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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 | FIA |
| Activity | Other Financial service providers |
| Are you representing an association? |  |
| Country/Region | Europe |

**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>

FIA members support removing the special process of collection and distribution of penalties by CCPs for cleared transactions. This will allow for the centralisation of collection and distribution process of cash penalties for both cleared and uncleared transactions upon a single entity (CSD), allowing for a more straightforward and consistent approach, fully centred on the settlement step regardless of trading flow.

Specifically, we would like to emphasise that:

* 1. Removing the CCPs from the cash penalties (CP) process will reduce risk and improve the operating environment. This is because:
* Two operational frameworks to follow (‘EACH’ and ‘ECSDA’) create operational complexity further magnified by individual FMI’s divergence from the relevant standards.
* Bifurcated reporting / payment processes increase:
  + The number of reconciliation processes
  + Scale of operational support
* Removing CCPs will:
  + Result in a single report / payment per market / CSD
  + Increase transparency of what trades have incurred penalties and improve reconciliation since not all CCPs are providing a transactional breakdown
  + Reduce the actors in the CP chain thereby reducing the touchpoints and potential for delays in the reporting / payment cascade
  + Simplify the operating environment for market participants, streamlining processes and resource allocation
  + Facilitate the removal of the ‘CMPU’ flag in the CP reporting which is used inconsistently and incorrectly by some CCPs, CSDs and settlement agents diverging from SMPG market practice
  + Reduce financial risk for certain clearing members
  1. Sunken costs will be lost but a single cascade of cash penalties instigated by the CSDs will improve resource allocation and reduce the technical overheads of a split process.

[**Note to members**: It would be helpful to provide ESMA practical examples/evidence of clear benefits of centralizing the penalty collection and distribution process. Please send them across to us if you have them readily available. <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>

FIA members agree with the suggested model so that any imbalanced positions would be ultimately covered by the CCP.

Due to a lack of quantitative data, FIA has no particular opinion at this stage on the approach to be taken by the CCP (mutualization or identification of the CCP member responsible for the difference). We note, however, that mutualization may risk undermining the general principle that the impacted parties of settlement fails should have a neutral penalty outcome. We are also concerned that mutualization could negatively impact smaller participants with a good settlement discipline.

Most importantly, FIA is of the view that an additional paragraph should be added to the proposal to confirm that CSDR cash penalties still apply to CCP trades and that CCPs are not allowed to implement their own cash-penalty regime, as it is just the administration of CSDR cash penalties that is proposed to change.

<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>

FIA members believe that the benefits of removing the special process of collection and distribution of penalties by CCPs for cleared transactions is clear. We therefore recommend that the amendment is introduced without additional delays, as the burden imposed by a bifurcated regime is ultimately detrimental to the smooth running of the CSDR Cash Penalty regime and the EEA’s capital markets. Therefore, we recommend that a 6 month delay be the latest implementation date for each CSD to take-over the process.

Additionally, we note that those CCPs and CSDs capable of implementing the amendment earlier than others should not be prevented from doing so, as implementation in unison is not seen as a technical necessity.

However, collaboration and transparency from the FMIs, as well as for any technical requirements to be fully tested, remain essential to ensure that all cleared trades are included in the CSDs daily / monthly reporting and payment process and that any changes implemented do not impact the operation of the broader CP regime.

<ESMA\_QUESTION\_SETD\_3>