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Additional Information

Level 1 Regulation

Central Securities Depositories Regulation (CSDR) Regulation (EU) No 909/2014- PTR-CSDR

Topic

Settlement discipline - Cash penalties: process

Subject Matter

Cash penalties: joint penalty mechanism

Question

- (a) When CSDs use a common settlement infrastructure, which part of the penalty mechanism should be jointly managed? Can such CSDs use multiple service providers to operate the penalty mechanism?
- (b) Is the use of a common framework or rulebook sufficient in order to satisfy the

requirement for a joint establishment and joint management of the cash penalty mechanism under Article 20 of the RTS on Settlement Discipline?

ESMA Answer

26-09-2018

Original language

[ESMA70-156-4448 CSDR Settlement Discipline Q&A 2]

(a) According to Article 20 of the RTS on Settlement Discipline, when CSDs use a common settlement infrastructure, the entire penalty mechanism should be jointly managed. It is thus expected that the calculation, application, collection and redistribution of cash penalties is jointly managed.

If multiple service providers are used, it is up to the CSDs using a common settlement infrastructure to prove how they can ensure the joint management of the penalty mechanism, in particular with regard to the coordination and exchange of information between the different service providers.

(b) Such a framework may be helpful in terms of ensuring an increased degree of harmonisation across all CSDs in the EU, however, in order to ensure compliance with Article 20 of the RTS on settlement discipline, in the case of CSDs that use a common settlement infrastructure, the penalty mechanism should be jointly established, managed and operated by the respective CSDs. This should include at least:

(i) the joint governance and legal enforceability of common rules and procedures related to the application of the penalty mechanism;

(ii) the use of common reference data and prices;

(iii) the use of a single calculation engine, which does not require reconciliation operations amongst the involved CSDs related to the application of the penalty mechanism.