



EUROPEAN COMMISSION

Directorate General Financial Stability, Financial Services and Capital Markets Union

The Director-General

Brussels,
FISMA C2 SK/cv Ares(2020) 3761873

Mr Steven Maijoor
Chair of the European Securities and
Markets Authority
steven.maijoor@esma.europa.eu

Subject: *Entry into force of the Regulatory Technical Standards on settlement discipline*

Dear Mr Maijoor,

I am writing about the entry into force of the RTS on settlement discipline,¹ which triggers the application of the settlement discipline regime in the CSDR.²

The Commission adopted in May 2020 a Commission Delegated Regulation amending the RTS on settlement discipline in order to postpone its date of entry into force from 13 September 2020 to 1 February 2021. This was based on a proposal by ESMA. This short delay was considered necessary to take into account the additional time needed for the establishment of some essential features for the functioning of the new framework (e.g. the necessary ISO messages, the joint penalty mechanism of CSDs that use a common settlement infrastructure, and the need for proper testing of the new functionalities). The amending Commission Delegated Regulation is currently with the European Parliament and the Council for their non-objection in accordance with Article 13 of the ESMA Regulation.³

In the past few weeks, DG FISMA has received many urgent representations asking for a further postponement of the entry into force of the RTS on settlement discipline. I understand that ESMA has received similar requests. Stakeholders argue that the COVID-19 pandemic has seriously impacted the overall implementation of regulatory projects and IT deliveries by CSDs and their

¹ Commission Delegated Regulation (EU) 2018/1229 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on settlement discipline, OJ L 230, 13.9.2018.

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 Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012, OJ L 257, 28.8.2014.

³ Regulation (EU) No 1095/2010/EU of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC, OJ L 331, 15.12.2010.

participants. During this unprecedented time, these financial institutions have had to focus their efforts on the implementation of effective contingency plans. Therefore, due to the pressure COVID-19 has put on core operations, activities not strictly related to those contingency plans had to be de-prioritised. As a consequence, these stakeholders have argued that they will not be able to comply with the requirements of the RTS on settlement discipline by 1 February 2021. Other stakeholders have also noted that market developments during this crisis would have been significantly worse in terms of available market liquidity (especially in the non-cleared bond and repo markets) if the mandatory buy-in regime was in place. We note that certain stakeholders have been precise in their communications to us, asking that the entry into force of the RTS on settlement discipline be postponed for an additional year.

In the light of these representations about the impact of COVID-19, I would like to invite ESMA to consider whether a further postponement of the date of entry into force of the RTS on settlement discipline would be appropriate and, if it is, to present a proposal for amendment of the relevant RTS in this respect to the European Commission.

Considering the urgency of the matter and the fact that the RTS on settlement discipline is set to enter into force in the next few months, I would be most grateful if ESMA could consider this matter as quickly as possible.

As always, where necessary, my services are available to work closely with yours in order to ensure a timely and appropriate policy response to the current challenges.

Yours sincerely,

(e-signed)
John BERRIGAN