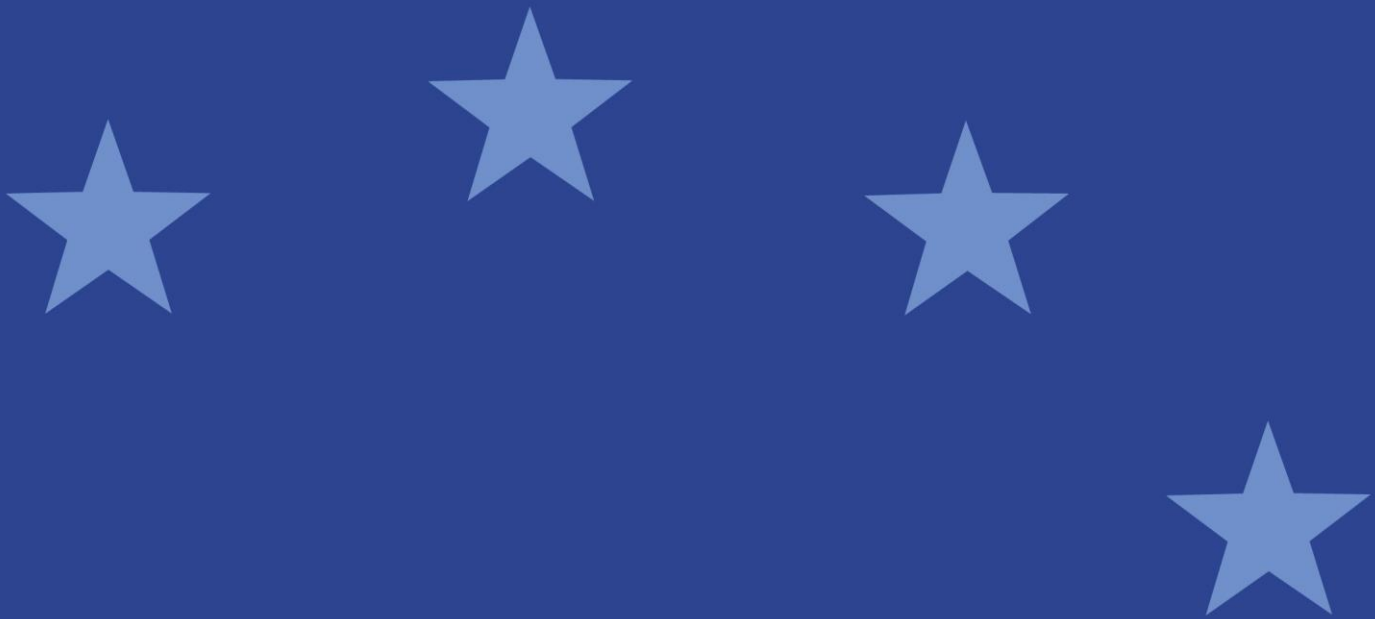




European Securities and
Markets Authority

Response Form to the Consultation Paper

Guidelines on Settlement Fails Reporting under Article 7(1) of CSDR



Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex IV. Comments are most helpful if they:

1. respond to the question stated;
2. indicate the specific question to which the comment relates;
3. contain a clear rationale; and
4. describe any alternatives ESMA should consider.

ESMA will consider all comments received by **20 February 2019**.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA_QUESTION_SFR_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA_SFR_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_SFR_ABCD_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA's website (www.esma.europa.eu under the heading "Your input – Open consultations" → "Consultation on Securitisation Repositories Application Requirements").

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

The collection of confidential responses is without prejudice to the scope of Regulation (EC) No 1049/2001¹. Possible requests for access to documents will be dealt in compliance with the requirements and obligations laid down in Regulation (EC) No 1049/2001.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading Legal Notice

Who should read this paper

All interested stakeholders are invited to respond to this consultation. In particular, this paper may be specifically of interest to central securities depositories (CSDs) as defined in point (1) of Article 2(1) of Regulation (EU) No 909/2014² (CSDR).

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, (OJ L 145, 31.5.2001, p. 43–48)

² Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directive 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1-72).

General information about respondent

| | |
|--------------------------------------|---|
| Name of the company / organisation | London Stock Exchange Group |
| Activity | Regulated markets/Exchanges/Trading Systems |
| Are you representing an association? | <input type="checkbox"/> |
| Country/Region | International |

Introduction

Please make your introductory comments below, if any

<ESMA_COMMENT_SFR_1>

The London Stock Exchange Group (“LSEG” or “the Group”) one of the largest operators of safe, efficient and diversified international market infrastructures, headquartered in London, with significant operations in Europe, North America and Asia. Its diversified global business focuses on capital formation, intellectual property and risk and balance sheet management. LSEG operates an open access model, offering choice and partnership to customers across all of its businesses.

LSEG welcomes the opportunity to respond to ESMA consultation on settlement fail reporting on behalf of Monte Titoli, the Central Security Depository operating in the Italian market. Monte Titoli has a broad expertise in the operation of securities settlement system and is currently working on the implementation of settlement discipline regime including the reporting of fails.

<ESMA_COMMENT_SFR_1>

Questions

1. : Do you have any comments or suggestions regarding the financial instruments which should be covered by the reports on settlement fails? Please provide arguments supporting your comments and suggestions.

<ESMA_QUESTION_SFR_1>

In our understanding the scope of settlement fails reporting is wider than the settlement discipline regime. Indeed the scope of reporting obligations is the result of the joint application of article 7(1) of CSDR and article 7(13) which in our view excludes only transactions in shares for which the principal venue for the trading of shares is located in a third country.

Therefore our interpretation is that all failed transactions settled within a EU securities settlement system shall be included in the report regardless of where a financial instrument is issued (i.e. whether the securities is issued in or outside EU and whether the reporting CSD is the issuer or investor CSD). The confirmation of this principle is particularly important because applying reporting obligations on any transaction in any CSD-eligible instruments is less cumbersome to manage from an operational standpoint than the scope of financial instruments subject to cash penalties. Therefore we recommend ESMA to validate our understanding on this.

In our understanding, Guideline 1 is endorsing this principle however to avoid any type of misunderstanding we suggest to modify the guideline as follows:

“Guideline 1: Reports ~~When reporting to competent authorities and relevant authorities on as to the number and details of settlement fails and any other relevant information in accordance with Article 7(1) of CSDR, a CSD should include in those reports all failed transactions in on all securities settled within the same securities settlement system send separate reports for each securities settlement system it operates, including the following financial instruments even though they are initially recorded or centrally maintained in a third-country CSD:~~

a) ~~financial instruments that are initially recorded or centrally maintained in CSDs authorised in the EU, i.e. financial instruments in relation to which an EU CSD acts in an issuer CSD capacity;~~

b) ~~financial instruments that recorded or centrally maintained in an EU CSD that acts in an investor CSD capacity for the respective financial instruments, even though they may be initially recorded or centrally maintained outside of CSDs authorised in the EU.”~~

<ESMA_QUESTION_SFR_1>

2. : Do you believe it would be useful for CSDs to provide data by taking into account the liquidity of the financial instruments and whether the settlement instructions and settlement fails relate to transactions executed on an SME growth market, thus reflecting the types of penalty rates specified in the Commission Delegated Regulation (EU) 2017/389? Would this add operational complexities to the reporting? Please provide arguments supporting your comments and suggestions.

<ESMA_QUESTION_SFR_2>

We would welcome ESMA's clarification under guideline 2. Indeed, our understanding is that reporting obligation are governed by article 14 and related Annexes. Reports provided by the Annexes are consistent with settlement information provided under article 13 where there is no reference to the liquidity profile of financial instruments. If our understanding is correct, then the proposal to provide data by taking into account liquidity and other information related to financial instruments would add complexities to fails reporting since this would require to combine different logic and databases used for the calculation of penalties with fail reporting.

<ESMA_QUESTION_SFR_2>

3. : Do you have any comments or suggestions regarding the fact that a CSD should only take into account matched instructions where matching is required? Please provide arguments supporting your comments and suggestions.

<ESMA_QUESTION_SFR_3>

We would support an approach whereby CSDs should report as settlement fails: (i) all matched settlement instructions for which matching is required and that do not settle on the ISD; (ii) instructions for which matching is not required and that do not settle at the ISD. Indeed even if matching is not required settlement is mandatory therefore we do not see the rationale for excluding transactions which are not subject to mandatory matching from the report on settlement fails. Any deviation from the principle that any failed transaction shall be included in the report will add complexities and costs of reporting process.

<ESMA_QUESTION_SFR_3>

4. : Do you have any comments or suggestions regarding the scope of the data that should be included in the reports on settlement fails? Please provide arguments supporting your comments and suggestions.

<ESMA_QUESTION_SFR_4>

We support ESMA's approach on the scope of settlement fail reporting.

However, the definition of "primary market" operations, is not in line with the role and information generally available to CSDs. Indeed from an operational point of view, the initial recording of securities in a CSD could happen FOP or DVP and the CSD does not enter into the detail of the creation or placement or subscription of securities. In this context we suggest avoiding any reference to securities law principles that could differ among Member States and the amend we definition of primary market following amendment:

primary market operations, meaning the process of initial recording of securities in a CSD creation of securities, whereby the securities are created, but they have not yet been subscribed for, so no capital has been raised

Similarly we suggest excluding mark down and mark up settlement instructions.

<ESMA_QUESTION_SFR_4>

5. : Are there other types of realignment operations than those used in T2S? What are the characteristics of those realignment operations? Could those realignment operations fail? How can realignment operations be identified by CSDs? Please provide details and examples.

<ESMA_QUESTION_SFR_5>

No comment

<ESMA_QUESTION_SFR_5>

6. : Do you have comments or suggestions regarding the settlement scenarios included in Annex I to the Guidelines? Do you think there are additional scenarios which would be relevant? Please provide arguments supporting your comments and suggestions.

<ESMA_QUESTION_SFR_6>

No comment

<ESMA_QUESTION_SFR_6>

7. : Do you see any operational burdens related to reporting by an Investor CSD even when it receives only one settlement instruction which it sends to another CSD (e.g. Issuer CSD) through a CSD link? What about in the case where the Issuer CSD is a third-country CSD? Please provide arguments supporting your comments and suggestions.

<ESMA_QUESTION_SFR_7>

No comment

<ESMA_QUESTION_SFR_7>

8. : Can such settlement instructions as mentioned in Q7 be subject to settlement fails? If the answer is no, please explain why. If the answer is yes, please specify the cases/reasons that may lead to settlement fails.

<ESMA_QUESTION_SFR_8>

We agree with scenarios reported in the Annexes to the Guidelines. However we do not believe that reporting the settlement instruction that an investor CSD receives in the context of standard or customized link is relevant, since those instructions are similar to realignment instructions. In addition those transaction can never fail from the investor CSD side when the prefunding and the prepositioning mechanism in place to ensure that CSDs are not exposed to any settlement risk in the context of a link.

<ESMA_QUESTION_SFR_8>

9. : Do you think it would be useful for CSDs to report also ‘settled instructions’, in addition to ‘settlement fails’ and ‘total instructions’? Would this add operational complexities to the reporting? Please provide arguments supporting your comments and suggestions.

<ESMA_QUESTION_SFR_9>

Since the inclusion of this information may add complexities to the reporting process also considering the challenges referred to in Q2.

<ESMA_QUESTION_SFR_9>

10. : Do you have any comments or suggestions regarding the proposed approach for calculating the rate of settlement fails by taking into account recurring settlement fails? Please provide arguments supporting your comments and suggestions.

<ESMA_QUESTION_SFR_10>

No comment

<ESMA_QUESTION_SFR_10>

11. : How could the information on the duration of settlement fails be captured in the reporting template (to be potentially included in Table 2 of Annex I of the Commission Delegated Regulation (EU) 2018/1229)? Would it be useful to split the daily data depending on the number of days for which settlement instructions have been failing (fully or partially)? Would this add operational complexities to the reporting? Please provide arguments supporting your comments and suggestions.

<ESMA_QUESTION_SFR_11>

In our view, information on the duration of settlement fails cannot be captured by the monthly or annual reporting. This would add additional complexities of the reporting process as the duration of fails is related to the single settlement instruction and not to the aggregated data. In addition this information is not captured under article 13 of the Regulation and therefore this would require additional elaborations on behalf of CSDs.

<ESMA_QUESTION_SFR_11>

12. : Do you have any comments or suggestions regarding the proposed approach for reporting partially settled instructions? Please provide arguments supporting your comments and suggestions.

<ESMA_QUESTION_SFR_12>

In our view, a partially settled settlement instruction should be reported as fail until the moment it is completely settled. Therefore we propose to count the instruction that is partially settled as “0”. The partially settled instruction shall only be counted for the calculation of unsettled quantity.

<ESMA_QUESTION_SFR_12>

13. : Can you please provide estimates regarding the cases where a late matching instruction is received containing an ISD within the previous month?

<ESMA_QUESTION_SFR_13>

<ESMA_QUESTION_SFR_13>

14. : Do you have any comments or suggestions regarding the proposed approach for treating late matching instructions? Which option do you prefer? Please provide arguments supporting your comments and suggestions.

<ESMA_QUESTION_SFR_14>

In our view, late matching instructions shall not be reported as settlements fails as this would complicate the processing of reports. In particular the amending and resubmission of reports seems particularly cumbersome. Providing this information in the report entails high operational effort, even if done on a monthly basis (option 2).

<ESMA_QUESTION_SFR_14>

15. : What would be an adequate tolerance level (for figures related to: values, volumes, rates) for the discrepancies between the annual report and the aggregated figures in the related monthly reports?

<ESMA_QUESTION_SFR_15>

We do not expect that discrepancies between the annual report and the aggregated figures in the related monthly reports will occur. However it depends on the number of parameters and criteria that would be added to fail reporting process. Therefore we believe this parameter could be set once the fail reporting process is clearly defined and fully in place.

<ESMA_QUESTION_SFR_15>

16. : Do you have any comments or suggestions regarding the proposed approach for reporting settlement fails based on the reason (cause) of each settlement fail? Please provide arguments supporting your comments and suggestions. Please see the two Options which have been considered, together with the related examples, in Annex II to these Guidelines.

<ESMA_QUESTION_SFR_16>

No comment

<ESMA_QUESTION_SFR_16>

17. : Which Option regarding the treatment of business days in the monthly reports on settlement fails is preferable from an operational perspective? Please provide arguments supporting your comments and suggestions.

<ESMA_QUESTION_SFR_17>

We support OPTION 2 – only the business days of the respective months.

<ESMA_QUESTION_SFR_17>

18. : Do you have any comments or suggestions regarding the currencies? Please provide arguments supporting your comments and suggestions.

<ESMA_QUESTION_SFR_18>

No comment

<ESMA_QUESTION_SFR_18>

19. : Do you have any comments or suggestions regarding the proposed approach for reporting the value of financial instruments included in DwP/RWP settlement instructions? Please provide arguments supporting your comments and suggestions.

<ESMA_QUESTION_SFR_19>

No comment

<ESMA_QUESTION_SFR_19>

20. : Do you have any comments or suggestions regarding the proposed ranking? Please provide arguments supporting your comments and suggestions.

<ESMA_QUESTION_SFR_20>

No comment

<ESMA_QUESTION_SFR_20>

21. : Do you have any comments or suggestions regarding the proposed process for the submission of settlement fails reports? Please provide arguments supporting your comments and suggestions.

<ESMA_QUESTION_SFR_21>

No comment

<ESMA_QUESTION_SFR_21>

22. : Do you have any additional comments or suggestions regarding the proposed guidelines? Please provide arguments supporting your comments and suggestions.

<ESMA_QUESTION_SFR_22>



No comment

<ESMA_QUESTION_SFR_22>