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Additional Information

Level 1 Regulation

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

Topic

Settlement discipline - Other topics

Subject Matter

Partial settlement functionality

Question

(a) When should CSDs start offering a partial settlement functionality as per Article 10 of the RTS on Settlement Discipline?

(b) How should field 19 of table 1 of Annex II to the RTS on Settlement discipline be filled in if

a CSD has no intention to use the derogation provided for in Article 12 of the RTS on Settlement Discipline?

(c) Should a CSD set up its partial settlement functionality as a proper functionality or could it be an outcome-based feature?

ESMA Answer

13-03-2023

Original language

[ESMA70-156-4448 CSD Settlement discipline Q&A 8]

(a) Article 10 of the RTS on Settlement Discipline requires CSDs to allow for the partial settlement of settlement instructions. Article 12 of the same RTS provides for a derogation to that requirement, if both the value and the rate of settlement fails in a securities settlement system operated by a CSD are below certain thresholds.

CSDs that want to benefit from the derogation in Article 12 of the RTS on Settlement Discipline should perform the required calculations by 20 January of the year following that of the entry into force of the RTS on Settlement Discipline. If the calculation shows that a CSD reaches one of the above-mentioned thresholds, that CSD should start offering a partial settlement functionality within one year following the notification of the results of the calculation to the competent authority.

(b) If a CSD does not intend to use the derogation provided for in Article 12 of the RTS on Settlement Discipline, the CSD should specify “NO” in field 19 of table 1 of Annex II to the same RTS. In such a case, the CSD would not need to provide any justification.

(c) Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

Article 10 of Commission Delegated Regulation (EU) 2018/1229 (regulatory technical standards on settlement discipline) requires that a CSD allow for the partial settlement of settlement instructions. Furthermore, Article 23 of the RTS on settlement discipline states that where on the last business day of the extension period some of the relevant financial instruments are available for delivery to the receiving participant, the receiving and failing clearing members, trading venue members or trading parties, as applicable, shall partially settle the initial settlement instruction, unless the instruction is put on hold. However, neither the CSDR Regulation nor the RTS on settlement discipline provide a detailed explanation or set instructions as to how to proceed with a partial settlement, implying a certain degree of flexibility in how CSDs are to achieve this outcome.

Therefore, CSDs are free to determine how the partial settlement functionality and its related features are implemented in practice. CSDs should nevertheless actively undertake all necessary steps to make partial settlement available, rather than solely rely on the participants' initiative.

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation: these answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.