Frankfurt,
14 April 2025

BVI's position on the ESMA consultation to amend the RTS on Settlement Discipline

We[1] welcome ESMA's initiative to amend the RTS on the settlement discipline regime in order further improve settlement efficiency. We would like to make the following comments:

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

We agree with ESMA's proposal. German fund management companies acting on behalf of regulated funds (UCITS/AIFs) allocate and confirm predominantly securities transactions in real time and STP before the end of the trade day. The proposed time changes will have no significant impact of the allocation/confirmation process as our members have already implemented well advanced and automated IT technology for the allocation/confirmation and settlement process.

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?

We do not see any additional value to introduce a legal obligation for investment firms to notify their professional clients (e.g. asset managers) about the execution details of their orders as soon as these orders are fulfilled. Securities transactions are executed and confirmed on an automated basis in real time and are processed STP without any manual intervention, thereby enabling the German Buy-Side to fulfil the allocation/confirmation deadlines in the context of T+1 by the end of the trading day.

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?

Please see our answer to question 2. We do not see any additional value to consider a legal timeframe for professional clients. As mentioned above, all securities transactions are confirmed in real time. It is therefore a more pragmatic approach to ensure by all trading parties that allocations and confirmations are sent as 'soon as practically possible', but latest on the end-of-day deadline.

[1] BVI represents the interests of the German fund industry at national and international level. The association promotes sensible regulation of the fund business as well as fair competition vis-à-vis policy makers and regulators. Asset managers act as trustees in the sole interest of the investor and are subject to strict regulation. Funds match funding investors and the capital demands of companies and governments, thus fulfilling an important macro-economic function. BVI's 115 members manage assets of EUR 4.5 trillion for retail investors, insurance companies, pension and retirement schemes, banks, churches and foundations. With a share of 27%, Germany represents the largest fund market in the EU. BVI's ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de/en.

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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?

No, we see no additional value to further specify the term "close of business".

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?

No, we consider the ESMA approach in Art. 2 (2) and (3) CDR 2018/1229 as a pragmatic step forward to move to T+1 also for the allocation/confirmation process in Europe.

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

We have no further comments.

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

Yes, we agree to use electronic and machine-readable format to send written allocations via STP. However, in exceptional cases (e.g. outage, bug of a service provider) it should be further possible to send written allocation via fax/email as many business continuity management tools (BCM) require the usage of non-machine-readable formats only in such cases.

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

Please see our answer to Q7. We do not agree with the proposal to set earlier deadlines for non-machine-readable formats.

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

We have no comments.

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

No, please see our comments to Q7.

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

Please see our answer to Q7. In exceptional cases (e.g. outage, technical issues at a service provider) it should be further possible to send written allocation via fax/email as many business continuity

management tools (BCM) require the usage of non-machine-readable formats only in such cases. Therefore, such exceptional cases should also be covered within Art. 2 of CDR 2018/1229.

Q13: Do you agree that settlement efficiency would improve if all parties in the transaction and settlement chain used 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?

Since 2002, we have strongly advocate for automation in the financial market based on ISO standards, in particular the use of ISO identification numbers and the usage along the whole value chain of the financial industry, such as ISO 15022 and 20022.

German investment fund management companies are not directly involved in the value chain of clearing and settlement of securities transactions. They instruct the custodians of the relevant investment funds to match and settle securities (e.g. equity, bonds, ETFs, fund units) belonging to such investment portfolios. The custodians have a direct access with the CSDs. Investment fund management companies must rely on the information obtained by the custodians in order to react in cases of settlement fails. The (fund) custodians must ensure that all relevant settlement information needs to be sent as fast as possible to the fund management companies. This will enable the investment fund management companies to solve all discrepancies for unsettled and failing trades where a decision is required by the custodians from the investment managers. A fast transformation of settlement information from the fund custodian to the asset manager is of utmost importance if the settlement cycle will be shortened to T+1.

The usage and adaptation rate of ISO 20022 for securities transaction within the financial community have made little progress during the last years compared to payments and fund transactions. Most of the direct participants (e.g. (fund) custodians) of a CSD use today only MT securities transactions messages based on ISO 15022 to communicate with their indirect clients (e.g. Asset manager) which runs very smooth. Therefore, as mentioned above, our members use in the settlement value chain only MT messages based in ISO 15022.

The usage of ISO 20022 requires deeper analysis to establish its relevance and feasibility and it should be recognized that the adoption of ISO 20022, beyond existing (regulatory reporting and fund unit transaction) mandates, will require a longer lead-time than the timeframe to implement T+1 until October 2027. Since settlement instructions have already today a high rate of STP and are typically in ISO 15022 format we therefore see currently no value to move the securities transaction to the ISO 20022 standard in the context of T+1. This view is also supported by the EU Industry Task Force (please compare p. 19).

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)?

Please see our answer to Q14.

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

We have no comments.

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, we strongly agree with the proposal that investment firms (brokers) should be regulatory required to collect the necessary data to settle a trade from professional clients (e.g. asset manager) during their onboarding phase. During this phase, investment firms should also be obliged to set up all-new investment funds and segments with the fund management company with the relevant settlement information (e.g. SSIs etc). Furthermore, investment firms should be legally mandated to keep the relevant static data for settlement up to date. Such measures will significantly improve the settlement efficiency with the value chain.

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

Please see our answer to Q17. There are no other options available.

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

Yes, we agree that CSDs should offer their market participants (e.g. Buy-Side) partial settlement as this will also contribute to improve settlement efficiency. As soon as all EU-CSDs will offer partial settlement, direct participants of CSDs, e.g. fund custodians, should also be encouraged to provide partial settlement to the Buy-Side enabling them to settle more matched trades as soon as practicable possible.

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

Yes, we agree to delete Article 12 of CDR 2018/1229.

Q21: Do you have other suggestions to incentivise partial settlement? If yes, please Elaborate.
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?
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.
Q24: Can you suggest any other means to achieve the same objective? If yes, please elaborate.

We have no comments.

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, EU-CSDs should offer real-time gross settlement during the day. This will also help the Buy-Side to identify a potential settlement fail earlier and therefore resolve it sooner.

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.

We have no comments.

Q27: Can you suggest any other means to achieve the same objective? If yes, please elaborate.
Q28: Do you agree with the proposed amendments to Table 1 of Annex I of CDR 2018/1229? If not, please elaborate.
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)?
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.

We have no comments.

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?

Yes, we agree that direct participants of a CSD (e.g. fund custodians) should be required to provide all reasons for settlement fails at their level which cannot be made transparent by the CSD. Buy-Side firms are not a direct member of a CSD. Therefore, the responsibility to provide information on settlement fails should apply only to the fund custodians of the relevant investment funds (UCITS/AIFs).

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".

According to our observations the main reason for settlement fails are securities not made available by the Sell-Side or instructions that are sent too late to the markets or problems with the settlement instructions (SSIs).

Furthermore, the introduction of the CSDR cash penalty system has increased the operational burden for the Buy-Side firms as they have to monitor every penalty of a failed trade of an investment fund without any additional value for the settlement efficiency. German asset managers are generally responsible only for a very small fraction of settlement fails and are therefore able to be a net receiver when it comes to the CSDR cash penalties.

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?

We have no comments.

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

We generally agree with the proposed additional data fields. However, we think that the market (e.g. Buy-Side-firms) would benefit from more granular data than is currently provided in the ESMA TRV reports. Within asset classes, there could be further breakdowns by asset types, particularly on ETF fails. Also, getting information whether fails were caused by late matching or late settlement.

Furthermore, it could be more appropriate if CSD submit more additional data to ESMA who would be in a position to aggregate and publish more relevant data to the market.

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

We have no comments.

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

We strongly disagree to mandatory introduce an EU wide UTI which should be used within the MT messages. While industry adoption of an UTI may facilitate prompt identification and resolution of mismatches, this step should not be considered as pre-requisite for moving to T+1. German fund management companies and (external) asset manager have their own IDs within their settlement IT systems in order to identify their instructions within the settlement value chain.

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

Please see our comments to Q37.

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?

The storage and exchange of SSIs should be left to the industry via further developments of market standards. All market participants within the settlement chain should be encouraged to use to the extent possible SSIs databases. Market participants (broker/dealer, custodians) need also ensure that SSIs are kept up to date during settlement process.

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.

We have no comments.

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.

Yes, we agree that the PSET should not be made a regulatory data field. Within the SWIFT-MT messages, the PSET/PSAF are already today mandatory data points. The development of such data fields should be left to the industry as it is already today the case within the SWIFT community. The SMPG develops market practise for all relevant securities business cases.

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

Please see our answer to Q41. We agree with ESMA's assessment that the usage of the PSAF/PSET within the settlement instructions should be left to the industry and defined in a market practise.

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

We have no comments.

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?

As soon as the trades are confirmed the instructions are sent in real time by the fund management companies to the custodians which sent them to the market for settlement. This is a well-established Buy-Side market practise which works very well. Therefore, we do not see any need neither to require regulatory actions in this field nor that market participants should send their settlement instructions intra day or as bulk at the end of the day.

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.

Please see our answer to q46. The introduction of a deadline for the submission of settlement instructions is regulatory not necessary as Buy-Side instructions are sent already today in real time after confirmation to the custodians. As mentioned above, the custodians have the responsibility to instruct the trades to the markets. Therefore, asset managers must rely on the custodian's settlement resource to allocate the instructions as soon as technical possible to the market.

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

Please see our answer to Q46 and Q47.

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

We have no comments.

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.

The introduction of the CSDR cash penalty regime in February 2022 has not improved the settlement efficiency for the German Buy-Side. Asset managers must rely on the information/accuracy obtained by the (fund) custodians to react in cases of settlement fails. The custodians must ensure that all relevant settlement information needs to be sent as fast as possible to the fund management companies. This will enable the investment fund management companies to solve all discrepancies for unsettled and failing trades where a decision is required by the custodians from the investment managers. According to our observations the main reason for settlement fails are missing securities, instructions that are sent too late to the markets, or problems with the settlement instructions (SSIs).

The introduction of the CSDR cash penalty system has increased the operational burden for the Buy-Side as they need to monitor every penalty of a failed trade which belongs to investment funds without increasing settlement efficiency. German asset managers are responsible only for a very small fraction of settlement fails and therefore are usually a net receiver when it comes to the CSDR cash penalties.

However, there are various approaches in place to negotiate the redistribution and penalties for the final investor of the investment fund in respect of a debit penalty. In this case, fund management

companies often incur penalty costs although they are not responsible for the debit. (Low) value debit cash penalties generate disproportionately high operational burden for the German Buy-Side.

For instance, some German asset managers strongly insist on a EUR 10 debit cash penalty being reimbursed as they argue they cannot bear debits due to the legal interpretation either of the EU fund regulation (UCITS/AIF) and the German fund law which require the trustee to go after the payment even though the operational costs and custody fees are much higher than the reimbursement value of the penalty.

We acknowledge the fact that the CSDR cash penalty system should bring down all settlement fails, not just those above a certain market threshold (e.g. AFME Guideline with a de-minimis threshold of EUR 500).

Whilst it could be argued that creating a de-minimis threshold may remove the incentive for the biggest offenders to improve their processes, the counterargument is that these will not be prioritised for resolution anyway. Brokers/Dealers could face large numbers of net debits comprised of an array of values and are likely to have a relatively high threshold to write-off low value cash penalties and will look to resolve and solve for the larger values. We appreciate, that some of the operational impact of processing these penalties could be a further deterrent behind settlement fails, but these are also felt by some of the entities being failed into who may have little influence in resolving the root cause of the settlement fail (e.g. German Buy-Side).

In this context, it is worth to mention that European Central Bank (ECB) has pointed out that the settlement discipline regime should be based on the principle of proportionality and that the *"review of the settlement discipline regime should take as its starting point the aim of sanctioning only those settlement fails that result in adverse financial effects for the counterparty of the failing party".*[2]

Therefore, we propose to introduce a de-minimis threshold for EU-CSDs to be applied for cash penalties before these are processed. This would lead to a more operationally proportional system, while still providing sufficient incentive to improve the settlement infrastructure within European CSDs. Furthermore, such a de minimis threshold will remove the operational pressure of investigating, processing and reconciling cash penalties and will give our members more capacity to further investigate and solve real settlement causes thereby improving settlement rates. Therefore, we encourage ESMA to take our proposal into considerations

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.

We have no comments.

[2] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022AB0025