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# **EACH CSDR Settlement Discipline Framework**

## **12<sup>th</sup> February 2020**

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# 1 Introduction

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The European Association of CCP Clearing Houses (**EACH**) has been representing the interests of Central Counterparties (**CCPs**) in Europe since 1992. EACH currently has 19 Members from 15 European countries and is registered in the European Union (**EU**) Transparency Register under number 36897011311-96.

The regulatory background for this document is Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (**CSDR**). CSDR is complemented by various Implementing Technical Standards and Regulatory Technical Standards (**RTS**) published by the European Banking Authority and European Securities and Markets Authority (**ESMA**).

The aim of CSDR is to harmonise certain aspects of the settlement cycle and settlement discipline and to provide a set of common requirements for Central Securities Depositories (**CSDs**) for both domestic and cross-border transactions. One of the main objectives of CSDR is to improve the safety and efficiency of securities settlement by ensuring that buyers and sellers receive their securities and money on time and without undue risk.

In particular, CSDR provides a set of measures to prevent and address failures in the settlement of securities transactions (settlement fails) commonly referred to as the settlement discipline regime. The settlement discipline regime is codified in CSDR and the related Commission Delegated Regulation (EU) 2018/1229 of 25 May 2018 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on settlement discipline (**SDR**).

CSDR requirements regarding settlement discipline affect wider financial market infrastructures in addition to CSDs themselves, including CCPs and trading venues.

This document represents EACH's CSDR Settlement Discipline Framework (**Framework**). Its objective is to provide ESMA, relevant authorities and market participants with details of EACH's implementation of the CSDR settlement discipline provisions that affect CCPs and their Clearing Members.

## 2 Key considerations

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1. This Framework is applicable to all CCPs subject to CSDR. Should a CCP not comply with the Framework in a specific aspect (e.g. due to legislative or operational boundaries), it will inform EACH and the CCP's participants.
2. This Framework may be subject to change due to shifting working assumptions and discussions with ESMA, the European Central Securities Depositories Association (**ECSDA**) and/or the market community.
3. This Framework follows the structure of the law. If a certain aspect is not relevant to CCPs or does not give rise to further clarification, it will not be dealt with in this document.
4. This Framework will be shared with all relevant stakeholders (i.e. Clearing Members, CCPs, CSDs, market participants, ESMA and other EU and national authorities).
5. All discussions pertaining to the Framework were conducted in accordance with the [EACH Competition Law Provisions](#).

This Framework references the following documents:

- [CSDR](#)  
Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012
- [SDR](#)  
Commission Delegated Regulation (EU) 2018/1229 of 25 May 2018 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on settlement discipline
- [Calculation of Cash Penalties Technical Advice](#)  
Commission Delegated Regulation (EU) 2017/389 of 11 November 2016 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council as regards the parameters for the calculation of cash penalties for settlement fails and the operations of CSDs in host Member States
- [ESMA Q&A](#)  
Questions and Answers, Implementation of the Regulation (EU) No 909/2014 on improving securities settlement in the EU and on central securities depositories

## 3 Population of settlement instructions (Article 5 SDR)

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Article 5 and 6(4) CSDR requires participants to settle their transactions on the intended settlement date (**ISD**). In order to facilitate this, CSDR mandates that CSDs implement specific matching criteria for settlement instructions (Article 5 and 13 SDR). As direct or indirect participants at CSDs, CCPs are expected to follow the same matching criteria for settlement instructions as all other market participants.

Discussed in this section are matching fields according to Article 5(3) SDR and additional mandatory fields according to Article 5(4) and 13 SDR in so far as they impact CCPs. For the full list of matching and additional mandatory fields, see the mentioned regulatory provisions.

### 3.1 Trade date and CCP netting (Article 5(3) SDR)

Article 5(3) SDR states that the trade date is a mandatory matching field for settlement instructions. Depending on the netting model used by a CCP, this requirement may have a unique impact on CCPs and their Clearing Members.

The method by which CCPs net trades falls into two categories:

- Netting based on the trade date – Trade Date Netting (**TDN**)
- Netting based on the settlement date – Settlement Date Netting (**SDN**)

#### 3.1.1 Netting based on trade date

Where CCPs use TDN, commonly for equity and equity styled products, the trade date of any net trade is the same as its constituent gross trades. In this scenario, the trade date poses no issue when matching settlement instructions.

#### 3.1.2 Netting based on settlement date

SDN is usually the standard for fixed income trades and repurchase (repo) transactions. This allows the netting of a closing leg of a repo trade with the same settlement date as the opening leg of another repo trade. As the settlement date is used as a netting criteria, SDN models may net several trades with different trade dates together.

Currently, CCPs using these netting models send settlement instructions with the trade date as either "ISD", "ISD-1", "Date in which the instructions are sent to the CSD", or "the date of the first trade." As no single standard is mandated by CSDR, respective CCPs will continue to send settlement instructions with their preferred 'trade date' denotation.

In any case, CCPs will keep records of the underlying transactions behind the net trade with their corresponding trade dates.

### 3.2 Transaction type (Articles 5(4) and 13(1)(d) SDR)

Article 5(4) SDR mandates a transaction type indication for all settlement instructions. This field serves as information and for monitoring and reporting settlement fails as required by Article 13(1)(d) SDR.

Currently, CCPs send settlement instructions with transaction type "NETT", "NETE", or "TRAD". As no single standard is mandated by CSDR, respective CCPs will continue to send settlement instructions with their preferred 'transaction type' denotation.

In any case, CCPs will keep records of the underlying transactions behind the net trade with their corresponding transaction types.

### 3.3 Place of clearing (Article 13(1)(e) SDR)

Where applicable, Article 13(1)(e) SDR tasks CSDs to collect information regarding the place of clearing. CCPs will identify their own transactions by including either their Bank Identifier Code (**BIC**) or Legal Entity Identifier (LEI) in the 'place of clearing' field.

### 3.4 Place of trading (Article 13(1)(e) SDR)

#### 3.4.1 General

According to Article 13(1)(e) SDR, CSDs must also collect the place of trading where applicable. Some CCPs clear and net trades executed on multiple trading venues. Currently, CCPs send such net transactions to CSDs with a place of trading value of "blank", "VARI", "EXCH", or "the place of trading of the first trade of the net". As no single standard is mandated by CSDR, respective CCPs will continue to send settlement instructions with their preferred 'place of trading' denotation.

#### 3.4.2 Cleared trades on Small and Medium-sized Enterprise growth markets

Under CSDR, Small and Medium-sized Enterprise (**SME**) growth market transactions are subject to different penalties and buy-in regimes. CCPs will therefore create separate netted instructions for SME growth markets and non-SME growth markets. Accordingly, the 'place of trading' field in settlement instructions will accurately denote an SME growth market trade.

It is possible that identical instruments are traded on multiple SME growth markets. Due to the possibility of different SME growth markets adopting different time frames for the buy-in (Article 7(3) CSDR), CCPs have three options of handling netting in SME growth markets:

1. Deny their Clearing Members the option of netting multiple SME growth markets (i.e. one separate net per SME growth market);

2. Use a new generic SME growth market code regardless of how many SME growth markets are involved in a net trade. Note, however, that this option can only apply to those SME growth markets that maintain the same buy-in regime (15 days). Work on defining and getting approval for this code is underway.
3. Use several new universally recognised Market Identifier Code (**MIC**) designating a net trade of SME growth market trades for each possible buy-in regime. This option is not currently being progressed. Therefore, trades on SME growth markets that deviate from the standard buy-in regime will not be netted with any other SME growth markets.

Ultimately, CCPs will disclose to their Clearing Members which solutions they shall permit.



## 4 Cash penalties

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In order to encourage market participants to settle transactions on time, CSDR introduces a standardised penalty regime that all CSDs must enforce vis à vis their participants. Where the failing or receiving participant is a CCP, CSDR's settlement discipline regime makes special provisions:

- Article 7(11) CSDR exempts failing participants which are CCPs from the cash penalties regime outlined in Article 7(2) CSDR and Articles 16 to 20 SDR.
- Article 19 SDR provides for a separate penalty mechanism where the participant is a CCP.

These provisions directly shape the application of the penalty regime (Articles 16 to 20 SDR) for CCPs and their Clearing Members and inform the following sections.

### 4.1 Identification and segregation of CCP business (Articles 2(16) and 7(11) CSDR)

CCPs send settlement instructions to CSDs on three occasions:

1. as a CCP as defined in Article 2(16) CSDR i.e. as the buyer to a seller and the seller to a buyer for cleared transactions;
2. regarding collateral management activities between the CCP and its Clearing Members;
3. regarding treasury investment activities with collateral held by the CCP.

Considering Article 7(11) CSDR, CCPs are exempt from all settlement discipline penalties for all transactions that fall under the first scenario.

As no CCP function is performed under the second and third scenarios according to Article 2(16) CSDR *e contrario*, EACH assumes that all settlement transactions related to collateral management or treasury investment by CCPs are fully subject to settlement discipline penalties.

In order to distinguish between penalty-exempt and non-penalty-exempt settlement transactions, CCPs currently use account level segregation or participant level segregation (by BIC code)<sup>1</sup>. Either one of these solutions allow for the required segregation at the CSD.

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<sup>1</sup> Under discussion with ESMA.

## 4.2 Calculation and application of cash penalties

### 4.2.1 Re-instructions of settlement transactions placed after ISD

Article 16(3) SDR states that when settlement instructions are matched after ISD, cash penalties for the period between ISD and the business day prior to the matching day shall be paid by the last participant who has entered or modified the relevant settlement instruction. Where re-instructions of settlement transactions are placed after ISD, this provision has the potential to unduly harm CCPs and their Clearing Members through the triggering of a second round of late matching penalties. Consider:

1. When a buy-in is partially executed and the CCP chooses to defer the rest of the buy-in, the failing counterparty and the CCP are obliged to cancel their original failed instructions and re-instruct the transaction with the amended settlement quantity and amount, but with the original ISD. Since a buy-in necessarily indicates that the ISD has passed, the re-instructing party will automatically be charged late matching penalties.
2. When manually splitting (partialling) and/or netting-off settlement transactions, existing transactions must be cancelled. At the earliest, these actions can be done on ISD, but they often occur days after ISD. As the ISD of these transactions does not change, late matching penalties will unjustifiably be charged.
3. When buyer protection is enacted on part of a settlement undergoing an elective corporate action, the existing settlement instruction has to be cancelled and re-instructed according to the buyer's decision. As corporate actions typically take multiple days to process, the re-instruction may also occur after ISD, thus incurring unjustified late matching penalties.

As the first case is explicitly considered in the regulation (Articles 16(3) third subparagraph in conjunction with Article 23 and 27(2) SDR), CSDs should provide an appropriate solution. EACH is aware of a change request in T2S geared at alleviating this issue: a new indicator (BSSP) is being developed to denote a re-instruction arising from a partial buy-in, exempting that transaction from late matching penalties.

In the second scenario (manual splitting), the hold and release mechanism in T2S will be amended such that instructions may be partially released without the need to cancel and re-instruct any transactions.

In other scenarios, such as the second outside T2S and the third scenario, avoiding double penalization remains problematic. Discussions with ECSDA and ESMA to find a working solution are ongoing. Tentatively, once available, the second and third scenarios may be resolved by using the same partial buy-in indicator as intended for the first scenario. Alternatively, counterparties may appeal to the relevant CSDs to annul the unjustified late matching penalties.

#### 4.2.2 Penalties mismatch scenarios

##### 4.2.2.1 *CCP holding securities overnight*

There are potential scenarios in which CCPs may be left holding securities overnight on cleared business. As a result the fails into the CCP are less than the fails out from the CCP and hence the penalty calculations made by the CSDs on each fail would leave the CCP with a loss. EACH does not believe that this is the intention of the Regulation according to Article 7(11) CSDR. Remedies are therefore required.

The following two scenarios were identified:

1. A CCP receives securities into its account towards the very end of the CSD settlement window and the CSD does not deliver the securities out to a receiving Clearing Member as it closes its settlement process. That is, the settlement out would have happened were it not for the hard CSD cut-off. Some CSDs already protect CCPs from such a hard cut-off and others are working towards minimizing such cases.<sup>2</sup> However, the possibility of such a scenario remains.

Where the scenario arises, the CCPs propose to cover the deficit by either mutualizing the cost among their Clearing Members on a fair basis or establishing clear rules by which to assign the cost to particular Clearing Members.

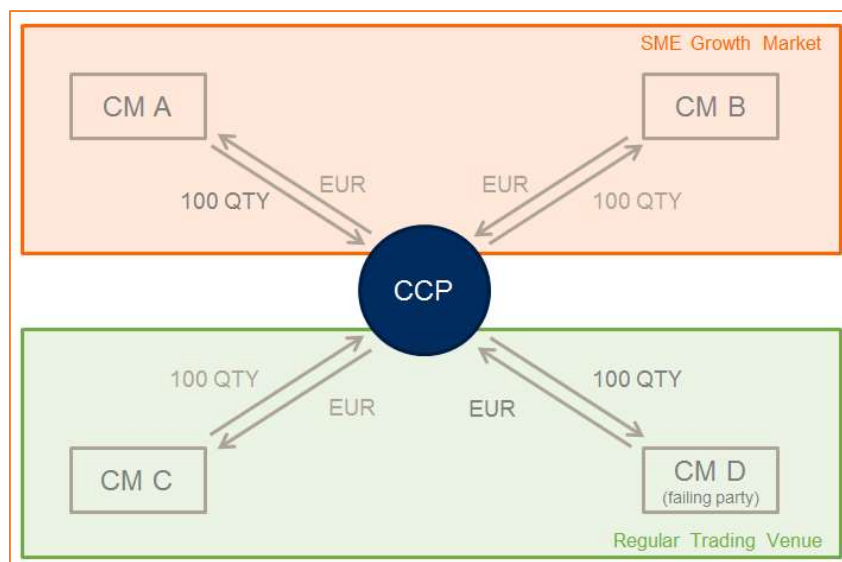
2. Receiving Clearing Members have not enabled partial settlement. The best solution is to require all Clearing Members to accept any partial settlement as part of a CCPs internal rules and regulations. In cases where Clearing Members do not abide by such rules the CCP would seek remedy from the offending receiving Clearing Member.

##### 4.2.2.2 *SME growth market trades settling against non-SME growth market trades*

All trades executed on an SME growth market are subject to the penalties regime for SME growth markets as defined in the Annex of the Calculation of Cash Penalties Technical Advice. However, some of these instruments can also be traded on regular trading venues or over the counter (OTC). As these financial instruments are identical, while CSDs may be able to distinguish between financial instruments settled for an SME growth market trade and a non-SME growth market trade, they currently have no intention to use this notion in the settlement algorithm. Consider the following scenario:

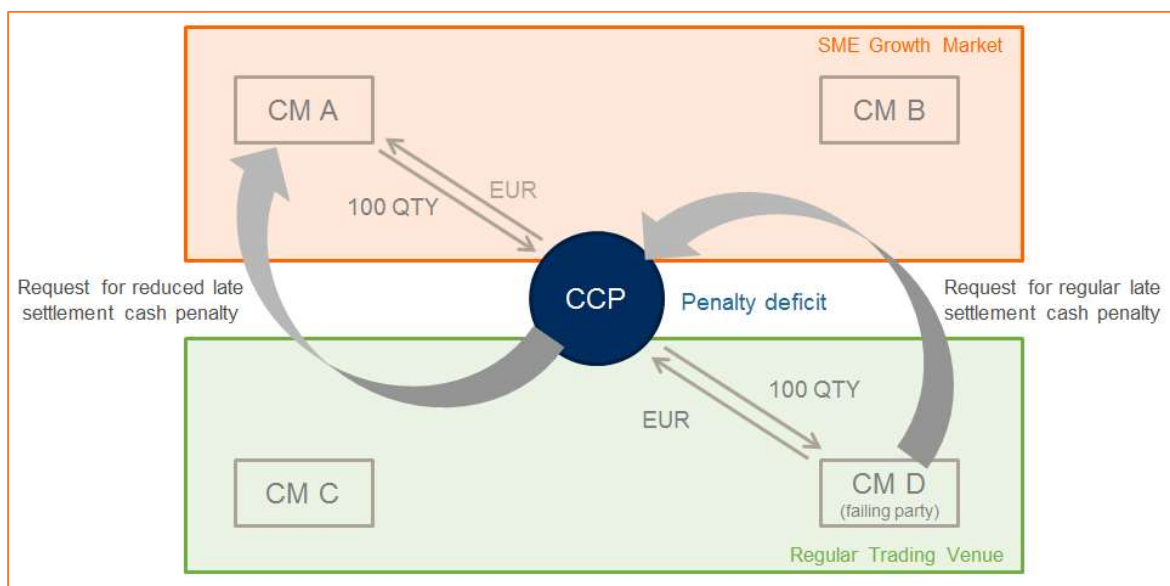
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<sup>2</sup> E.g. T2S CR T2S-0689-SYS.



**Figure 1: Trading of identical securities on both an SME and a regular market**

If CM C settles before CM A, the CSD might deliver the securities to CM B rather than CM D, resulting in two remaining open transactions:



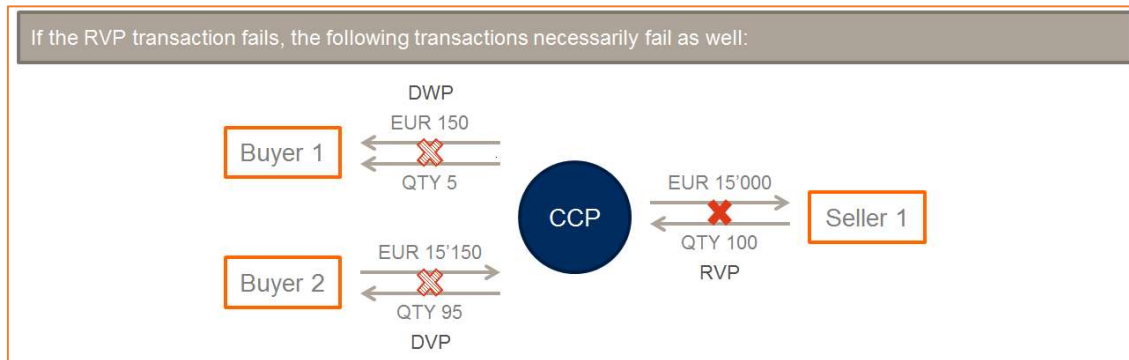
**Figure 2: Possible scenario once CM C fulfills its obligation to the CCP**

In this case, the CCP will be left with a penalty deficit due to the reduced penalties levied on SME growth market trades.

EACH proposes that either CCPs mutualise the loss or establish clear rules on how the penalties should be covered.

#### 4.2.2.3 *Strange nets and resulting penalties*

So called strange nets may occur after CCPs have performed their netting function, resulting in a non-receipt versus payment (RVP)/DVP transaction. Certain such strange nets may generate problematic penalty scenarios. Consider a case where a CCP has the following three failing settlements:



**Figure 3: Example of a CCP transaction in which strange nets may occur**

According to penalty calculation methods, the CCP will be charged two separate penalties for the failure of the delivery with payment (**DWP**) transaction to Buyer 1:

- a penalty based on the non-delivered securities (QTY 5); and
- a penalty based on the non-paid cash amount (EUR 150).

The failed securities delivery will be covered by the failed securities penalty from Seller 1. However, as the CCP is failing to deliver securities to Buyer 2 it will not receive a cash fail penalty from Buyer 2, and in particular not for the EUR 150 which it then fails to pay Buyer 1.

EACH proposes that either CCPs mutualise the cost or individually establish clear rules on how the penalties should be covered.

#### 4.2.3 *Market-wide technical production issues and resulting penalties*

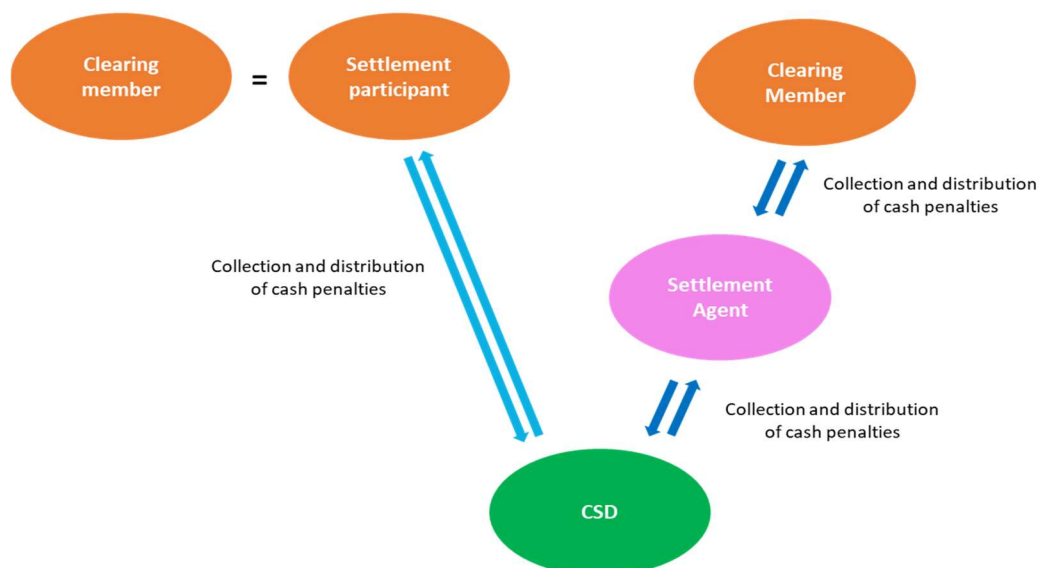
Scenarios may arise where, due to market-wide technical production issues, the CCP fails to send settlement instructions to the market on time. Due to this failure to instruct, late settlement and late matching penalties may occur.

Every CCP is entitled to deal with the resulting penalties as it sees fit.

### 4.3 *Penalty mechanism where the participant is a CCP (Article 19 SDR)*

Article 19 SDR requires CSDs to ensure that CCPs receive all relevant cash penalty calculations for cleared fails and duly collect and distribute these penalties to their Clearing Members. Article 17 SDR requires CSDs to fulfill this very same role for their settlement participants. CSDs

therefore already have the necessary processes and infrastructures in place. Furthermore, as all Clearing Members and CCPs, either directly or indirectly, have linked cash/settlement accounts at the relevant CSDs (See Figure 4), a separate process for the collection and distribution of cash penalties for cleared transactions seems unnecessary.



**Figure 4: Role of the Clearing Member in the settlement chain**

EACH believes that Article 19 SDR can be fulfilled by CSDs through the universal application of Article 17 SDR.

All stakeholders would benefit from such an arrangement:

- CSDs, CCPs and custodians would avoid unnecessary implementation costs;
- CSDs can ensure full compliance by managing the entire cash penalties regime;
- Clearing Members benefit by having a single streamlined penalties process.

EACH believes that the majority of market participants agree that a different process for the collection and distribution of cash penalties for cleared and non-cleared transactions seems unnecessary, EACH, ECSDA, ESMA and the European Commission are currently working on a solution to effectively treat all penalties identically.

## 5 Buy-in process

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In order to increase settlement efficiency, all CCPs maintain robust solutions for dealing with failed transactions. These measures include accommodating late delivery processing, as well as implementing buy-in and cash compensation models. CSDR's settlement discipline regime aims to set minimum standards for buy-in and cash compensation procedures. However, EACH members believe that individual CCPs should be allowed to maintain more stringent buy-in rules to further boost settlement efficiency, subject to acknowledgment by their National Competent Authority. Such additional rules will be communicated to the Clearing Members by every CCP as necessary.

### 5.1 Initial verification of the buy-in (Article 26 SDR)

According to Article 26(1) SDR, for all CCP-cleared transactions, CCPs shall verify whether a buy-in is possible on the business day following the expiry of the extension period. As per Article 21(a) SDR, a CCP can only consider a buy-in not possible if the relevant financial instrument no longer exists.

### 5.2 Buy-in notification (Article 27 SDR)

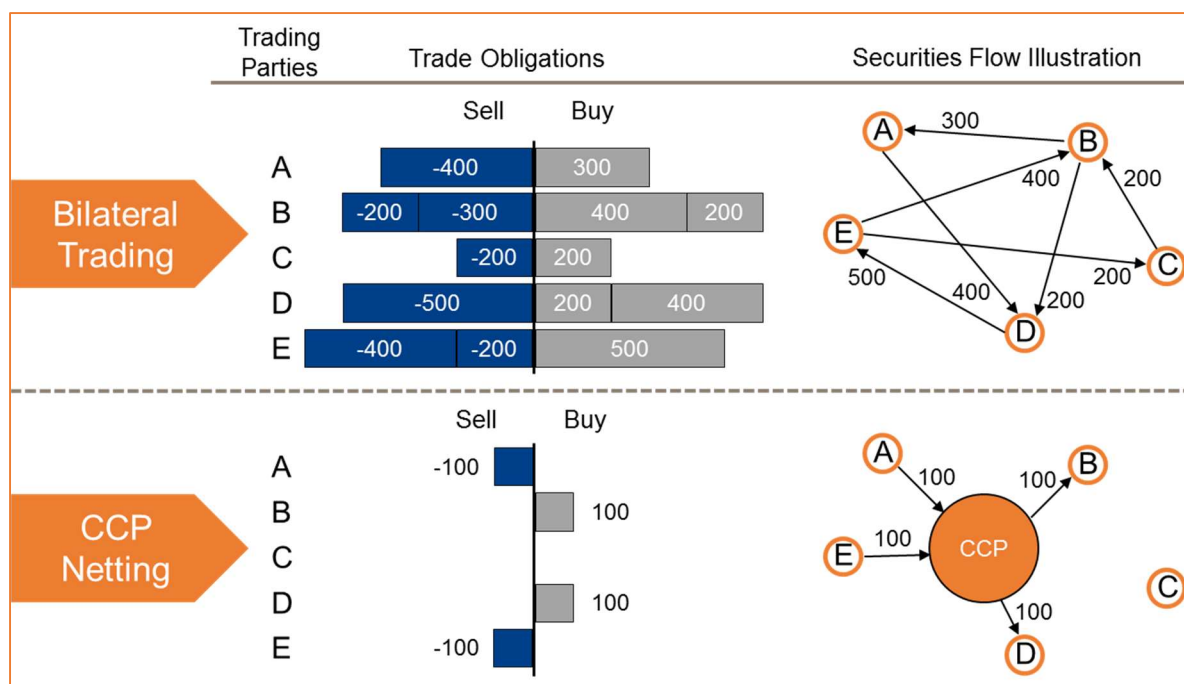
#### 5.2.1 Notification timing

As per Article 27(1) SDR, where a buy-in is possible, CCPs shall launch an auction or appoint a buy-in agent on the business day following the expiry of the extension period and notify the failing and receiving Clearing Members thereof. Prior to receiving this notification, the failing party is entitled to deliver the financial instruments to the CCP.

While complying with this provision, each CCP shall be free to define the exact timing of the notifications and communicate this accordingly to their Clearing Members. At a minimum, participants will be able to settle transactions until at least 8.30 am Central European Time (CET) on the business day following the expiry of the extension period.

#### 5.2.2 Notification procedure

While Article 27 SDR mandates notifying receiving Clearing Members that a buy-in has been initiated to the failing delivering Clearing Member, the relationship between delivering and receiving Clearing Members is misleading. As a CCP which nets transactions together, all other counterparties' receive and delivery obligations cease to be linear (see Figure 5).

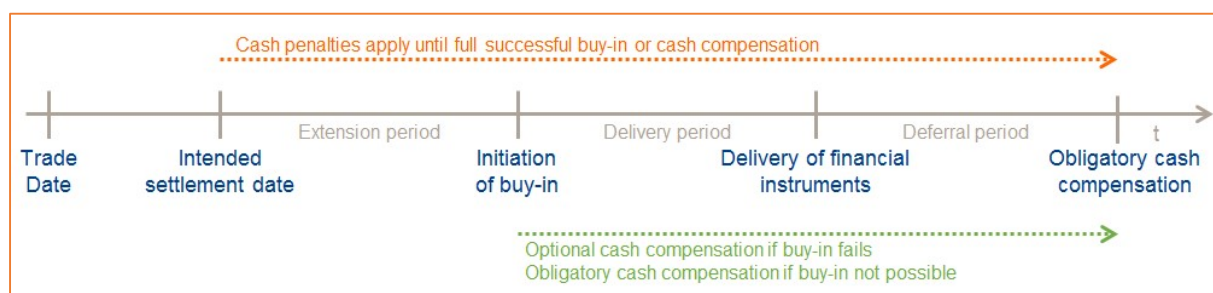


**Figure 5: Bilateral trading versus CCP netting**

As the graphic illustrates, the CCP becomes the receiving party for all delivery obligations, and the delivering party for all receiving obligations. Furthermore, when considering that settlement instructions remain open for varying lengths of time, the relationship between delivering and receiving Clearing Members breaks down even further. Thus, as no receiving Clearing Member can be reliably identified, EACH considers Article 27 SDR fulfilled when CCPs notify the failing counterparty of the impending buy-in.

### 5.3 Timeframes for buy-in process

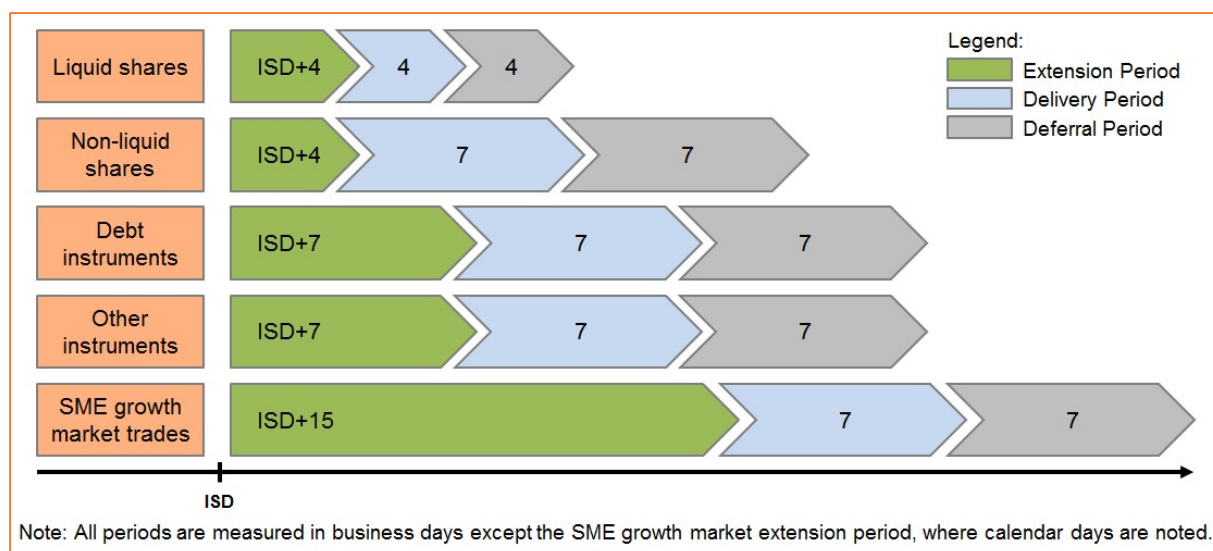
The following timeframes are defined by Article 7 CSDR as well as Articles 36, 37, and 38 SDR.



**Figure 6: Overview over buy-in timeline**

Note: While Article 7(4) SDR provides a seven business day extension period for non-liquid shares, according to Article 7(5) CSDR, this increased extension period is not granted to transactions cleared by a CCP. Thus, from a CCP's standpoint, both liquid and non-liquid shares shall have an extension period of four business days (see Figure 7).





**Figure 7: Buy-in timeframes according to CSDR as apply to CCPs**

## 5.4 Determining which buy-in regime to apply

### 5.4.1 Determining a security's liquidity status

CSDR establishes separate penalties and buy-in regimes for shares that are liquid versus shares that are non-liquid. Article 36 SDR makes reference to article 2(1)(17)(b) of Regulation (EU) No 600/2014 for determining a security's liquidity. This article must be read in conjunction with the first four articles of the Commission Delegated Regulation (EU) 2017/567, where liquidity is actually defined.

In order to calculate and apply the correct penalties, CSDs will have to ensure the correct liquidity status of every share settling in their depository. Since CSDs must provide CCPs with information on the penalties applied to failed settlement instructions, CCPs may extrapolate from this data whether the security is liquid or non-liquid, and apply the periods for the respective buy-in regimes. If and when a common data source is agreed upon by all market participants, CCPs may choose to use this rather than the CSD penalty files.

### 5.4.2 Buy-ins on rights issues

EACH's view is that trades in subscription rights/rights issues should be fully exempt from buy-ins. This opinion is justified by the limited life span (typically between 10 and 20 days) of subscription rights/rights issues, their small market value, and their lack of value after they have lapsed. Furthermore, as buyer protection procedures may apply to failing rights transactions, buy-ins would unreasonably interfere with these buyer protection procedures.

Considering that CSDR does not provide for a specific exemptions, CCPs may be required to apply Article 7(3) CSDR also to rights issues unless a different interpretation is allowed by national competent authorities.

#### 5.4.3 Buy-in procedure on netted transactions with different buy-in regimes

There are clear settlement efficiency benefits for CCPs and their Clearing Members to net settle where different buy-in regimes apply or some constituents of the net are considered effective for buy-ins and some considered ineffective as defined by Article 22 SDR.

Where trades subject to different buy-in regimes, such as short-term repos (which are exempted from buy-ins) and long-term repos (subject to buy-ins), are netted together, the CCPs will ensure that the buy-ins can be handled either on an individual trade- or net position-level also for exempted trades.

All gross trades and net positions subject for buy-in will be maintained within the CCP's system to ensure the possibility to process buy-ins based on the differing durations of the relevant transactions as required and as per acknowledgement by the relevant National Competent Authority.

### 5.5 Buy-in procedure

#### 5.5.1 Placing the failing instruction on hold

As stated in Article 27(2) SDR, a failing Clearing Member must put all relevant failing transactions subject for buy-in on hold. Where CCPs act under a Power of Attorney (**PoA**), the CCP may put the failing Clearing Member's failed transaction on hold on their behalf.

Should a Clearing Member fail to put their instruction on hold on time, with the possibility that the fail incorrectly settles, a CCP is entitled to amend its rules and regulations to allow for suitable rectification and to levy additional penalties.

Unless the CSD has made provisions to identify this scenario and continue to charge the failing counterparty and not the CCP, putting the CCP's instruction on hold is not a viable solution as the CCP, instead of the counterparty, would be subject to late settlement penalties for holding their cash payment (Article 16(3) SDR).

#### 5.5.2 Cancelling the failed instruction and new settlement instructions in case of partial buy-in

In accordance with Article 27(10)(b) SDR, when the CCP has received some or all of the securities from the buy-in, the CCP will ensure that the settlement instructions relating to the settlement fail are cancelled.

Where the CCP is able to buy-in the whole position and it settles in full, no new settlement instructions will be required.

Where the settlement of an executed buy-in is not for the full amount of the original fail, a new on hold settlement instruction needs to be entered. This can be done in two ways:

1. The new on hold settlement instruction is entered by the failing Clearing Member and matched by the CCP for the remaining failed balance. The CCP and failing Clearing Member ensure the cancellations and re-instructions are submitted to the relevant CSD before penalties are calculated for that business day.
2. Where a CCP acts under a PoA, the CCP may ensure the relevant settlement instructions are cancelled and new instructions sent. A CCP may extend the delivery period using the deferral period to allow for the execution and settlement of buy-ins, or opt for cash compensation.

#### 5.5.3 Cost of the buy-in versus price of financial instruments of the buy-in (Article 34 SDR)

It is important to note that Articles 34 and 35 SDR make a distinction between the costs of the buy-in, and the price of the financial instruments paid for in the buy-in. Article 34 SDR unequivocally states that all costs relating to the buy-in shall be paid for by the failing Clearing Member. CCPs may bill these costs to the failing Clearing Member separately.

#### 5.5.4 Payment of price difference (Article 35 SDR)

##### 5.5.4.1 *Where the price of the financial instruments of the buy-in is greater than the settlement amount (Article 35(1) SDR)*

According to Article 35(1) SDR, when the price of the financial instruments of the buy-in exceeds the settlement amount of the failed transaction, the CCP shall charge the difference between these two amounts to the failing Clearing Member, so the CCP has the necessary funds to cover the losses incurred as a result of the buy-in as compared to the original transaction.

##### 5.5.4.2 *Where the price of the financial instruments of the buy-in is less than the settlement amount*

According to Article 35(2) SDR, when the price of the financial instruments of the buy-in is less than the settlement amount of the failed transaction, no price difference payment is made to the failing delivering member as it is “deemed paid”.

## 5.6 Cash compensations

### 5.6.1 Initiating a cash compensation

The CCP, as the receiving party to the failing member may opt for a cash compensation if the buy-in fails at any time during the delivery period or the deferral period, if used.

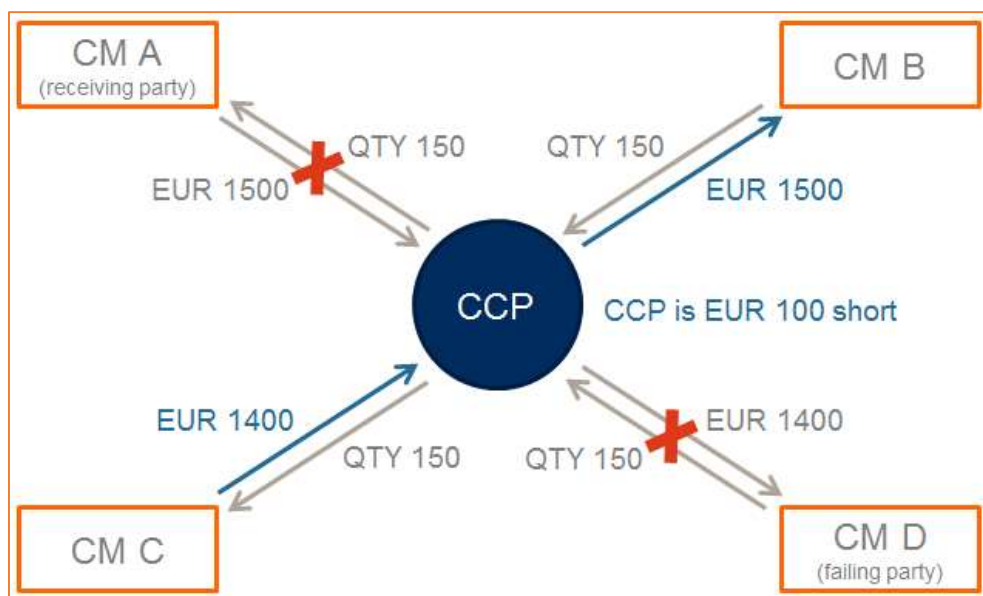
The CCP must opt for a cash compensation at the end of the deferral period if the buy-in fails or when the buy-in is not possible (Article 7(7) CSDR).

Contrary to the buy-in procedure, which does not involve any receiving Clearing Members, the cash compensation process requires CCPs to allocate the cash compensation to one or multiple

receiving Clearing Members. In general, these will be identified and selected based on having the oldest pending settlement instructions against the CCP.

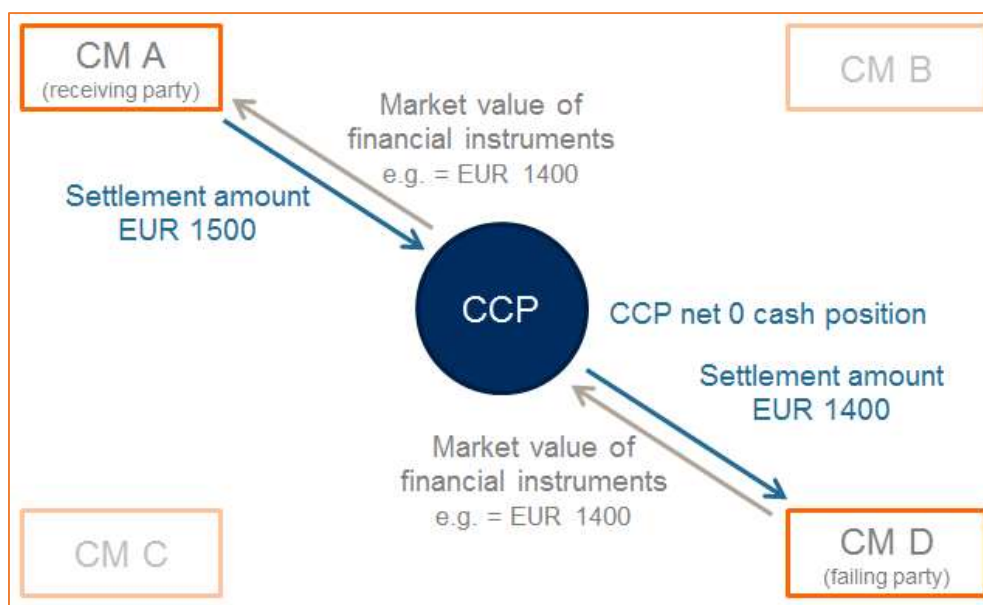
#### 5.6.2 Calculation of cash compensation amount

Because a CCP clears two equal and opposite trade legs for every trade executed by its Clearing Members, once all trades have settled, the CCP is net flat on stock and cash. In the interim, however, due to multilateral netting and unlinked settlements, a CCP might temporarily be short on cash when some settlement instructions settle and some remain open (Figure 8).



**Figure 8: Example of transaction flows leading to a CCP net cash imbalance**

In order to mitigate this potential cash imbalance, and in compliance with Article 32 SDR, the settlement amounts shall be paid for all relevant settlement instructions. The market value of the financial instruments on the business day before the payment of the cash compensation will then substitute the securities component of the settlement instruction and shall also be paid (Figure 9). These cash payments can be paid separately or netted together per relevant counterparty.



**Figure 9: Cash compensation flows where market value of the financial instruments is lower than the settlement amount, before addressing the short position**

Consider the example where the relevant market value is EUR 1400. In this case the difference between the relevant market value and the original fail value between the CCP and CM D is zero, so no payment is due between them according to Article 32.1(a) SDR.

In the event that, due to the decreased market value of the financial instruments, the receiving Clearing Member faces a net debit against the CCP (e.g. EUR 100 in Figure 9). CCPs may address the CCP's short position in the following two ways:

1. To require receiving Clearing Member (e.g. CM A) to pay the cash amount (e.g. EUR 100) to the CCP without applying the exclusion, on the basis that the exclusion is not intended to apply where the CCP is the failing party (Article 7(11) CSDR).
2. Charge the failing delivering Clearing Member (e.g. CM D) the net debit. Since the receiving Clearing Member (e.g. CM A) is not the cause of the failed delivery of securities, it should not have to carry the loss in market value incurred due to the lack of delivery.

In any case, the CCP may establish rules to levy additional penalties on the failing delivering Clearing Member for causing a cash compensation event. CCPs shall inform their Clearing Members accordingly.

### 5.6.3 Payment of cash compensation

CCPs have two valid methods for fulfilling the cash compensation payments:

1. Instruct a payment free of delivery (PFoD) in the relevant securities settlement system;
2. Instruct a cash payment outside any securities settlement system.

Every CCP will choose how to fulfill cash compensations and shall inform its Clearing Members accordingly.

### 5.7 Reporting to the CSD

As far as the mandatory reporting of buy-in and cash compensation to the CSD is required by CSDR, EACH will follow market standards. These will be clarified in the coming months.

## 6 Consistent and systematic failure to deliver financial instruments

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According to Article 7(9) CSDR, “CSDs, CCPs, and trading venues shall establish procedures that enable them to suspend in consultation with their respective competent authorities, any participant that fails consistently and systematically to deliver” financial instruments. While the metrics of a consistent and systemic failing counterparty is defined in Article 39 SDR, the procedures to suspend a systemically failing CSD participant shall be coordinated between the relevant CCPs, CSDs, trading venues, and the competent authorities.

## Appendix

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Abbreviation	Explanation
BIC	Bank Identifier Code
CCP	Central Counterparty
CSD	Central Securities Depository
CSDR	Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012
DVP	Delivery versus payment
EACH	European Association of CCP Clearing Houses
ECSDA	European Central Securities Depositories Association
ESMA	European Securities and Markets Authority
ESMA Q&A	Questions and Answers, Implementation of Regulation (EU) No 909/2014 on improving securities settlement in the EU and on central securities depositories
EU	European Union
Framework	EACH's CSDR settlement discipline Framework
ISD	Intended settlement date
MIC	Market Identifier Code
PoA	Power of Attorney
RTS	Regulatory Technical Standards
SDR	Commission Delegated Regulation (EU) 2018/1229 of 25 May 2018 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on settlement Discipline
SD	Settlement Date
SDN	Settlement Date Netting
SME	Small and Medium-sized Enterprise
TD	Trade Date
TDN	Trade Date netting
T2S	TARGET2-Securities: Settlement System



Abbreviation	Explanation
TDN	Trade Date Netting