|  |
| --- |
| 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](http://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](http://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 1049/2001[[1]](#footnote-2). 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](http://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 909/2014[[2]](#footnote-3) (CSDR).

**General information about respondent**

|  |  |
| --- | --- |
| Name of the company / organisation | AFTI / AMAFI |
| Activity | Post trade and broker associations |
| Are you representing an association? | ☒ |
| Country/Region | France |

**Introduction**

***Please make your introductory comments below, if any***

<ESMA\_COMMENT\_SFR\_1>

**The Association Française des Professionnels des Titres (AFTI)**, is the leading association representing post-trade businesses in France and Europe. AFTI has over 80 members covering a wide range of activities, including market infrastructures, custodians, account holders and depositaries, issuer services providers, as well as reporting and data providers.

**Association française des marchés financiers (AMAFI)** is the trade organisation working at national, European and international levels to represent financial market participants in France. It acts on behalf of credit institutions, investment firms and trading and post-trade infrastructures, regardless of where they operate or where their clients or counterparties are located. AMAFI’s members operate for their own account or for clients in different segments, particularly organised and over-the-counter markets for equities, fixed-income products and derivatives, including commodities. Nearly one-third of members are subsidiaries or branches of non-French institutions.

<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>

We consider that the reports on settlement fails should cover the same scope of financial instruments as the settlement discipline to ensure coherence between the fails reported and the fails subject to penalties.

Notably the FIRDS file should be accessible to all participants including banks and investment firms, and should be with a user friendly access, and fed with reliable data

<ESMA\_QUESTION\_SFR\_1>

1. : 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>

Not relevant for banks and investment firms participants.

<ESMA\_QUESTION\_SFR\_2>

1. : 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>

Not relevant for AFTI / AMAFI.

<ESMA\_QUESTION\_SFR\_3>

1. : 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 strongly push that all primary market operations, including subscriptions and redemptions of fund units, should be excluded from the scope of the settlement discipline regime.

<ESMA\_QUESTION\_SFR\_4>

1. : 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>

Auto-collateralisation operations are other types of realignment concluded with the Central Bank. These operations with the NCB can fail when the participant cannot return the cash lent by NCB. In that case, there is already a penalty rate taken by NCB. How this should be handled in the context of CSDR as we do not want to be penalysed twice for the same operation?

<ESMA\_QUESTION\_SFR\_5>

1. : 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>

Not relevant for AFTI / AMAFI.

<ESMA\_QUESTION\_SFR\_6>

1. : 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>

Not relevant for AFTI / AMAFI.

<ESMA\_QUESTION\_SFR\_7>

1. : 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>

Not relevant for AFTI / AMAFI.

<ESMA\_QUESTION\_SFR\_8>

1. : 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>

Not relevant for AFTI / AMAFI.

<ESMA\_QUESTION\_SFR\_9>

1. : 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>

Not relevant for AFTI / AMAFI.

<ESMA\_QUESTION\_SFR\_10>

1. : 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>

Not relevant for AFTI / AMAFI.

<ESMA\_QUESTION\_SFR\_11>

1. : 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>

Not relevant for AFTI / AMAFI.

<ESMA\_QUESTION\_SFR\_12>

1. : 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>

Not relevant for AFTI / AMAFI.

<ESMA\_QUESTION\_SFR\_13>

1. : 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>

Not relevant for AFTI / AMAFI.

<ESMA\_QUESTION\_SFR\_14>

1. : 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>

Not relevant for AFTI / AMAFI.

<ESMA\_QUESTION\_SFR\_15>

1. : 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>

Not relevant for AFTI / AMAFI.

<ESMA\_QUESTION\_SFR\_16>

1. : 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 strongly push for one single option taken by all CSDs, to encourage European harmonisation. We also support the adoption of the most common calendar across Europe.

<ESMA\_QUESTION\_SFR\_17>

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

<ESMA\_QUESTION\_SFR\_18>

Even if a security is redenominatedin another currency than the settlement currency, we believe that the penalty should be based on the settlement currency only. It is not logical to ask CSDs to execute changes and take a banking risk, should the currency rate be moving into the wrong direction.

<ESMA\_QUESTION\_SFR\_18>

1. : 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>

Not relevant for AFTI / AMAFI.

<ESMA\_QUESTION\_SFR\_19>

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

<ESMA\_QUESTION\_SFR\_20>

Not relevant for AFTI / AMAFI.

<ESMA\_QUESTION\_SFR\_20>

1. : 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>

Not relevant for AFTI / AMAFI.

<ESMA\_QUESTION\_SFR\_21>

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

<ESMA\_QUESTION\_SFR\_22>

Not relevant for AFTI / AMAFI.

<ESMA\_QUESTION\_SFR\_22>

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*) [↑](#footnote-ref-2)
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*). [↑](#footnote-ref-3)