

Technical Standards under the CSD Regulation (ESMA/2014/1563)

2. Settlement Discipline

2.1 Preventing Settlement Fails

Q1: Do you think the proposed timeframes for allocations and confirmations under Article 2 of the RTS on Settlement Discipline are adequate?

If not, what would be feasible timeframes in your opinion?

Please provide details and arguments in case you envisage any technical difficulties in complying with the proposed timeframes.

We agree broadly that the timeframes as proposed are appropriate, but are concerned that there is no reference to the dependency in the first instance on the investment firm itself to notify the client of the terms of the transaction. We believe, therefore that the proposed paragraph 2(b) should extend to orders where the investment firm has notified the professional client of the execution and of the relevant terms (as opposed to the execution itself) after 4pm.

Q2: Do you agree with the cases when matching would not be necessary, as specified under Article 3(2) of the draft RTS?

Should other cases be included? Please provide details and evidence for any proposed case.

We have no comment to make on this question.

Q3: What are your views on the proposed approach under Article 3(11) of the draft RTS included in Chapter II of Annex I?

Do you think that the 0.5% settlement fails threshold (i.e. 99.5% settlement efficiency rate) is adequate? If not, what would be an adequate threshold? Please provide details and arguments.

Do you think that the 2,5 billion EUR/year in terms of the value of settlement fails for a securities settlement system operated by a CSD is adequate? If not, what would be an adequate threshold? Please provide details and arguments.

We have no comment to make on this question.

Q4: What are your views on the proposed draft RTS included in Chapter II of Annex I?

We assume that a portfolio management firm executing client orders with another investment firm would be a "professional client" in the context of this Article (as per Annex II of MiFID (Directive 2014/65/EU)). It is however also an investment firm as defined in Article 4(1) MiFID. We believe it is essential that there is clarity concerning the respective positions of different types of investment firm depending their role in a transaction; to this end we recommend that the proposed definitions in Article 1 be extended to include one for "investment firm", which for the purposes of these RTS should exclude where a firm is acting in the capacity of a professional client.

We are also concerned that the proposed Article 2 places no reciprocal obligation on the investment firm to ensure that a professional client has the firm's settlement details. For these purposes, we therefore believe provision should be made that obliges the investment firm to notify a professional client of the terms of the transaction it has executed per indents (a) to (i) of paragraph 1 and, if it has not done so in advance of the transaction, its settlement details as per indents (j) and (k).

2.2 Monitoring Settlement Fails Article 7

Q5: What are your views on the proposed draft RTS on the monitoring of settlement fails as included in Section 1 of Chapter III of Annex I?

We have no comment to make on this question.

2.3 Cash Penalties

Q6: What are your views on the proposed draft RTS related to the penalty mechanism? Do you agree that when CSDs use a common settlement infrastructure, the procedures for cash penalties should be jointly managed?

We have no specific concerns to raise with regard to the mechanism as proposed in Article 7. We do, however, raise some concerns with regard to both the penalty rates and lack of any provision for a de minimis threshold in our separate response to consultation on the technical advice in this area (ESMA 2014/1564).

We have no comment to make concerning the procedures in the case of a common settlement infrastructure.

2.4 The Buy-in Process

Q7: What are your views on the proposed draft RTS related to the buy-in process?

In particular, what are your views on applying partial settlement at the end of the extension period? Do you consider that the partialling of the settlement instruction would impact the rights and obligations of the participants?

What do you think about the proposed approach for limiting multiple buy-in and the timing for the participant to provide the information to the CSD?

We have no specific concerns to raise with regard to any of these aspects of the draft RTS.

Q8: What are your views on the proposed draft RTS related to the buy-in timeframe and extension period?

We have no specific concerns to raise with regard to these aspects of the draft RTS.

Q9: What are your views on the proposed draft RTS related to the type of operations and their timeframe that render buy-in ineffective?

We have no specific concerns to raise with regard to these aspects of the draft RTS.

Q10: What are your views on the proposed draft RTS related to the calculation of the cash compensation?

We have no specific concerns to raise with regard to this aspect of the draft RTS.

Q11: What are your views on the proposed draft RTS related to the conditions for a participant to consistently and systematically fail?

We have no comment to make on this question.

Q12: What are your views on the proposed draft RTS related to the settlement information for CCPs and trading venues?

We have no comment to make on this question.

2.5 Anti-avoidance rules for cash penalties and buy-in

Q13: What are your views on the proposed draft RTS related to anti-avoidance rules for cash penalties and buy-in?

We have no comment to make on this question.

2.6 Phase-in for Settlement Discipline

Q14: Do you agree that 18 months would be an appropriate timeframe for the implementation of the settlement discipline regime under CSDR? If not, what would be an appropriate timeframe in your opinion? Please provide concrete data and evidence justifying a phase-in for the settlement discipline measures and supporting your proposals.

We agree that 18 months from publication of the RTS in the Official Journal would be an appropriate timeframe for the implementation of the settlement discipline regime.

The Investment Association is not responding to Questions 15-32, which concern the authorisation and regulation of CSDs