SURVEY ON TOPICS FOR THE CSDR REVIEW

Overview of ICMA Response

Zurich, July 10, 2020

Executive summary

- ICMA recommends that with respect to Article 7 of CSDR, the implementation of the mandatory buy-in provisions be suspended to allow for a rigorous market impact assessment. In the meantime, the authorities should implement the other elements of the Settlement Discipline regime, including cash penalties, as soon as practicable to do so. The impacts of these measures should be monitored, and their application recalibrated as appropriate.
- ICMA further recommends that the proposed impact assessment be used firstly to conclude whether a mandatory buy-in regime is warranted, and secondly, to the extent that it is, to inform the design of any framework, noting that the current regime, as outlined in Article 7, is not fit for purpose.
- ICMA remains supportive of all constructive initiatives to improve settlement efficiency in Europe's capital markets, whether regulatory or market-driven. These initiatives should not create undue risks for market participants, in particular investors, nor should they undermine the objective of efficient and stable European capital markets that are attractive for European and international investors and capital raisers. The CSDR mandatory buy-in framework threatens to do precisely this.

Introduction

ICMA is grateful for the opportunity to respond to the ESMA Survey on Topics for the CSDR Review. ICMA's response is focused on **Article 7** of the CSDR, *Measures to address settlement fails*, and has been developed in close collaboration with its membership, coordinated through its dedicated CSDR-SD Working Group. A workstream set up under the umbrella of ICMA's Secondary Market Practices Committee (SMPC), the CSDR-SD WG comprises of sell-side and buy-side traders (fixed income and repo), operations experts, as well as legal and compliance functions. More than 90 firms are represented in the Working Group. The Working Group also works closely with the ICMA CSDR Legal Workstream, compromising of member firms' legal teams, focused on contractual implementation of the CSDR-SD measures, in particular mandatory buy-ins (MBI).

ICMA's suggested recommendations with respect to Article 7 are from the perspective of the non-cleared[1] bond and repo markets.

ICMA's response to the Survey suggests **two recommendations** with respect to Article 7 of CSDR, which are closely related:

1. The mandatory buy-in (MBI) regime should not be implemented as scheduled on the basis that it risks causing significant, and potentially irreparable, damage to secondary market liquidity, efficiency, and stability, which would be detrimental to market users, in particular investors and issuers. Instead, the EU should move ahead with the other measures outlined in the SD package, to the extent that it is practicable to do so, with a view to monitoring their impacts and recalibrating, as necessary. Meanwhile, the authorities should undertake a rigorous market impact assessment of the MBI proposal to ascertain both its appropriateness and design, based on various underlying markets and to ensure alignment of objectives with initiatives such as the Capital Markets Union.

2. In the event that the authorities believe that an MBI regime is necessary for the non-cleared bond markets, a comprehensive revision of the regulatory framework for buy-ins will be required in order to avoid adverse impacts on market liquidity and price discovery and anomalous economic outcomes of the buy-in process. These concerns arise largely as the result of substantive flaws and weaknesses in the Level 1 drafting, which are now widely understood. These revisions should also take into account existing contractual remedies for settlement fails, with the MBI requirement operating as a backstop in the case that such mechanisms are not successful.

Recommendation 1: apply cash penalties and reassess the need for mandatory buy-ins

It is broadly believed that the current design of the MBI regime will have significant impacts on bond and repo market pricing and liquidity. This has been highlighted in the 2015 and 2019 impact studies undertaken by ICMA, and is a concern raised by multiple market associations and industry bodies, representing a broad range of stakeholders. The impact on pricing and liquidity becomes more pronounced for less liquid bond classes, such as corporate bonds, high yield, less actively traded sovereign bonds, and emerging markets.

In determining the need for, and the calibration of, any MBI regime, the starting point should be an assessment of the current settlement efficiency rates with respect to different asset classes and market segments, as well as an identification of the causes of settlement fails. To the extent that fails are the result of structural inefficiencies, such as multiple settlement and payment systems or fragmented settlement processes and timings, any settlement discipline measures are likely to be ineffectual, and may compound existing stresses. Only once such an assessment is undertaken can a settlement discipline regime be appropriately calibrated.

[1] It is beyond the remit of ICMA's response to provide recommendations on the application of CSDR-SD with respect to CCPs

To the extent that settlement fails are considered to be behavioural (such as firms not investing in their own operational processes, or dealers not utilizing the repo and securities lending markets), then settlement discipline measures could be effective in providing the appropriate incentives. This has been the observation in the case of the US Treasury market where an extremely low interest rate environment seemed to correlate with a decrease in settlement efficiency rates. The introduction of the TMPG Fails Charges is generally considered to have been effective in improving settlement efficiency. By imposing relatively substantive charges and rebates, that effectively replicate the economics of failing in a normal interest rate environment, this not only creates an incentive for timely settlement of transactions, but has helped to generate more lending and borrowing of securities to support settlement. Furthermore, these charges, while not insignificant, are predictable and therefore have not had a detrimental impact on market liquidity.

ICMA firmly believes that to the extent that settlement inefficiencies in the European bond markets are behavioural, a similar penalty mechanism could be highly effective. ICMA therefore remains supportive of the CSDR cash penalties framework for settlement fails. While the design is not necessarily optimal, ICMA believes that this this is a good starting point, and that with careful monitoring of the impacts and appropriate recalibration of the framework over time there is no reason why this should not be an effective and broadly supported regulatory tool. Furthermore, as well as cash penalties, other mechanisms to remedy settlement fails, such as interest claims and contractual buy-in and sell-outs (such as those widely available in the bond markets),[2] will continue to be available to market participants.

If a well-calibrated penalty mechanism, alongside ongoing initiatives to improve the European settlement structure, still do not produce the desired outcomes, the authorities then may wish to consider the possibility of an MBI regime in the non-cleared bond markets. In determining the design of such a regime, it will be important to establish a balance between the desired outcomes with respect to improved settlement efficiency rates and the impacts on market liquidity and efficiency. This would also require a detailed analysis of underlying markets, their structure, liquidity and price discovery modalities, as well as existing tools for managing settlement risk. It would seem inconceivable that a one-size-fits-all approach would be optimal, and that, for instance, the appropriate model for centrally-cleared equities could be successfully applied in the case of non-cleared corporate bonds (which is precisely what the current MBI framework appears to attempt). This perhaps also explains why existing market-based remedies for settlement fails differ by market and transaction type, and why they are applied in different circumstances.

Recommendation 2: if still required, revise the mandatory buy-in framework to be functional

Should the authorities decide to push ahead with an MBI regime in the non-cleared bond markets, whether as scheduled or at a future date, it is essential that the current design of the framework is revised. As currently drafted, the MBI framework is not fit for purpose and attempting to implement it in its current form will have unintended outcomes for market liquidity, efficiency, and stability.

[2] For example, these remedies are available through the widely used ICMA Secondary Market Rules & Recommendations

Buy-ins (and sell-outs) are a risk management tool available to the non-defaulting party in the event of a settlement fail and are designed to enforce delivery of securities (or cash) while restoring the economics of the original transaction. While the process will often result in a cost to the failing party (usually in the form of the buy-in premium),[3] the objective of the mechanism is restorative, and not transformative. As currently designed, the CSDR MBI framework creates additional risks for the trading parties beyond those already embedded in a buy-in process, as well as having the capacity to produce distortive and largely random economic outcomes, which could be to the detriment of either the failing or non-failing party.

It is also important to remember that buy-ins are not a post-trade process. A buy-in is a market transaction that has risk implications for both the failing and non-failing parties. On successful execution of the buy-in transaction, the position of the original selling party changes, requiring them to execute a further trade, either to re-sell the securities or to hedge their new exposure. In the case of cash settlement ("cash compensation"), the position of both the seller and buyer changes, potentially requiring both to execute further offsetting transactions. It is therefore questionable as to the appropriateness of an MBI requirement in post-trade regulation (CSDR) as opposed to market regulation (MiFIR). At the very least, any regulatory buy-in mechanism should be designed with this in mind.

As mentioned above, it should also be recognized that longstanding contractual remedies for settlement fails already exist with respect to certain markets and transaction types, and that a regulatory overlay is likely to be counterproductive to the extent that it creates additional and unhelpful complexity, conflicting requirements, or uncertainty of outcomes.

Symmetrical differential payments

Buy-ins are a restorative remedy designed to put the trading parties in the economic position they would have been in had the original transaction settled. They are not intended to change the original economics of the transaction by creating random windfall profits for the non-failing party. Established buy-in mechanisms used in the non-cleared bond markets therefore provide for the price component of the buy-in differential to be paid in either direction between the selling and purchasing party, depending on whether the buy-in price is higher or lower than the original transaction price. This needs to be reflected in any CSDR buy-in design. The same provision is equally necessary in the case of cash settlement (or "cash compensation").

Article 7(6) not only fails to outline symmetrical payments; it quite notably provides for the differential payment to be made in the wrong direction. This must be corrected.

It is also important to note that a functioning pass-on mechanism will only be possible in the case of symmetrical buy-in and cash settlement differential payments.

A pass-on mechanism

Pass-on mechanism allows for a single buy-in to remedy a chain of dependent transactions while preserving the economics of the original transactions in that chain. Not only is this important from a risk management perspective, but also with respect to market stability. Without a pass-on mechanism a single settlement fail could trigger multiple buy-ins in the same security, at the same time (or within a limited

[3] This is the difference between the price of the buy-in and market fair value at the time of the buy-in (usually this difference is explained by guaranteed delivery)

timeframe). In illiquid markets (which is where buy-ins generally occur), this would be price-distortive and market-destabilizing.

While Recital 19 of CSDR alludes to the wish to minimize the number of buy-ins, the possibility for such a mechanism is not explicitly provided for in the Regulation. In fact, the current drafting appears to exclude the possibility of a functioning pass-on mechanism. The application of a pass-on mechanism should therefore be explicitly provided for in any CSDR buy-in regime, while not being so prescriptive as to exclude existing contractual mechanisms.

Extension periods

Buy-ins are market transactions which create risks for trading parties. Mandating a buy-in, in most cases, will require a trading party to enter into a transaction that ordinarily they would not elect to execute, and which in many cases is not considered to be in their interest or that of their clients. Similarly, the risk of a buy-in, and the associated costs, is a deterrent to market-makers and other liquidity providers who are required to show offers in securities that they do not naturally hold in inventory and must subsequently source or borrow. It is also a deterrent to holders of securities from lending them, since any delay in their securities being returned could cause them to fail in the case of a sale, with the risks and costs of a potential buy-in.[4] The more likely the possibility of a buy-in, the greater these risks become for all parties concerned. The length of the extension period in the case of MBIs therefore correlates directly with the probability of a buy-in occurring, which in turn impacts the pricing of transactions or the willingness of trading parties to enter into transactions. The less liquid the market or instrument, the greater this impact. Furthermore, this correlation is non-linear, and shorter extension periods will negatively impact pricing and liquidity exponentially.

While it is questionable whether any buy-in in non-cleared markets should be mandated, particularly where contractual remedies already exist to deal with settlement failures, to the extent that they are mandated this should be as a backstop in the event that all other measures to address the fail, have been unsuccessful. This therefore suggests the need for detailed analysis to determine the appropriate calibration of extension periods based on asset class to establish a balance between impacting market liquidity and pricing and providing for a backstop for settlement fails.

Cash compensation

Cash settlement is generally an unsatisfactory outcome for the non-failing party. Firstly, it forces them out of a position that they would not ordinarily elect to exit, at a point over which they have no control. This has consequences for investment mandates and portfolio optimization and may require the purchaser to enter into a replacement trade which could be on less favourable terms than the original transaction. Secondly, bonds are relative value instruments and fixed income trades are rarely executed in isolation. Any party being cash settled on a trade may therefore find themselves having to unwind contingent trades, such as cash or derivatives hedges, which creates additional indirect costs and risks. Thirdly, in the case where a buy-in is not possible, establishing the fair market value in order to calculate the cash settlement is challenging. If this valuation is set too low, it will further disadvantage the purchasing party. To the extent that any prescribed regulatory process cannot be relied upon to produce equitable

[4] The ability to recover buy-in costs through SFT contractual remedies for fails is limited

outcomes for all parties, this creates additional uncertainty for both investors and liquidity providers and erodes market integrity.

It is therefore questionable whether cash settlement should be mandated. It would be in the interest of trading parties that the buy-in timeframe could be extended until the buy-in is successfully completed, or where the parties elect to agree on a cash settlement alternative (as is current practice). To the extent that it is mandated, this also needs to be a consideration in the calibration of the relevant extension periods and buy-in and deferral timeframe, recognizing that a time limit on the buy-in process creates more problems than it solves. Third country implications would also need to be considered, noting that provisions for cash settlement do not exist in other widely used non-EU buy-in frameworks, while some non-EU investment funds are legally restricted from accepting cash settlement.

Transaction scope

The Regulation is unhelpfully vague with respect to the application of MBIs to different transaction types. Article 7(4)(b) appears to be related to securities financing transactions (SFTs) but does not outline how a buy-in process would apply. SFTs under market standard documents, such as repo and securities lending transactions under GMRAs and GMSLAs, have well established remedies for settlement fails which are designed specifically to suit the structure, risks, and economics of the underlying transaction type. These are different to outright cash market buy-ins and for good reason. In many cases the application of a cash market MBI framework would create additional risks and economic anomalies that are not commensurate with the transaction type. Non-cleared SFTs should therefore be explicitly excluded from any MBI requirement.

The Regulation should also provide greater clarity on its scope with respect to other transaction types where an MBI requirement would make no sense. These include, but are not limited to, margin movements, settlements related to derivatives transactions, intra-entity transfers of securities, and the ETF creation and redemption process.

Counterparty scope

As was recognized by ESMA in the drafting of the RTS, applying the MBI obligation to parties other than the trading parties in the case of non-cleared transactions (e.g. CSD participants or trading venues) is not only challenging, but in most cases not possible. This should be reflected in the Level 1 text. This will also potentially impact Article 25 of the RTS.

Suspension mechanism

As was highlighted by the market turbulence created by the COVID-19 pandemic, particularly in March 2020, an MBI requirement would have compounded the already marked decline in liquidity and sharp increase in volatility experienced across all markets.[5] This suggests the need for a suspension mechanism. In stressed market conditions, where the settlement discipline provisions could compromise the smooth and orderly functioning of markets, ESMA should have the authority to suspend the application of the SD framework (noting that this would also need to be reflected in firms' contractual arrangements with respect to Article 25 of the RTS).

[5] This is highlighted by ICMA's report: *The European investment grade corporate bond secondary market & the COVID-19 crisis* (May 2020)

Buy-in agents

While buy-in agents are only explicitly referenced in the RTS (which provides a requirement to appoint a buy-in agent at the start of the buy-in process), the Regulation should provide for the possibility that parties may not be able to appoint a buy-in agent. An inability to appoint a buy-in agent could be due to a lack of buy-in agents, which is a current market concern. Even in the case where a range of buy-in agents may eventually exist, this does not necessarily mean that there will be sufficient coverage of all securities and market segments, nor that the trading parties will have contractual relationships with all buy-in agents, which ultimately is a commercial decision.

Conclusion

ICMA and its members remain committed to the improvement of settlement efficiency in the European securities markets and have for many years developed and made use of contractual mechanisms to remedy settlement failures. Whilst we fully support all constructive initiatives to achieve this, it is strongly recommended that the MBI provisions should not be implemented in their current form or as currently scheduled. Firstly, any MBI framework is likely to be detrimental for market liquidity and pricing, creating additional risks and costs for both institutional and retail investors, and ultimately unnecessarily limiting their investment options and impeding their investment objectives. Secondly, the MBI framework in its current form is not fit for purpose and contains flaws and weaknesses that would result in economic anomalies, uncertainty of outcome, and adverse behavioural incentives for market participants.

ICMA recommends that the authorities implement the other provisions in the SD package, in particular the cash penalty mechanism, with a view to monitoring its impact and recalibrating where necessary. Meanwhile, the authorities should review the need for an MBI requirement, as well as the design and calibration of an MBI framework, based on a rigorous market impact assessment and analysis of underlying markets, instruments, and transaction types. Ideally this should be done in consultation with an Expert Group made up of market stakeholders.

The objective of settlement discipline measures should be to support efficient and stable European capital markets that are attractive for European and international investors and capital raisers and which underpin economic growth and prosperity for Europe’s citizens. Implementing the MBI provisions as currently designed would compromise this objective.

	Regulation (EU) No 909/2014 (CSDR)[1] – current provisions	Suggested amendments	Justification including evidence and data
Article 7	Articles 7(3,4,5,6,7,8, 10, 15(c,d,e,f))	**IMPORTANT NOTE:** Having regard to the format provided, ICMA has focused on particular Articles and suggested amendments thereto. These have not been considered as part of a broader redrafting of the Regulation and therefore will require further refinement prior to adoption. Recommendation 1 To facilitate the recommendation to suspend and review the MBI provisions, the paragraphs referring to the requirement to initiate a buy-in process should be replaced with: ESMA shall, in close cooperation with the members of the ESCB, undertake a market impact assessment of a potential regulatory buy-in process. The assessment should include recommendations for the possible design of such a process, taking into account different markets, instruments, and transaction types, as well as the likely impacts on the smooth and orderly functioning of the markets concerned.	ICMA and its members fully support the suspension of the mandatory buy-in provisions in implementing the CSDR Settlement Discipline package, at least until a time that its design and application is justified by a comprehensive market impact assessment. The mandatory buy-in regime, as outlined in Article 7 of CSDR, does not take into account the structure and dynamics of different markets and instruments, nor the impacts that such a regime would have on market liquidity, pricing, or stability, either in normal market conditions or in stressed markets. This creates unwarranted risks and costs for investors, and is expected to compromise overall EU market efficiency and liquidity. Impact assessments of a mandatory buy-in regime on the European bond markets undertaken by ICMA in 2015 and 2019 suggest that in normal conditions the regime will have significant negative impacts on pricing and liquidity. While these detrimental impacts will affect all classes of bonds, they will be more significant with respect to less actively

			traded corporate and sovereign bonds, high yield, and emerging markets. Furthermore, the regime would indirectly deter lending of securities, again with the least liquid bond classes being most significantly impacted. The stakeholders most impacted by the additional costs and risks that that the mandatory buy-in regime would create are investors (asset managers, pension funds, insurance funds). An erosion of secondary market liquidity is also likely to impact primary market pricing, and possibly access, particularly for smaller or less frequent issuers and capital raisers. While other large international capital markets have measures in place to improve and maintain settlement efficiency (such as penalties and contractual buy-ins), they do not impose anything comparable to the EU's mandatory buy-in regime. To do so would undermine their attractiveness to international investors, and therefore capital raisers, thereby reducing their economic competitiveness. ICMA's analysis of the European investment grade corporate bond secondary market during the 2020 COVID-19 crisis, suggests that the existence of a mandatory buy-in regime at this time would have compounded market illiquidity and volatility.

			ICMA and its members fully support regulatory and market initiatives to improve settlement efficiency across all asset classes (including encouraging the availability and use of contractual buy-ins). ICMA therefore endorses the settlement discipline measures outlined in Article 7, including the implementation of a cash penalty mechanism, to the extent that such a mechanism can be implemented practicably. However, in the interests of EU market liquidity, efficiency, and stability, it cannot endorse the provisions for a mandatory buy-in process for non-cleared transactions. ICMA accordingly recommends that the cash penalty mechanism be implemented, as soon as this is practicable, and, following careful monitoring and review, recalibrated as appropriate with a view to meeting explicit quantitative targets for settlement efficiency rates in the EU. Meanwhile, a detailed and extensive market impact assessment of a possible regulatory buy-in process could be undertaken, to determine the feasibility of such a regime in the non-cleared markets, as well informing the possible design, taking into account different underlying markets, instruments, and transaction types. Such an analysis should also take

			into consideration relevant market structures, liquidity and pricing dynamics, and the design and application of existing market-based frameworks for managing settlement fails.

		Recommendation 2 In the event that the authorities believe that an MBI regime is necessary for the non-cleared bond markets, a comprehensive revision of the regulatory framework for buy-ins will be required, resulting in potentially extensive revision to Article 7 (with related revisions to the RTS). However, if the authorities decide to go ahead with implementation of the MBI regime on the basis of the current regulatory text, ICMA recommends that the paragraphs referring to the requirement to initiate a buy-in process should be revised as follows: 3. Without prejudice to the penalty mechanism referred to in paragraph 2 and the right to bilaterally cancel the transaction, where a failing ~~participant~~ trading party does not deliver the financial instruments referred to in Article 5(1) to the receiving ~~participant~~ trading party within an appropriate time frame ~~4 business days~~ after the intended settlement date ('extension period') a buy-in process shall be initiated whereby those instruments shall be available for settlement and delivered to the receiving	While ICMA and its members would strongly recommend that the mandatory buy-in obligation not be implemented before a robust and extensive market impact assessment, it would also point to significant limitations in the current design that are in urgent need of revision before attempting implementation. ICMA would ague that as written, the mandatory buy-in provisions are not fit for purpose and create additional and unjustifiable risks for trading parties (both buyers and sellers) and uncertainty of economic outcome. These revisions should also be considered in light of existing contractual remedies for settlement fails, where a regulatory overlay could result in unhelpful complexity, conflicting requirements, or unsatisfactory outcomes. Most importantly, the provisions will need to be revised with respect to: i) **Payment asymmetry**. It is essential that the price component of both the buy-in and the cash settlement ("cash compensation" differential can be settled symmetrically between the trading parties. This is important to minimize risks to the selling party, to improve predictably of

		~~participant~~ trading party within an appropriate time-frame. The appropriate timeframes for initiating and completing the buy-in process shall be determined taking into account different markets, instruments, and transaction types, as well as the likely impacts on the smooth and orderly functioning of the markets concerned. ~~Where the transaction relates to a financial instrument traded on an SME growth market the extension period shall be 15 days unless the SME growth market decides to apply a shorter period.~~ 4. The following exemptions from the requirement referred to in paragraph 3 shall apply: (a) Securities financing transactions; (b) Settlements related to derivatives contracts; (c) Collateral movements; (d) Intra-entity transfers of securities; (e) Primary market transactions in ETFs; (f) Other transactions that do not directly represent the outright purchase and sale of a security. ~~(a) based on asset type and liquidity of the financial instruments concerned, the extension period may be increased from four business days up to a maximum of seven business days where a shorter extension period would affect the~~	economic outcomes, to avoid incentivizing adverse behaviour of trading parties, and to facilitate a pass-on mechanism. ii) **Pass-on mechanism**. The Regulation should explicitly provide for a pass-on mechanism. This is in order to avoid the single settlement fails resulting in multiple buy-ins in the same security at the same time, which would have detrimental impacts for market liquidity and stability. iii) **Cash compensation**. In a cash settlement (“cash compensation”) process, it is important to establish a fair market value for the reference price. In many scenarios, particularly in the case of highly illiquid bonds, this may be challenging. The design of any cash settlement process should take this into consideration. Putting a finite limit on the buy-in timeframe, with a requirement for mandatory cash compensation, does not solve the problem; rather it creates additional challenges

		~~smooth and orderly functioning of the financial markets concerned;~~ ~~28.8.2014 EN Official Journal of the European Union L 257/21~~ ~~(b) for operations composed of several transactions including securities repurchase or lending agreements, the buy-in process referred to in paragraph 3 shall not apply where the timeframe of those operations is sufficiently short and renders the buy-in process ineffective.~~ 6. Without prejudice to the penalty mechanism referred to in paragraph 2, where the value of the securities agreed at the time of the trade is lower than the value of the buy-in, the corresponding difference shall be paid by the failing trading party to the receiving trading party. W~~w~~here the ~~price~~ value of the ~~shares~~ securities agreed at the time of the trade is higher than the ~~price paid for the execution~~ value of the buy-in, the corresponding difference shall be paid ~~to~~ by the receiving ~~participant~~ trading party ~~by~~ to the failing ~~participant~~ trading party ~~no later than on the second business day after the financial instruments have been delivered following the buy-in.~~ 7. If the buy-in fails or is not possible, the receiving ~~participant~~ trading party can choose ~~to be paid cash compensation~~ cash settlement or to defer the execution of the buy-in to an appropriate later date ('deferral period').	and risks for the trading parties. iv) **Extension periods**. The relevant extension periods should not be specified in the Level 1, but rather should be based on an assessment by ESMA and outlined in the Regulatory Technical Standards. These should be based on the market structure and liquidity dynamics of the underlying instrument market segment, and should strike a balance between providing a 'hard stop' to resolve settlement fails and the impacts on market efficiency and liquidity. Extension period calibrations should also be determined with consideration of cash penalties as well as existing market-based frameworks for settlement discipline. v) **Transaction scope**. The Regulation should explicitly and clearly rule out the application of the buy-in obligation to certain transactions, including documented securities financing transactions, margin

		If it is not possible to derive an appropriate value for cash settlement, the receiving trading party may choose to continue to defer the buy-in until it is completed or such a time that deriving the appropriate value for cash settlement is possible. , ~~If the relevant financial instruments are not delivered to the receiving participant at the end of the deferral period, cash compensation shall be paid.~~ ~~Cash compensation shall be paid to the receiving participant no later than on the second business day after the end of either the buy-in process referred to in paragraph 3 or the deferral period, where the deferral period was chosen.~~ X. Where a settlement fail is the cause of multiple settlement fails through a transaction chain, it should be possible for a single buy-in to be initiated with the intention to settle the entire chain of fails and to avoid multiple buy-ins being processed at the same time. Where a receiving trading party in a transaction chain initiates the buy-in process, all other receiving trading parties in that transaction chain are relieved of any obligation to initiate a buy-in process. 10. Paragraphs 2 to 9 shall apply to all transactions of the financial instruments referred to in Article 5(1) which are admitted to trading or traded on a trading venue or cleared by a CCP as follows: (a) for transactions cleared by a CCP, the CCP shall be the entity that executes	payments, portfolio transfers, and the ETF creation/redemption process). The justification for clarifying exempting certain transaction types has already been provided in a number of industry submissions to the Q&A process. vi) **Counterparty scope**. In the case of non-cleared transactions, the Regulation should explicitly limit the buy-in process to trading parties, excluding any obligation for CSD participants or Trading Venues. This will also have implications for Article 25 of the RTS. vii) **Suspension mechanism.** In stressed market conditions, where the settlement discipline provisions could compromise the smooth and orderly functioning of markets, ESMA should have the authority to suspend the application of the SD framework. viii) **Buy-in agents**. While possibly more a consideration for the RTS, there should not be a

		the buy-in according to paragraphs 3 to 8; (b) for transactions not cleared by a CCP, the receiving trading party shall be the entity that executes the buy-in according to paragraphs 3 to 8; ~~(b) for transactions not cleared by a CCP but executed on a trading venue, the trading venue shall include in its internal Rules an obligation for its members and its participants to apply the measures referred to in paragraphs 3 to 8;~~ ~~(c) for all transactions other than those referred to in points (a) and (b) of this subparagraph, CSDs shall include in their internal rules an obligation for their participants to be subject to the measures referred to in paragraphs 3 to 8.~~ 15. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify: (c) the details of operation of the appropriate buy-in process referred to in paragraphs 3 to 8, including appropriate timeframes to deliver the financial instrument following the buy-in process referred to in paragraph 3. Such time-frames shall be calibrated taking into account the asset type and liquidity of the financial instruments;	requirement to appoint a buy-in agent as part of the buy-in process. The Regulation should provide for the case where buy-in agents may not be available. ICMA would further recommend that in assessing and revising the design of the mandatory buy-in framework, as well as determining the appropriate calibrations for the applicable extension periods, the authorities should engage a stakeholder Expert Group of industry participants to provide analysis and advice, including investors, market-makers and intermediaries, public and corporate issuers, and relevant market infrastructures.

		~~(d) the circumstances under which the extension period could be prolonged according to asset type and liquidity of the financial instruments, in accordance with the conditions referred to in point (a) of paragraph 4 taking into account the criteria for assessing liquidity under point (17) of Article 2(1) of Regulation (EU) No 600/2014;~~ ~~(e) type of operations and their specific time-frames referred to in point (b) of paragraph 4 that renders buy-in ineffective;~~ (f) a methodology for the calculation of the cash compensation referred to in paragraph 7 as well as circumstances where the buy-in process can be deferred in the case that appropriate valuation is not possible; (i) a suspension mechanism for the application of the measures outlined in Article 7 where it is deemed to be in the interests of smooth and orderly markets.	