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| Response Form to the Consultation Paper on the amendement of Article 19 of CSDR RTS on Settlement Discipline |
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**Responding to this paper**

ESMA invites comments on all matters in this consultation paper and in particular on the specific questions. Comments are most helpful if they:

* respond to the question stated;
* indicate the specific question to which the comment relates;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

ESMA will consider all comments received by **9 September 2022**

**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. Use this form and send your responses in Word format (**pdf documents will not be considered except for annexes**);
3. Please do not remove tags of the type <ESMA\_QUESTION \_SETD\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
4. 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.
5. When you have drafted your response, name your response form according to the following convention: ESMA\_SETD\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_SETD\_ABCD\_RESPONSEFORM.
6. Upload the form containing your responses, **in Word format**, to ESMA’s website (www.esma.europa.eu under the heading “Your input – Open Consultations” -> Consultation Paper on the clearing and derivative trading obligations in view of the benchmark transition”).

**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 publically 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.

**Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading [Legal Notice](http://www.esma.europa.eu/legal-notice).

**Who should read this paper**

All interested stakeholders are invited to respond to this consultation paper. In particular, this paper may be specifically of interest to CCPs, CSDs and their clients.

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**General information about respondent**

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| Name of the company / organisation | Click here to enter text. |
| Activity | Audit/Legal/Individual |
| Are you representing an association? |  |
| Country/Region | Germany |

**Questions**

1. Do market participants support removing the special process of collection and distribution of penalties by CCPs for cleared transactions? Please provide justifications, if possible supported by quantitative data.

<ESMA\_QUESTION\_SETD\_1>

We do not support removing the special process. The CCPs are in the best position to identify the parties that fail to deliver securities and/or cash for settlement. With the Unique Transaction Identifier, the CCPs will be in a position to identify the specific market participants who fail settlement.<ESMA\_QUESTION\_SETD\_1>

1. Do market participants support amending Article 19 of the CDR on Settlement Discipline as suggested in Annex IV? Please provide justifications, if possible supported by quantitative data.

<ESMA\_QUESTION\_SETD\_2>

We do not support the amendment suggested in Annex IV. Passing information about settlement failures post-netting and after the CCPs have interposed themselves between failing and receiving parties only adds a layer of complication to the calculation. This is not to say we disagree with the CSDs performing the funds movements; only that the calculation for collection must remain with the CCP responsible for novation and netting.<ESMA\_QUESTION\_SETD\_2>

1. Do market participants support delaying the application of the envisaged amendment by six months after the publication of the amending RTS in the Official Journal of the EU? If not, what would be appropriate implementation period in your view? Please provide explanations.

<ESMA\_QUESTION\_SETD\_3>

We do not support the additional six-month delay after publication for application, in the event the amendments are approved. The reporting of settlement fails, and subsequent assessment of fines were delayed multiple times from the 2014 passage of the regulation. There should be no further excuse for delaying implementation that the EC intended to occur more than five or six years ago. Given that the amendment is already available, and that the CCPs and CSDs have already agreed to the processes described in the amendment, we see no need for more than 30-days post-publication for implementation.<ESMA\_QUESTION\_SETD\_3>