European Venues & Intermediaries Association

EVIA Response to ESMA Consultation Paper; Technical Advice on CSDR Penalty Mechanism

Summary Comments

Settlement discipline penalties should not apply to entities outside those dealing counterparties properly in the 'horizontal' settlement chain as discretionary principals. Other actors who are facilitating the marketplace via back-to-back deal entry such as trading venues operating Matched Principal models, arranging intermediaries or firms acting only in the role of agent cannot control fails into them and have always been treated as pass-through entities.

In this regard we welcome the concept of 'actionably avoidable' settlement fails [Paras 59, 60] as mitigation for adequate exemptions in Level 1 text because deterrent isn't a tool for arranging and processing parts of the market infrastructure. For the avoidance of doubt, ESMA introduces the principle that, "*the setting of penalty levels for that failing on a transaction should never be an economically viable option*". This is entirely inappropriate and the wrong lens for our member firms who are arrangers, and not a part of the "horizontal" settlement chain. Clearly these intermediaries cannot effect buy-ins and so are solely reliant on the counterparties to make settlement.

However, we would like to raise the scope and diversity of the various use-cases for such trading venues operating Matched Principal models and arranging intermediaries in relation to the penalty regime from which they should be excluded. Specifically it may be the case that trade legs under Matched Principal models may be allocated to different CSDs, in which case the CSDR mechanism needs to inform or accommodate the CSD that the failure which they witness as singular is in fact a pass-through as a part of a chain.

Answers to questions

Q1 Do you agree with ESMA's proposal? Which Option is preferable in your view? Please also state the reasons for your answer.

No we do not agree with the proposal to move to option 4.

Given the overarching requirement for the process to be simple and straightforward, whilst being mindful of the substantial process and system changes that T+1 will trigger, we would not suppose any change is appropriate at this stage.

Notwithstanding the preference to reassess this after settlement cycles have been shortened, as set out, Option 2 appears to present the closest option to BAU.

We would underscore that no parties seek to fail in deliveries and therefore any regime such as that proposed under Option 4 will fail due to the inability of most parties in transaction chains to effect a remedy.

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Q2 Do you have other suggestions? If yes, please specify and provide arguments.

Given the overarching requirement for the process to be simple and straightforward, whilst being mindful of the substantial process and system changes that T+1 will trigger, we would not suppose any change is appropriate at this stage.

We would underscore that no parties seek to fail in deliveries and therefore any regime such as that proposed under Option 4 will fail due to the inability of most parties in transaction chains to effect a remedy.

Q3, Do you agree with the approach followed for the Option you support to incorporate proportionality in the Technical Advice? If not, please provide an indication of further proportionality considerations, detailed justifications and alternative wording as needed.

Yes, as Matched Principal TVs we concur with the incorporation of proportionality in the Technical Advice.

In the case of trading venues and intermediaries without any position taking permissions, all fails should be passed through between the matched counterparties, however it is inevitable that exceptional circumstances will occur. These will require proportionality in the settlement discipline process and to the penalties arrangements because no such trading venue or intermediary could ever effect a buying-in due to lack of permissions and balance-sheet.

Q4 What costs and benefits do you envisage related to the implementation of each Option? Please use the table below. Where relevant, additional tables, graphs and information may be included in order to support some of the arguments or calculations presented in the table below.

Options 1,2,3 would all present smaller changes to participants in the EUR zone.

As wholesale venues, we note that DKK and HUF transactions are relatively small in proportion to the totals.

Option 4 would mean a greater deal of changes and higher process costs, in addition to the higher penalties.

Q5, As a CSD, do you face the issue of accumulation of reference data related to Late Matching Fail Penalties (LMFPs), that may degrade the functioning of the securities settlement system you operate? If yes, please provide details, including data where available, in particular regarding the number and value of late matching instructions, as well as for how many business days they go in the past from the moment they are entered into the securities settlement system, and the percentage they represent compared to the overall number and value of settlement fails on a monthly basis (please use as a reference the period June 2022 – June 2023).

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Our members do not operate CSDs. Defer to ECSDA comments.

Q6, What are the causes of late matching? How can you explain that there are so many late matching instructions? What measures could be envisaged in order to reduce the number of late matching instructions?

As trading venues holding client standing settlement instructions, its more likely that the causes of late matching are in end user trades with dealers.

Recalling last year's AFME report 'Improving the Settlement Efficiency Landscape in Europe,' clearly the solutions lie in pre-population of the relevant data and settlement details as consistent with CSD-level settlement matching criteria. Again we underscore that this report advocated for market participants to use centralised industry trading platforms such as OTFs and MTFs.

Q7, Do you agree with ESMA's proposal to establish a threshold beyond which more recent reference data shall be used for the calculation of the related cash penalties to prevent the degradation of the performance of the systems used by CSDs? Please also state the reasons for your answer.

Yes, this seems reasonable.

The alternative would be for a central common database for CSD access.

Q8, Do you agree with the threshold of 92 business days or 40 business days in order to prevent the degradation of the performance of the systems used by CSDs? Please specify which threshold would be more relevant in your view:

a. *92 business days;*
b. *40 business days;*
c. *other (please specify).*

Please also state the reasons for your answer and provide data where available, in particular regarding the number and value of late matching instructions that go beyond 92 business days, 40 business days in the past or another threshold you think would be more relevant, and the percentage they represent compared to the overall number and value of settlement fails on a monthly basis (please use as a reference the period June 2022 – December 2023).

We would defer to ECSDA on this matter as it is a decision for each CSD.

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Q9, Do you agree that the issuer CSD for each financial instrument shall be responsible for confirming the relevant reference data to be used for the related penalties calculation? Please also state the reasons for your answer

Yes. We agree that issuer CSDs should be responsible for confirming the relevant data to be used for the calculation of cash penalties and for the information to be shared in a timely manner with the other CSDs. Again we would defer to ECSDA on this matter.

Q10, In your view, where settlement instructions have been matched after the intended settlement date, and that intended settlement date is beyond the agreed number of business days in the past, the use of more recent reference data (last available data) for the calculation of the related cash penalties should be optional or compulsory? Please also state the reasons for your answer.

It follows from our advocacy for proportionality that the calculation of the related cash penalties should be optional depending on the matters specific to the case. CSDs need to be afforded flexibility and agility to respond appropriately.

This could the case where trading venues may have matched and contingent trade legs under the matched principal model settling into different CSDs. Here the absent or incomplete settlement instructions or matching details could be consequent to issues transmitted down the settlement chains, but would appear to any CSD as a discrete issue because of the different directions of trade settlement, and possible complexities and contingent trades within a single transaction set.

Q11, Do you have other suggestions? If yes, please specify, provide drafting suggestions and provide arguments including data where available.

Per answers above, a standardised approach across CSDs should entail not only the pass-through exemption to enable trading venues and intermediaries to carry out their market effectiveness, but also consider where such arrangers may have more complex transactions and multiple CSDs such that penalties would be inappropriate and ineffectual.

Q12, Do you agree with the approach followed to incorporate proportionality in the Technical Advice? If not, please provide an indication of further proportionality considerations, detailed justifications and alternative wording as needed.

We understand that the specific proportionality under question here refers to the quantum of data storage by the CSD such as reference prices and exchange rates, shall be used for the calculation of the related cash penalties. We therefore agree with the approach.

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In respect of wider proportionality, penalties should only accrue from principle counterparties in the settlement chain and not from any arrangers or trading venues who may be acting in a matched principal capacity but whom would not transaction report as "DEAL".

Q13, What costs and benefits do you envisage related to the implementation of the approach proposed by ESMA? Please use the table below. Where relevant, additional tables, graphs and information may be included in order to support some of the arguments or calculations presented in the table below.

We would defer to ECSDA on these costs and benefits details.

Q14 If applicable (if you have suggested a different approach than the one proposed by ESMA), please specify the costs and benefits you envisage related to the implementation of the respective approach. Please use the table below. Where relevant, additional tables, graphs and information may be included in order to support some of the arguments or calculations presented in the table below.

No response.

Q15 Based on your experience, what has been the impact of CSDR cash penalties on reducing settlement fails (by type of asset as foreseen in the Annex to Commission Delegated Regulation (EU) 2017/389 since the application of the regime in February 2022? Please provide data and arguments to justify your answer.

Whilst anecdotally we can report improved settlement efficiency under the recent penalty regime, on an empirical basis we can only refer to the data in the cited ESMA TRV reports, the cited AFME report 'Improving the Settlement Efficiency Landscape in Europe,' and data from the CSDs themselves. These do point towards improvements with both CSD industry data and T2S reports observing that settlement efficiency has generally increased between 2022 and 2023 by c. 4%.

Its notable that settlement efficiency for bonds ought to be correlated to the amount and proportion of bonds that are trading 'Special' or 'Specific' on repo as well as the ambient level of nominal rates. We would also like to cite more effective application and use of UTIs as a relevant factor.

Also extraneous matters such as market volatility [*"Settlement fail rates typically increase when there are unstable market conditions"*], Covid#19 and the sanctions imposed on Russian assets and access make a significant impact. Therefore signals within data would need a longer and more stable period than that which the penalty regime currently affords. It then

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follows that a move to T+1 will continue to disturb the sequential value of the penalties and settlement efficiency data going forwards.

Q16 In your view, is the current CSDR penalty mechanism deterrent and proportionate? Does it effectively discourage settlement fails and incentivise their rapid resolution? Please provide data and arguments to justify your answer.

Premia facie the answer is Yes. Referencing the available public data on settlement fails cited in the answer to Question 15 above, there has been a marked improvement in settlement efficiency in the EU. Reiterating as well that correlation is not causality and the recent timeframe has witnessed declining numbers and proportions of bonds trading "Special" [rare] as well as a period of higher primary issuance, declining Quantitative Easing and higher interest rates, all of which act as an additional cost for, or a hurdle to settlement fails.

In addition, and mindful of the conjoined global interest from both market participants and authorities to shorten the settlement cycle (starting this year with the US SEC approach), we note the continuous focus and ongoing industry efforts to apply both common standards together with innovations and technology in order improve settlement efficiency.

Therefore, many of the empirical improvements would have likely eventuated regardless of the current EU CSDR penalty mechanism deterrent. That said its entirely coherent to suppose that these current penalty rates are indeed working towards the desired objectives which are commonly held across all stakeholders.

Where the CSDR cash penalties regime actually creates the opposite effect would be to penalise firms not acting as discretionary Principal in the direct settlement chain, and who therefore cannot act to mitigate the passing on of any settlement failures. This is in accordance with our 2020 letter to ESMA regarding a Q&A explanation; EVIA draft letter to the ESMA concerning submitted CSDR Q&A on the settlement chain.pdf.

Rather the penalty itself needs to be agile and capable of being passed through the chain to reach the failing counterparty. This is in accordance with current and prior market practice but needs to be considered across the more complex use cases such as multiple CSDs, contingent trade legs, complex products and cross-border transactions. Of these we identify transactions for settlement into multiple CSD as the most prevalent.

Most pertinently, trading venues and intermediaries [1]who act to increase liquidity by arranging trading interests and bringing together contingent or non-latent liquidity should not be disincentivised by the CSDR penalty regime as the direct consequence would be either or both less addressable liquidity or wider bid-offer spreads.

[1] We note that the term "broker" as used by most of the buy-side and sell-side refers to a dealer who trades inventory on their balance sheet. Rather our firms act under limited permissions as Matched Principal venues or intermediaries and do not hold positions. They can not undertake buy-ins. See; Benefits of Matched Principal over Name Give Up for the Fixed Income Markets.pdf

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Q17 What are the main reasons for settlement fails, going beyond the high level categories: "fail to deliver securities", "fail to deliver cash" or "settlement instructions on hold"? Please provide examples and data, as well as arguments to justify your answer.

We would refer to the relevant industry research and reports including the cited AFME report 'Improving the Settlement Efficiency Landscape in Europe,' and the ICMA Secondary Market Rules & Recommendations, as an effective contractual remedy for settlement fails. These illustrate the breadth of relevant causes, and we will not repeat these here.

As market operators we would add that all fails are intrinsically related along the settlement chain and in being contingent on other matters they do not tend to be isolated at a single market participant. In effect this means that the solution is not simple and discrete, but structurally applies to the eco-system or via its "natural capital".

Q18 What tools should be used in order to improve settlement efficiency? Please provide examples and data, as well as arguments to justify your answer.

Clearly the application of cash penalties is a "last resort" rather than a tool. Rather, "tools" are devices that should be used every day.

Therefore relevant tools may be out of the scope of this consultation, but would include: the greater use of matched principal trading venues; standardisation and automation of settlement details [SSI] in trading venues; the application of proper UTI and UPI trade details; cross-border market access, especially for fund trades; data sharing; DVB transparency and segregation; and the wider use of partial settlement.

Q19, What are your views on the appropriate level(s) of settlement efficiency at CSD/SSS level, as well as by asset type? Please provide data and arguments to justify your answer.

We would suppose that the appropriate levels of settlement efficiency at CSD/SSS level, are reflective to the observed outcomes over time rather than theoretical. There is no appropriate answer to this question.

This is because the number of external variables are large and vary over time, including the application of technology. Variations will also naturally occur both between and also within each asset type, as well as both between and also within each transaction type or market model or complexity. Transactions that are cross-border, or have international components are also idiosyncratic. Clearly wholesale counterparties matching trades on trading venues, as in the case of our members, is a very different case to dealer-to-client markets.

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Q20, Do you think the penalty rates by asset type as foreseen in the Annex to Commission Delegated Regulation (EU) 2017/389 are proportionate? Please provide data and arguments to justify your answer.

We refer to our comments above in the answers to questions 19 and 16 such that proportionality is important both in its own right and also because the penalty rules are new and novel. We understand that this is well understood by both the European Commission and by ESMA consequent to the extensive analysis and revisions made to the settlement disciple aspects of the CSDR text.

Whilst Matched Principal trading venues and intermediaries should be excluded across all their market models; it's also recommended that further proportionality and discretion should be afforded to CSDs until both the CSDR regulation has been reviewed & revised, and T+1 settlement has been fully implemented.

Q21, Regarding the proportionality of the penalty rates by asset type as foreseen in the Annex to Commission Delegated Regulation (EU) 2017/389, ESMA does not have data on the breakdown of cash penalties (by number and value) applied by CSDs by asset type. Therefore, ESMA would like to use this CP to ask for data from all EEA CSDs on this breakdown, including on the duration of settlement fails by asset type.

We would defer to ECSDA on this matter.

Q22, In your view, would progressive penalty rates that increase with the length of the settlement fail be justified? Please provide examples and data, as well as arguments to justify your answer.

We do not consider that progressive penalty rates would comply with the objective of the CSDR regime to be a simple and straightforward as possible.

Concisely, as market operators we do not witness any wholesale counterparties willingly failing to make settlement or considering it a commercial choice. Therefore progressive penalty rates could not act as a tool as suggested in the consultation. Most likely they would solely create costs and risks which would increase the charges passed on to end users and decrease the effectiveness of European capital markets, most especially their wholesale infrastructures.

Should progressive penalty rates be relevant and useful, that could only be assessed once both the CSDR regulation has been reviewed & revised, and T+1 settlement has been fully implemented.

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Q23, What are your views regarding the introduction of convexity in penalty rates as per the ESMA proposed Option 2 (settlement fails caused by a lack of liquid financial instruments)? Please justify your answer by providing quantitative examples and data if possible.

We do not consider that the introduction of convexity into penalty rates would comply with the objective of the CSDR regime to be a simple and straightforward as possible. It follows from our answer to Question 22 above this proposal would also introduce irrelevant and unnecessary complexities and costs. A "bigger hammer" is rarely the preferred outcome.

Q24, Would it be appropriate to apply the convexity criterion to settlement fails due to a lack of illiquid financial instruments as well? Please justify your answer by providing quantitative examples and data if possible.

No.

Q25 What are your views regarding the level of progressive penalty rates:

a) as proposed under Option 1?
b) as proposed under Option 2?

It follows from our answer to Question 22 that whilst penalties should not anyway apply to entities outside those dealing counterparties properly in the settlement chain; we do not support the levels of penalty rate proposed under either Option 1 or Option 2 for those who are. This would diminish the effectiveness of European liquidity pools rather than enhance settlement discipline.

Q26 If you disagree with ESMA's proposal regarding the penalty rates, please specify which rates you believe would be more appropriate (i.e. deterrent and proportionate, with the potential to effectively discourage settlement fails, incentivise their rapid resolution and improve settlement efficiency). Please provide examples and data, as well as arguments to justify your answer. If relevant, please provide an indication of further proportionality considerations, detailed justifications and alternative proposals as needed.

Settlement discipline penalties should not apply to entities outside those dealing counterparties properly in the settlement chain such as trading venues operating Matched Principal models and arranging intermediaries. In this regard we welcome the concept of 'actionably avoidable' settlement fails [Paras 59, 60] as mitigation for adequate exemptions in Level 1 text because deterrent isn't a tool for arranging and processing parts of the market infrastructure. For the avoidance of doubt, ESMA introduces the principle that, "*the setting of penalty levels for that failing on a transaction should never be an economically viable option*". This is entirely inappropriate and the wrong lens for our member firms who are arrangers, and not a part of the "horizontal" settlement chain.

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For the relevant participants in the settlement chain, we would suppose that the calibration and the recalibration penalty rates should be simple and arithmetic. It should be done on a periodic basis by reference to repo market participant access and instrument availability to remediate any fail as a singular measure with notification along the settlement chain.

Q27 What are your views regarding the categorisation of types of fails:

a) as proposed under Option 1?
b) as proposed under Option 2?

Do you believe that less/further granularity is needed in terms of the types of fails (asset classes) subject to cash penalties? Please justify your answer by providing quantitative examples and data if possible.

We understand that Question 27 refers to proposals to introduce an addition and new category for ETFs. Currently members of EVIA are not active in arranging this asset class.

Q28 What costs and benefits do you envisage related to the implementation of progressive penalty rates by asset type (according to ESMA's proposed Options 1 and 2)? Please use the table below. Where relevant, additional tables, graphs and information may be included in order to support some of the arguments or calculations presented in the table below.

We do not consider that progressive penalty rates would confer benefits as they would not comply with the objective of the CSDR regime to be a simple and straightforward as possible. This therefore applies to both option 1 and to option 2.

Settlement discipline penalties should not apply to entities outside those dealing counterparties properly in the settlement chain such as trading venues operating Matched Principal models and arranging intermediaries.

Progressive penalty rates would likely increase the incentives not to settle in a timely manner if there is scope to contest, but moreover, not to participate in European Capital Markets in the first place.

Q29 Alternatively, do you think that progressive cash penalties rates should take into account a different breakdown than the one included in ESMA's proposal above for any or all of the following categories:

(a) asset type;
(b) liquidity of the financial instrument;
(c) type of transaction;
(d) duration of the settlement fail.

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If you have answered yes to the question above, what costs and benefits do you envisage related to the implementation of progressive penalty rates according to your proposal? Please use the table below. Where relevant, additional tables, graphs and information may be included in order to support some of the arguments or calculations presented in the table below.

We do not consider that progressive penalty rates would confer benefits as they would not comply with the objective of the CSDR regime to be a simple and straightforward as possible. This therefore applies to both option 1 and to option 2.

Progressive penalty rates would likely increase the incentives not to settle in a timely manner if there is scope to contest, but moreover, not to participate in European Capital Markets in the first place.

Q30, Another potential approach to progressive penalty rates could be based not only on the length of the settlement fail but also on the value of the settlement fail. Settlement fails based on instructions with a lower value could be charged a higher penalty rate than those with a higher value, thus potentially creating an incentive for participants in settling smaller value instructions at their intended settlement date (ISD). Alternatively, settlement fails based on instructions with a higher value could be charged a higher penalty rate than those with a lower value. In your view, would such an approach be justified? Please provide arguments and examples in support of your answer, including data where available. What costs and benefits do you envisage related to the implementation of this approach? Please use the table below. Where relevant, additional tables, graphs and information may be included in order to support some of the arguments or calculations presented in the table below.

The proposal to differentiate penalty rates based on the value of the instruction adds complexity where the objective for the rules to remain simple and straightforward should be paramount. Specifically this appears to create perverse incentives and may lead to unintended consequences.

Progressive penalty rates would likely increase the incentives not to settle in a timely manner if there is scope to contest, but moreover, not to participate in European Capital Markets in the first place.

Q31, Besides the criteria already listed, i.e. type of asset, liquidity of the financial instruments, duration and value of the settlement fail, what additional criteria should be considered when setting proportionate and effective cash penalty rates? Please provide examples and justify your answer.

The CSDR penalty regime should be as simple and straightforward as possible, and therefore additional criteria should be minimised and aligned with incentives to settle as soon as possible and in any partial manner. What may be also required is the functional identity of the participants in order to differentiate dealing counterparties from arrangers and agents.

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Whilst we consider the Repo market as the most relevant bellwether criteria (*to flag and quantify scarcity and market conditions, and therefore penalty quantum*); the most effective tool for this application would be a transparent pass-through model that is agnostic to multiple and separate CSDs such that any penalty is directed along a connected and contingent set of trades within a transaction. This requires a transparent and effective disclosure to the CSD of the nature and identity along the horizontal chain of settlement counterparties.

Additional considerations to simplify the cash penalty mechanism, while ensuring it is deterrent and proportionate

Q32, Would you be in favour of the use of the market value of the financial instruments on the first day of the settlement fail as a basis for the calculation of penalties for the entire duration of the fail? ESMA would like to ask for the stakeholders' views on the costs and benefits of such a measure. Please use the table below. Where relevant, additional tables, graphs and information may be included in order to support some of the arguments or calculations presented in the table below.

We would defer to ECSDA and individual CSDs on this matter.

We are unclear if solely using the market value of the financial instruments on the first day of the settlement fail would simplify the cash penalty mechanism, but if that consensus is arrived at by the CSDs, we would support the proposal.

Q33, How should free of payment (FoP) instructions be valued for the purpose of the application of cash penalties? Please justify your answer and provide examples and data where available.

We would defer to ECSDA and individual CSDs on this matter.

Q34, Do you think there is a risk that higher penalty rates may lead to participants using less DvP and more FoP settlement instructions? Please justify your answer and provide examples and data where available.

We would defer to ECSDA and individual CSDs on this matter.

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Q35, ESMA is considering the feasibility of identifying another asset class subject to lower penalty rates: "bonds for which there is not a liquid market in accordance with the methodology specified in Article 13(1), point (b) of Commission Delegated Regulation (EU) 2017/583 (RTS 2)". The information on the assessment of bonds' liquidity is published by ESMA on a quarterly basis and further updated on FITRS. However, ESMA is also aware that this may add to the operational burden for CSDs that would need to check the liquidity of bonds before applying cash penalties. As such, ESMA would like to ask for the stakeholders' views on the costs and benefits of such a measure. Please use the table below. Where relevant, additional tables, graphs and information may be included in order to support some of the arguments or calculations presented in the table below.

In view of the build cost, we would defer to ECSDA and individual CSDs on this matter.

Q36, Do you have other suggestions for further flexibility with regards to penalties for settlement fails imposed on illiquid financial instruments? Please justify your answer and provide examples and data where available.

We note that illiquid financial instruments are more commonly arranged in contingent packages and as complex trades made away from or only assisted by wholly electronic platforms. Such trades will entail a greater role by intermediaries. Recalling that settlement discipline penalties should not apply to entities outside those dealing counterparties properly in the 'horizontal' settlement chain such as trading venues operating Matched Principal models, arranging intermediaries or other agents.

Q37, How likely is it that underlying parties that end up with "net long" cash payments may not have incentives to manage their fails or bilaterally cancel failing instructions as they may "earn" cash from penalties? How could this risk be addressed? Please justify your answer and provide examples and data where available.

This may be a risk to trading venues operating Matched Principal models, arranging intermediaries or other agents if there are not adequate exemptions in the level 2 technical standards of CSDR because there is no prescriptive exemption in the level 1 regulation. It would be necessary therefore for the penalty regime to reference and identify dealing counterparties in the settlement chain from others.

Q38, How could the parameters for the calculation of cash penalties take into account the effect that low or negative interest rates could have on the incentives of counterparties and on settlement fails? Please provide examples and data, as well as arguments to justify your answer.

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Whilst the spread between the reverse repo rate and bank rate could provide a metric for the incentives of counterparties, we consider this not to be in accordance with any simple and straightforward approach.

Further we again underscore that the scope of cash penalties should be constricted to counterparties properly in the 'horizontal' settlement chain who would be a position to take note of this spread rather than trading venues operating Matched Principal models, arranging intermediaries or other agents who could not, should any legs of matched transactions fail to promptly settle.

Q39, To ensure a proportionate approach, do you think the penalty mechanism should be applied only at the level of those CSDs with higher settlement fail rates? Please provide examples and data, as well as arguments to justify your answer. If your answer is yes, please specify where the threshold should be set and if it should take into account the settlement efficiency at:

a) *CSD/SSS level (please specify the settlement efficiency target);*
b) *at asset type level (please specify the settlement efficiency target); or*
c) *other (please specify, including the settlement efficiency target).*

We would defer to ECSDA and individual CSDs on this matter.

Q40, Please specify what costs and benefits you envisage regarding the application of the penalty mechanism only at the level of the CSDs with higher settlement fail rates. Please use the table below. Where relevant, additional tables, graphs and information may be included in order to support some of the arguments or calculations presented in the table below.

We would defer to ECSDA and individual CSDs on this matter.

Q41, Do you think penalty rates should vary according to the transaction type? If yes, please specify the transaction types and include proposals regarding the related penalty rates. Please justify your answer and provide examples and data where available. Please specify what costs and benefits you envisage related to the implementation of your proposal. Please use the table below. Where relevant, additional tables, graphs and information may be included in order to support some of the arguments or calculations presented in the table below.

No. Adding complexity to the current scope should be only made where strictly necessary and the application of different penalty rates to different transaction types would not be simple and straightforward. It could also induce behavioural distortions.

We note however that presumably mandatory buy-ins could qualify as an exception to this approach. The reconciliation of post-dated errors and "out-trades" by trading venues operating

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Matched Principal models, arranging intermediaries or other agents could also be a specific case.

Q42, Do you think that penalty rates should depend on stock borrowing fees? If yes, do you believe that the data provided by data vendors is of sufficient good quality that it can be relied upon? Please provide the average borrowing fees for the 8 categories of asset class depicted in Option 1. (i.e. liquid shares, illiquid shares, SME shares, ETFs, sovereign bonds, SME bonds, other corporate bonds, other financial instruments).

No. Adding complexity to the current scope should be only made where strictly necessary.

The cost of stock borrowing would normally already be reflected in the cost of funding the trade fails.

Q43, Do you have other suggestions to simplify the cash penalty mechanism, while ensuring it is deterrent and proportionate, and effectively discourages settlement fails, incentivises their rapid resolution and improves settlement efficiency? Please justify your answer and provide examples and data where available. Please specify what costs and benefits you envisage related to the implementation of your proposal. Please use the table below. Where relevant, additional tables, graphs and information may be included in order to support some of the arguments or calculations presented in the table below.

No.

Q44, Based on your experience, are settlement fails lower in other markets (i.e. USA, UK)? If so, which are in your opinion the main reasons for that? Please also specify the scope and methodology used for measuring settlement efficiency in the respective third-country jurisdictions.

We are not aware of any systemic difference between the prevalence of settlement fails in Europe as opposed to other regions.

For instance, the US has the benefits of a single currency and simpler CSD structure, but also has more diversity in both product and participants to offset. Asia has more fragmentation, but is more institutional. Other than government stock, the UK largely settles into the EU CSD infrastructure and is therefore indistinguishable.

Q45, Do CSD participants pass on the penalties to their clients? Please provide information about the current market practices as well as data, examples and reasons, if any, which may impede the passing on of penalties to clients.

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As trading venues operating Matched Principal models and arranging intermediaries, we rely entirely on the pass-through mechanism embedded in current market conduct standards. For dealer-to-client models we defer to custodians and to market counterparties to answer question 45.

Q46, Do you consider that introducing a minimum penalty across all types of fails would improve settlement efficiency? Is yes, what would be the amount of this minimum penalty and how should it apply? Please provide examples and data, as well as arguments to justify your answer.

No. The introduction of a minimum penalty across all types of fails would add complexity and volume to the current scope of the rules without evident benefits.

Q47, What would be the time needed for CSDs and market participants to implement changes to the penalty mechanism (depending on the extent of the changes)? Please provide arguments to justify your answer.

Assuming appropriate pass-through mechanisms for trading venues operating Matched Principal models and arranging intermediaries; we would defer to ECSDA, to individual CSDs and to custodians on this matter, but would note the likelihood of a market transition to T+1 in 2026 should be relevant to the timing.

Q48, Since the application of the RTS on Settlement Discipline, how many participants have been detected as failing consistently and systematically within the meaning of Article 7(9) of CSDR? How many of them, if any, have been suspended pursuant to same Article?

We would defer to ECSDA, AGC, and to individual CSDs on this matter.

Q49, In your view, would special penalties (either additional penalties or more severe penalty rates) applied to participants with high settlement fail rates be justified? Should such participants be identified using the same thresholds as in Article 39 of the RTS on Settlement Discipline, but within a shorter timeframe (e.g. 2 months instead of 12 months)? If not, what criteria/methodology should be used for defining participants with high settlement fail rates? Please provide examples and data, as well as arguments to justify your answer.

We would not support the application of special penalties being applied to dealing counterparties with high settlement fail rates as this would create a differentiation factor in the market and would add complexity in terms of how the CSDs would calculate the penalty to be applied.

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Clearly without adequate pass-through exemptions trading venues operating Matched Principal models could be erroneously caught in such a category. Moreover, it may effectively serve to penalise those contributing the most liquidity to European Capital Markets.

Q50, How have CSDs implemented working arrangements with participants in accordance with article 13(2) of the RTS on Settlement Discipline? How many participants have been targeted?

We would defer to ECSDA, AGC, and to individual CSDs on this matter.

Q51, Should the topic of settlement efficiency be discussed at the CSDs' User Committees to better identify any market circumstances and particular context of participant(s) explaining an increase or decrease of the fail rates? Please justify your answer.

We would defer to ECSDA, AGC, and to individual CSDs on this matter.

Ends.

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