

FIA EPTA response to ESMA's Consultation Paper on the Amendments to the RTS on Settlement Discipline

(ESMA74-2119945925-2117)

Q1: Do you agree with the proposed amendments to Articles 2(2) and 3 of CDR 2018/1229?

FIA EPTA members agree with the spirit of the proposed amendments, in particular the extension to include orders executed after 16:00 CET on T of the general principle i.e., that professional clients should send their written allocations and confirmations by COB. We agree with ESMA that to enhance the timely settlement of transactions, pre-settlement matching should be carried out without delay on T. This includes not supporting the proposed change in the language from 'the business day on which the transaction has taken place' to the 'business day preceding the intended settlement date of the transaction'.

However, FIA EPTA members believe that simply having a set deadline does not assist with the objective of carrying out pre-settlement matching as soon as possible as allocations and confirmations, regardless of the timing of the execution, could be sent close to the deadline.

In addition, we believe that having a difference of more than two hours between the time zone of the investment firm and the time zone of the relevant professional clients, is not sufficient justification for a deadline of 10.00 CET on T+1 for receipt of allocations and confirmations. As currently worded, this extended deadline would be provided where one party was in the US and one in the EU while there would be sufficient time, in this case, to comply with the COB on T deadline.

We would, therefore, recommend adjusting to the proposed amendment as follows:

Article 2 of CDR 2018/1229

Measures concerning professional clients

[...]

2. Professional clients shall ensure that written allocations and written confirmations referred to in paragraph 1 are received by the investment firm as soon as reasonably practicable but in any event by one of the following deadlines:

(a) by close of business on the business day on which the transaction has taken place where the investment firm and the relevant professional client are within the same time zone;

(b) by ~~12.00 CET~~ 10.00 CET on the business day following that on which the transaction has taken place where ~~one of the following occurs:~~ (i) there is a difference of more than two hours between the time zone of the investment firm and the time zone of the relevant professional client.

(ii) ~~the orders have been executed after 16.00 CET of the business day within the time zone of the investment firm.~~

Q2: Would you see merit in introducing an obligation for investment firms to notify their professional clients the execution details of their orders as soon as these orders are fulfilled (in a way that allows STP)? If yes, should it be cumulative to the proposed amendments to Articles 2(2) and 3 of CDR 2018/1229?

Yes, FIA EPTA members see merit in introducing an obligation for investment firms to notify their professional clients of the execution details of their orders as soon as these orders are fulfilled (in a way that allows STP). In a similar manner to post-trade transparency obligations, there should be an onus on investment firms to provide this notification as soon as technically possible.

It has been observed that where STP is provided for confirmation, allocation and matching by a centralised matching platform (~40% of trades), matching errors are minimal. The increased use of STP by clients and investment firms in the settlement process will be a key component to increasing settlement efficiency and ensuring a smooth transition to the T+1 settlement cycle.

We also agree this should be cumulative to the proposed amendments.

Q3: If you support an obligation for investment firms to notify their professional clients the execution as soon as the orders are fulfilled, do you think that clients should be allowed a maximum number of business hours for the allocations and confirmations from the moment of notification by investment firms, instead of having fixed deadlines? If yes, how many hours would be necessary for that?

In line with our response to Q1 above, FIA EPTA members believe that allocations and confirmation should be sent as soon as practicably possible but, in any case, no later than the fixed deadline. We do not believe that it would be necessary or warranted to set a maximum number of business hours (from the moment of notification by investment firms) if the requirement is to allocate and confirm as soon as practicably possible. This requirement to allocate and confirm as close to real time as practicably possible would allow for a significant improvement in intraday allocation and time to prematch trades.

Q4: Should CDR 2018/1229 further specify the term 'close of business' for the purpose of Article 2(2)? If yes, how should this take into account the business day at CSD level?

In line with our response to Q1 above, FIA EPTA members believe that allocations and confirmation should be sent as soon as practicably possible. This includes that allocation and confirmation of trades executed during or close to the market close should occur as soon as possible after the market close. We do not believe that it is necessary for the term 'close of business' to be further specified in the regulations as long as there is a requirement to allocate and confirm as close to real time as possible and as soon as practicably possible.

Q5: Should the 10:00 CET deadline for professional clients in different time zones and retail clients be brought forward to 07:00 CET on T+1, to be aligned with the UK deadline?

Yes, FIA EPTA members agree that the deadline for professional clients in different time zones and retail clients should be brought forward to be aligned with the UK deadline. The aim being to have allocation and confirmation as early as possible on T+1 where this cannot practically occur on T. However, where allocation and confirmation can occur on T regardless of market participant type it should occur without delay.

Q6: Can you suggest any other means to achieve the same objective? If yes, please elaborate

No comment

Q7: Do you agree to make the use of electronic and machine-readable format that allow for STP mandatory for written allocations and confirmations?

Yes, FIA EPTA members believe that the use of electronic and machine-readable format that allows for STP should be made mandatory for allocations and confirmations. We members believe this is essential to ensuring a smooth transition to the T+1 settlement cycle and increasing settlement efficiency. The majority of matching errors occur currently with manual, non-automated allocations and confirmations. Implementing a regulatory requirement for mandatory use of electronic and machine-readable allocations and confirmations will significantly improve the matching process and needs to be a regulatory requirement to ensure widespread adoption.

Q8: Would you see merit in introducing optionality for investment firms to set deadlines based on whether an electronic, machine-readable format of the communication is used? In such case, do you agree that an earlier deadline could be set for non-machine readable formats, so clients are disincentivised to use them? Which should be such deadline?

In FIA EPTA members' opinion the use of electronic, machine-readable format should be mandatory and so there would be no requirement to set different deadlines. We do not believe that setting an earlier deadline for non-machine readable formats will disincentivise clients to use non-machine readable formats and believe there needs to be a regulatory requirement to enforce the use of an electronic, machine-readable STP format. Given the level of benefit seen in the settlement process with market participants already using an electronic, machine-readable format or centralised matching platform, we consider this crucial.

Q9: Please provide quantitative evidence regarding the use of non-machine readable formats for written allocations and confirmations.

In the experience of one FIA EPTA member, ~40% of allocations and confirmations occur in an electronic, machine-readable format with a low level of matching errors (resolved at point of allocation, rather than at CSD level). For the 60% that are non-machine readable, matching errors occur on a daily basis.

Q10: Would it be necessary to introduce a similar obligation in other steps of the settlement chain? If yes, please elaborate.

FIA EPTA member feedback on this point is that once the use of electronic, machine-readable STP format is mandatory for allocations and confirmations, subsequent steps will be handled in an electronic manner and so we do not see the need to introduce a similar obligation in other steps in the settlement chain.

Q11: Can you suggest any other means to achieve the same objective? If yes, please Elaborate

No comment

Q12: Do you agree with the proposed amendment to Article 2 of CDR 2018/1229?

Yes, FIA EPTA members agree with the proposed amendment requirement the use of international open communication procedures and standard. The key being electronic provision of allocations and confirmations in a machine readable format.

Q13: Do you agree that settlement efficiency would improve if all parties in the transaction and settlement chain used a single set of standards based on the latest international standards, such as the ISO 20022 messaging standards, in particular whenever A2A messages and data are exchanged? If not, please elaborate. How long would it take for all parties to adapt to ISO20022?

Yes, FIA EPTA members agree that settlement efficiency (matching/settlement) would improve if all parties used a single set of standards along the entire transaction and settlement chain whenever A2A messages and data are exchanged. As pointed out by ESMA, ISO 20022 is already broadly used and so would be the logical

standard for all parties to adopt. Although ESMA is only proposing to prescribe the mandatory use of international open communication procedures and standards, we would recommend prescribing the use of ISO 20022 to ensure a consistent approach.

Q14: Can you provide figures (by number and type of financial entities, jurisdictions) regarding the current use of international open communication procedures and standards such as: a) ISO 20022, b) ISO 15022, c) others (please specify)?

No comment

Q15: Do you agree with the proposal of the EU Industry Task Force whereby allocation requirements should be aligned with CSD-level matching requirements? If not, please elaborate.

Yes, FIA EPTA members agree that allocation requirements should be aligned with CSD-level matching requirements.

The primary objective of allocation is to ensure that both counterparties agree the transaction details from a trading perspective and, also, a settlement perspective. The place of settlement (PSET), Net cash, quantity and SSIs are the most common mismatches observed by our members.

The ability to resolve any mismatches with these key pieces of information at the allocation level circumvents many issues later in the settlement chain. For instance, position management can be handled in a more efficient manner if PSET and SSIs are matching on Trade date as any realignment of positions from one CSD to another to settle the trade can be instructed top day. However, if there is a PSET mismatch this can cause a settlement delay as the requirement to realignment may only become known and instructed on T+1 or SD once the mismatch is resolved.

Q16: Can you suggest any other means to achieve the same objective? If yes, please elaborate

No comment

Q17: Do you agree with the proposed regulatory change to introduce an obligation for investment firms to collect the data necessary to settle a trade from professional clients during their onboarding and to keep it updated? If not, please explain.

Yes, FIA EPTA members agree with the proposed regulatory change to introduce an obligation for investment firms to collect this data during the onboarding process and keep it updated. However, there is also an onus on the client to provide notification that their SSIs are changing in order for the investment firms to update it. We would, therefore, recommend that the amendment be updated to the following:

(1a) Investment firms shall collect all data necessary to settle a trade from professional clients during their onboarding and **require their professional clients to provide advance notification of any changes in order to** keep that information updated at all times.

Q18: Can you suggest any other means to achieve the same objective? If yes, please elaborate.

No comment

Q19: Do you agree with the proposed amendment to Article 10 of CDR 2018/1229? If not, please elaborate.

FIA EPTA members strongly agree with auto-partial settlement should be mandatory, rather than optional. This is key to settlement rates being efficient with the migration to a T+1 settlement cycle. In settlement chains,

having 1 counterparty not enabled with auto-partial causes significant slowdowns to the chain of settlement, which in turn causes buy in risk, CSDR and funding issues for all counterparties involved. This is especially true with less liquid products.

If auto-partial is provided by default with the ability for one of the participants to opt out, there needs to be recognition that the receiving party has taken this action. Currently, if for whatever reason (usually outside the selling party's control) the selling party has 99 available out of the 100 shares required to be delivered on SD, and the buying party will not accept partial settlement, the selling party will be hit with the full CSDR penalty fee for the 100 shares. In addition, the selling party will have forecast for the receipt of the funds from the settlement of the trade and so will be short from a funding perspective.

In order to recognise that the selling party was able to partially settle the trade on SD and would have done so had it not been for the buying party's NPAR (no partial settlement) request/indicator, the selling party should only receive a CSDR penalty fee for the shortfall of shares the selling party would not have been able to deliver.

Q20: Do you agree with the deletion of Article 12 of CDR 2018/1229? If not, please elaborate.

Yes, FIA EPTA members agree with the deletion of Article 12, i.e., that CSDs will no longer be able to disapply the hold & release and partial settlement functionality when the value or rate of settlement fails do not exceed certain thresholds. The hold/release functionality should always be provided as, unfortunately when access to hold/release is not provided, trading parties may end up withholding matching instructions entirely from the market therefore leading to late matching and causing settlement delays. In a similar manner, partial settlement functionality should always be provided to minimise the size of settlement delays.

Q21: Do you have other suggestions to incentivise partial settlement? If yes, please elaborate.

FIA EPTA members would suggest that if partial settlement is not mandatory, one way to incentivise partial settlement would be to apply a CSDR charge to those who opt out, removing the risk of someone being hit with a CSDR settlement fail fee for not having 100% of the shares available on ISD. This would be the same mechanism as used for Late Matching CSDR penalties (instruction/NPAR indicator at CSD would indicate who pays).

In addition, as ESMA points out in paragraph 98, that some CSDs apply fees to every partial settlement of a settlement instructions meaning that if, for instance, the same instruction is partial settled three times over a day, both participants will be charged three times the fee of an instruction. We believe that this does not happen for auto-partial settlement but can in the case of partial release. However, in any case in order to incentivise partial settlement, we would recommend that CSDs are not allowed to charge multiple times for the same instruction if it is partial settled.

Q22: Do you think that some types of transactions should not be subject to partial settlement? If yes, could you provide a list and the supporting reasoning?

No comment

Q23: Do you agree with the introduction of an obligation for CSDs to facilitate the provision of intraday cash credit secured with collateral via an auto-collateralisation facility? If not, please elaborate.

No comment

Q24: Can you suggest any other means to achieve the same objective? If yes, please elaborate.

No comment

Q25: Should CDR 2018/1229 be amended to require all CSDs to offer real-time gross settlement for a minimum window of time of each business day as well as a minimum number of settlement batches? Please provide arguments to justify your answer.

Yes, in FIA EPTA members' opinion it would be optimal for all CSDs to offer real-time gross settlement for a minimum window of time during normal trading hours during each business day as well as a minimum number of settlement batches. However, we believe, as also recommended by other stakeholders, that market participants should collaborate through relevant industry fora to define the optimal means to promote and optimise settlement by reviewing current batch times.

Q26: What should be the length of the minimum window of time of each business day for real-time gross settlement and the minimum number of settlement batches that should be offered, per business day? Please provide arguments to justify your answer.

Again, similar to our response to Q25, FIA EPTA members believe that market participants should collaborate through relevant industry fora to determine the optimal length of the minimum window of time for real-time gross settlement and the minimum number of settlement batches.

Q27: Can you suggest any other means to achieve the same objective? If yes, please elaborate

No comment

Q28: Do you agree with the proposed amendments to Table 1 of Annex I of CDR 2018/1229? If not, please elaborate.

With regards to the reporting of top failing participants, FIA EPTA members would like to ask ESMA to take a step back and consider the value and purpose of reporting at a participant level.

In our opinion the focus should be on efforts to i) automate the allocation, confirmation and matching process, ii) facilitate the smooth and timely transfer of shares across CSDs and iii) promote partial settlement.

We do not believe that the plan is to ultimately restrict any particular market participant from trading in the European financial markets and this would be contrary to the aim of building the EU capital markets. We would, therefore, question whether requiring CSDs to provide this granular information is necessary and would call for it to be reviewed as part of the simplification program.

Q29: Should top 10 failing participants be reported both in absolute terms (current approach) and in relative terms (according to the proposed amendments to Table 1 of Annex I of CDR 2018/1229)?

We refer our response to Q28. If this level of reporting is required, FIA EPTA members believe reporting of failing participants in relative terms is more appropriate.

Q30: Do you have additional suggestions regarding the requirements for CSDs to report settlement fails data specified in Annex I and Annex II of CDR 2018/1229? If yes, please elaborate.

No comment

Q31: Do you agree with the proposed amendments to Article 13(1)(a) of CDR 2018/1229? Or can you suggest alternative options so that CSDs have visibility of the root causes of settlement fails at participants level?

FIA EPTA members do not agree with the proposed amendment to have the reason for the settlement fail provided by participants. In our opinion, the key fact is that a settlement fail has occurred and there are steps being made to improve settlement efficiency across the settlement chain.

As per our response to Q28, the focus should be on efforts to i) automate the allocation, confirmation and matching process, ii) facilitate the smooth and timely transfer of shares across CSDs and iii) promote partial settlement. There are a multitude of reasons why a settlement may fail, and we do not believe gathering or reporting these on a more granular level to what is already provided by the CSDs is useful.

Q32: Based on the experience since the implementation of the settlement discipline regime under CSDR, please describe the main root causes of settlement fails identified so far. Please specify the relevant categories in more granular terms, going beyond “lack of securities”, “lack of cash” and “instructions put on hold”.

No comment

Q33: According to Article 13(2) of the CDR, CSDs shall establish working arrangements with their top failing participants to analyse the main reasons for settlement fails. Do you believe that this provision has proven useful in analysing the root causes of fails and in preventing them? Do you have suggestions on other actions which CSDs could take with respect to top failing participants?

No comment

Q34: Do you agree with the proposed amendments to Table 1 of Annex III of CDR 2018/1229 to include information on the breakdown of the settlement fails per asset class? If not, please elaborate.

Yes, FIA EPTA members agree with the proposed amendment to include information per asset class.

We would also like to raise with ESMA that to date a number of our members have been unable to gain access to this data from CSDs.

Q35: Do you think that CSDs should publish additional information on settlement fails? If yes, please specify.

No comment.

Q36: Should the frequency of publication of settlement fails data by CSDs increase? Which should be the right frequency?

Yes, FIA EPTA members believe it would be beneficial for this data to be provided on a monthly basis.

Q37: Do you agree that the use of UTI should not be made mandatory through a regulatory change?

FIA EPTA members agree that the use of UTI should not be made mandatory through a regulatory change. In our opinion the existing matching criteria is sufficient.

Q38: What are your views on the use of UTI in general and in the case of netted transactions specifically?

In FIA EPTA members' view, the use of UTI may further complicate the matching process dependent on how the UTIs are generated and in particular in the case of netted transactions. Also, we consider the existing matching criteria (with the addition of PSET) to be fit for purpose. We believe that the current level of mismatched observed is primarily based on manual allocations and confirmations. Once these processes move to an electronic,

machine-readable STP format we believe the number of mismatches will significantly reduce and the case for the use of UTIs in the settlement cycle will fade.

Q39: Should the market standards for the storage and exchange of SSIs be left to the industry or is regulatory action at EU level necessary?

FIA EPTA members believe that regulatory action at the EU level is required to ensure consistent standards for the storage and exchange of SSIs. The main reason for mismatches and late settlement that our members experience is stale or missing SSI data. We believe introducing a centralised SSI repository and facilitating a harmonised SSI format is critical. As pointed out by ESMA, the need for certainty on the accuracy and validity of SSIs will be essential in a T+1 environment. Unfortunately, however, if left to the industry we do not believe there will be the required industry-wide adoption and so regulation is needed requiring mandatory implementation.

Q40: How can the PSET contribute to improve settlement efficiency and reduce settlement fails? Do you have suggestions on how to make the use of PSET more consistent across the market? If yes, please elaborate.

In FIA EPTA members' opinion, having the place of settlement (PSET, the place where the ownership of securities is transferred from the selling party to the buying party) clearly designated on the settlement instruction and used as part of the matching criteria will contribute to improve settlement efficiency and reduce settlement fails. This is because in particular with multi-listed ETFs the two parties to a trade may designate a different place of settlement and thereby have an SSIs mismatch. As the reason for the SSI mismatch may not immediately be apparent, this can cause delays in the settlement process and a settlement fail if the mismatch cannot be resolved in a timely manner.

Including the PSET would allow each party to the trade to quickly identify the root cause of the SSI mismatch and speed up the communication to agree on and amend the PSET. It is expected that this would reduce mismatched trades on SD and will become even more important in a T+1 environment. The default PSET should be linked to the MIC where the instrument that is being traded is listed and if non-standard (or preferred) settlement is occurring the PSET can then be updated.

ESMA notes that the PSET may change along the settlement chain in the case of netting but for each individual settlement instruction, within the settlement chain, the place of settlement must match for settlement to occur and so it is valid to use PSET as a mandatory matching field.

With regards to suggestions on how to make the use of PSET more consistent across the market, we believe that PSET should be a mandatory matching field in all allocation and pre-settlement matching tools.

Q41: Do you agree that the PSET should not be made a mandatory field of written allocations under Article 2(1) of CDR 2018/1229? If you have a different view, please elaborate

No, as per our response to Q40, FIA EPTA members believe that PSET should be a mandatory matching field for allocations (provided in an electronic, machine-readable format).

Q42: Do you agree that the decision to use the PSAF and the PSET in the settlement instructions should be left to the industry?

In FIA EPTA members' opinion, the inclusion of PSAF is not a requirement in the settlement process. However, we believe that the use of PSET should be a mandatory matching field.

Q43: What are the current market practices regarding the use of PSAF and PSET, in particular in the case of netting along the trading and settlement chain?

No comment

Q44: Do you agree that the transaction type should not become a mandatory matching field under Article 5(4) of CDR 2018/1229?

Yes, we agree that the transaction type should not be a mandatory matching field.

Q45: Do you think the lists mentioned in Article 2(1)(a) and Article 5(4) of CDR 2018/1229 should be updated? If yes, please specify

No, we do not think the lists should be updated.

Q46: What are your views on whether market participants should send settlement instructions intra-day rather than in bulk at the end of the day?

FIA EPTA members agree that where possible settlement instructions should be sent intra-day, however, netting/bulking very often doesn't allow for that.

Q47: Do you consider it necessary to introduce a deadline for the submission of settlement instructions through a regulatory amendment to CDR 2018/1229? If yes, what should be such a deadline? Please provide arguments to justify your answers.

No, FIA EPTA members do not consider it necessary to introduce a deadline for the submission of settlement instructions through a regulatory amendment and believe this should be addressed within the industry discussions on T+1.

Q48: Do you agree that CSDs' business day schedule should be left to the industry? If not, please elaborate.

Yes, FIA EPTA members agree that the CSDs' business day schedule should be left to the industry and the EU Industry Task Force in particular.

Q49: What would be, in your view, the ideal business day schedule for CSDs taking also into account real-time settlement, night-time settlement and cut-off times? Should they be aligned? Please provide arguments

FIA EPTA members strongly agree that DVP and FOP cut-offs should be aligned to ensure that trades being covered by a realignment or stock loan can settle once the realignment or stock loan settles that day. In addition, an early morning cycle at 6AM would be very beneficial. Furthermore, we would like to highlight that certain CSDs offer past cut-off settlement. This allows for same-day settlement even after standard cut-off times, provided both counterparties are enrolled in the service and submit matched settlement instructions. We encourage the regulator to consider promoting the broader adoption of such services by CSDs across Europe, as this would enhance settlement efficiency and help reduce the risk of settlement failures by extending the window for same-day settlements.

Q50: Do you agree that shaping should be adopted as best practice? If you do not agree and believe that it should be adopted as regulatory change, please indicate which should be the most adequate size to shape transactions per type of financial instrument.

As set out in ESMA's analysis, shaping and auto-partial settlement have the same aim and as the shaping chip would be far higher than the auto-partial settlement threshold shaping would be less efficient than auto-

partial settlement in improving settlement efficiency. That said, FIA EPTA members do not believe that shaping should be adopted as best practice or made mandatory through an amendment of CDR 2018/1229.

In our opinion, auto-partial should be the main tool to handle the settlement of part of the instruction when the seller does not have the securities needed available to settle the entire instruction. The technology exists already and works well where applied. We believe focus should be incentivising existing auto-partial settlement functionality (with the objective to make it mandatory) rather than assessing the technical impacts of implementing a shaping tool(s).

Q51: Do you see the need for a regulatory action in this area? If yes, please elaborate.

No, FIA EPTA members do not see the need for regulatory action in the area of automated securities lending. CSDs should be free to determine if they do/do not want to implement this functionality and participation as a lender or a borrower should remain voluntary.

Q52: Do you have other proposals regarding settlement discipline measures and tools to improve settlement efficiency in areas not covered in the previous sections? Please give examples and provide arguments and data where available. If relevant, please also include the specific proposed amendments to CDR 2018/1229.

No comment

Q53: For all the topics covered in this CP please provide your input on the envisaged costs and benefits using the table below. Please include any operational challenges and the time it may take to implement the proposed requirements. Where relevant, additional tables, graphs and information may be included in order to support the arguments or calculations presented in the table below.

No comment

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