ESMA_QA_1223

Submission Date
03/08/2022

Status: Answer Published

Additional Information

Level 1 Regulation
Central Securities Depositories Regulation (CSDR) Regulation (EU) No 909/2014- PTR-CSDR

Topic
Settlement discipline - Other topics

Subject Matter
Bilateral cancellation facility

Question
(a) According to Article 7 of the RTS on settlement discipline, CSDs shall set up a bilateral cancellation facility that enables participants to bilaterally cancel matched settlement instructions that form part of the same transaction. Can this cancellation facility be contractually waived by the participants, e.g. for settlement instructions already matched by a

trading venue (and subject to multilateral settlement) or transactions centrally cleared by a CCP?
(b) Is it possible for matched settlement instructions to be cancelled automatically by the CSD if on settlement date for any reason settlement is not possible (i.e. securities, cash is not available) or does this require bilateral cancellation from the participants submitting the instructions?

ESMA Answer

03-08-2022

Original language

[ESMA70-156-4448 CSD Settlement discipline Q&A 10]

(a) **Answer provided by the European Commission in accordance with article 16b(5) of the ESMA Regulation:**

Yes. While Article 7 of the RTS establishes an obligation for the CSDs to set up a bilateral cancellation facility, the use of the facility remains a possibility for the participants. Consequently, in respect of non-CCP-cleared securities transactions, the possibility for trading venue members to make use of the bilateral cancellation right referred to in Article 7(2) CSDR can be contractually arranged in the rules of the relevant trading venue. In respect of CCP-cleared securities transactions, the rules of the CCP can govern the possibility and the manner in which the bilateral cancellation right may be used.

(b) **Answer provided by the European Commission in accordance with article 16b(5) of the ESMA Regulation**:

No. Article 7 of the Commission Delegated Regulation (EU) 2018/1229 provides that CSDs shall set up a bilateral cancellation facility that enables participants to cancel matched settlement instructions that form part of the same transaction. This entails that the right of

cancellation itself is the prerogative of participants and not of the CSDs.

However, participants should be able to contractually agree to delegate this right to the CSD, under specific and pre-defined conditions.

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.