of the settlement discipline regime: cash penalties and the buy-in process.

With reference to the request to delay the implementation of the cash penalties regime, ESMA has considered the implementation challenges that market participants have to face in order to prepare for the new settlement discipline regime under CSDR, and concurs with your assessment that additional time would be needed to facilitate the putting in place of the necessary processes, contractual arrangements and IT solutions.

In this respect, on 5 February 2020, ESMA has submitted to the European Commission a Final Report and draft regulatory technical standards (RTS) on postponing the date of entry into force of the RTS on settlement discipline to 1 February 2021. Therefore, subject to endorsement by the European Commission and non-objection by the European Parliament and the Council, the whole settlement discipline regime would become applicable only next year. This should allow financial market infrastructures, investment firms, credit institutions and their clients to finish developing and testing the required new processes, standardised messages, and IT solutions. We also believe that the additional delay may also allow for a 'parallel testing' period prior to the implementation, as mentioned in your letter, in which cash penalties are calculated and reported but not charged to participants yet, to ensure that systems and processes are well calibrated ahead of the effective implementation of penalties.

You also raise in your letter the need for monitoring processes to measure the impact of the cash penalty regime on settlement efficiency. I would like to highlight that this is already foreseen under CSDR. According to Article 7(1) of CSDR, the competent authorities and relevant authorities as well as ESMA will receive monthly reports on settlement fails, including information on the cash penalties applied by CSDs. Moreover, ESMA, in cooperation with the competent authorities and relevant authorities, needs to provide annual reports to the European Commission assessing potential risks and vulnerabilities and where necessary, recommendations of preventive or remedial actions in the markets for CSD services. Therefore, ESMA will assess, inter alia, and once the settlement discipline regime has come into force, the settlement efficiency of domestic and cross-border operations and the appropriateness of penalties for settlement fails.

With reference to the buy-in process, we have considered the suggestions and arguments set out in your letter in favour of: 1) delaying the entry into force of this feature of the settlement discipline regime, and 2) making it discretionary rather than mandatory.

On the first point, I would like to draw your attention to the fact that the entry into force of the settlement discipline regime has already been delayed by two years from the publication of the RTS on settlement discipline, and will be postponed by several more months if the above-mentioned amending RTS is adopted.

On the second point, the mandatory nature of the buy-in was a clear policy choice by the co-legislators when adopting the CSDR and it is meant to protect the securities buyers. In our view, it is premature to consider further action at this point in time, in the absence of concrete evidence following the implementation of the buy-in requirements. ESMA is committed to monitoring the situation and will assess the need for any further action following the implementation of the settlement discipline regime.

On the other various issues raised in your letter concerning the buy-in, such as the pass-on mechanism, the asymmetry of buy-in costs and the topic of cash compensation, discussions at expert level are ongoing, with a view to clarifying the respective matters through supervisory convergence measures when needed. I would like to thank you for your technical input supporting our ongoing work on further improving the clarity of the requirements and on ensuring supervisory convergence.

Should you have any questions on this letter, please do not hesitate to contact me or Fabrizio Planta, Head of the Markets and Data Reporting Department. Let me also assure you that ESMA is monitoring developments in the context of the COVID-19 crisis and may consider additional measures as appropriate.

Yours faithfully,

A handwritten signature in blue ink, appearing to be 'S/M' with a flourish.

Steven Maijor

Cc.:

- Valdis Dombrovskis, Executive Vice-President for An Economy that Works for People
- European Commission
- Sean Berrigan, Director-General, DG FISMA
- Patrick Pearson, Head of Financial Market Infrastructures and Derivatives, DG FISMA
- Tatyana Panova, Head of Capital Markets Union, DG FISMA
- Thomas Wieser, Chair, High-Level Forum on Capital Markets Union