APRIL 2025

AMENDMENTS TO THE RTS ON SETTLEMENT DISCIPLINE

AFG's response to ESMA's Consultation (CSDR)

AFG

The AFG federates the asset management industry for 60 years, serving investors and the economy. It is the collective voice of its members, the asset management companies, whether they are entrepreneurs or subsidiaries of banking or insurance groups, French or foreigners. In France, the asset management industry comprises 700 management companies, with €4600 billion under management and 102,000 jobs, including 27,000 jobs in management companies.

The AFG commits to the growth of the asset management industry, brings out solutions that benefit all players in its ecosystem and makes the industry shine and develop in France, Europe and beyond, in the interests of all. The AFG is fully invested to the future.

AFG'S RESPONSE TO ESMA'S CONSULTATION (CSDR)

Preliminary remarks

AFG thanks ESMA for the opportunity that is given to answer this consultation.

Settlement efficiency is even more crucial today, as the EU is engaging itself on work to reduce the settlement cycle for securities from T+2 to T+1. This project is full of interdependencies between players, and because of the reduced timeframe for them to do all their processes, and for the project to be a success, we need strong systems, infrastructures that are fully automated (STP) as well as tools that can help actors ensure timeliness. In that sense, ESMA's consultation paper (CP) is a very good first step in identifying which tools should be set up, should become mandatory, what deadlines should be set for players to respect etc.

However, as raised, work on settlement efficiency is highly linked to the move to T+1. Move for which ESMA has set a dedicated governance structure involving EU and national authorities, but mostly industry participants, with the aim for these latter to find solutions to support this time reduction. Considering the timeframe that has been set to be able to move to T+1 on the 11 October 2027, and notably the production of a report for end of June 2025, we were surprised by the date of publication of the CP and above all, by the deadline that was given for us to respond. Indeed, most of the issues raised in the CP are going to be discussed within the different EU workstreams with the aim to give concrete solutions/recommendations for the move. Therefore, although our answers are not likely to differ greatly from what is being discussed at EU industry level, we would like to point out that they might be subject to changes, in light of discussions we are and will be having with other players of the settlement chain within these workstreams.

I. Timing of allocations and confirmations

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

We agree with the proposed amendment to:

1) Extend the deadline by which professional clients should send their allocations and confirmations (A&C) by COB on T, for orders executed after 16:00 CET.
2) Reduce the deadline when A&C should be received by investment firms, from 12:00 to 10:00 on T+1 for retail clients and those with a time zone difference of more than 2 hours.

However, it should not be forgotten that, according to paragraph 2 of article 2.2 "*Investment firms shall confirm receipt of the written allocation and of the written confirmation within two hours of that receipt. Where [it] is received by an investment firm within less than one hour before its close of business, that investment firm shall confirm receipt (…) within one hour after the start of business on the next business day*".

Unlike the UK, who chose to set one deadline regardless of the time zone difference or the category of client, we are in favour of maintaining these differentiated timelines, at least temporarily. This can be explained by the fact that European market is much more fragmented and complex, and it will be a bigger challenge for the EU. But it could especially enable parties to transition smoothly and adapt themselves to the reduced deadlines (by further automating their processes notably). It would be particularly useful for clients located in different time zones, to ensure that all transactions are processed efficiently and in compliance with the new T+1 regulations and by allowing sufficient time to make further investments in technology and infrastructures to manage those differentiated times and ensure smooth communication between different time zones. We however strongly suggest that these allocation and confirmation are transmitted "*as soon as possible/reasonably practicable and no later than (…)*".

This subject is being discussed within the EU workstreams. Therefore, any change should follow their recommendations.

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?

In line with the objective to get the information as soon as it is available/reasonably practicable and not all at once, we agree that introducing an obligation for investment firms (IF) to notify their professional clients of the details of their execution as soon as the orders are fulfilled is useful and could ensure timeliness. However, to avoid any errors and counterproductive effect, these execution details should be notified only when they are fully filled and that no updates will be required.

The possibility to respond to this obligation would depend on the degree of automation/the choice of counterparty.

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?

As indicated above, the aim of the consultation, which we support, is to avoid batches in favour of receiving the information on the flow. Indeed, to meet deadlines in a T+1 world, all players in the settlement chain need to confirm and notify allocations and confirmations as they go along. Therefore, they should be encouraged to do so, as soon as practically possible. Having a maximum number of business hours for allocations and confirmations doesn't

allow for flexibility on certain transactions that might require it. Instead of imposing a maximum number of hours, clients should be incentivised to allocate and confirm when possible and within the set cut-offs. It already requires a certain degree of automation which might be challenging depending on the counterparty.

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?

Imposing a precise definition removes a margin of flexibility but at the same time, ensures harmonized practices. As did the UK, we can propose 23:59 which is the latest hour on trade date. ESMA should therefore require that all EU CSDs remain open and operational until this time.

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?

7am seems difficult to maintain and would require the reorganization of post-trade teams at night to keep up with flows. It's important to remind that UK and EU are very different markets, the second being much more fragmented. (*See our answer to Q1*).
Anyway, the UK 5:59 GMT deadline does not concern allocations and confirmations but settlement instruction submission to the CSDs. It is therefore irrelevant to compare allocations and confirmations deadline with the UK 5:59 GMT cut-off.

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

N/A

II. Means for sending allocations and confirmations

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

We agree that using electronic and machine-readable format is in line with the need for automation and that it should be made mandatory for written allocation in light of the EU move to T+1. However, it should be clarified what is considered as electronic and machine-readable format. In its consultation, ESMA refers to MiFID II definition of electronic format which only excludes paper. Machine-readable on the other hand is much more inflexible.
There are cases where it will be very complicated to impose automation. Furthermore, Emails and even faxes should be allowed in exceptional circumstances to allow for business continuity in case of outages or software bugs.

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?

We tend to disagree with the introduction of an optionality for investment firms to set deadlines based on whether an electronic, machine-readable format is used. As responded to Q°7, automation should be fostered by imposing the use of electronic, machine-readable format while keeping in mind that it will be challenging for smaller firms.

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

N/A

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

N/A

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

N/A

III. The use of international open communication procedures and standards for messaging and reference data to exchange allocations and confirmations

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

We agree with the proposed amendment to require professional clients to send written allocations and confirmations using international open communication procedures and standards for messaging and reference data referred to in Article 35 of CSDR. The choice of formats should however be left to investment firms and their clients. Again, having in mind that some smaller actors might not yet be equipped.

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?

We agree that using latest international standards like ISO 20022 might improve settlement efficiency as it harmonises procedures. Yet, a few international standards could be fit for purpose. Furthermore, imposing one standard might be challenging for some firms, even more so in the context of T+1 where they are already being asked to make significant changes to their processes (automation being key). As different standards can be compatible, no particular one should be imposed.

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)?

N/A

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.

We agree that aligning allocation requirements with CSD-level matching requirements could improve settlement efficiency. Yet, we do not think it's necessary to introduce any regulatory change in that matter.

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

N/A

IV. Onboarding of new clients

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.

Today, it's already largely common for investment firms to collect professional clients' data, necessary to settle a trade, during the onboarding, and to keep it updated. However, it shouldn't become mandatory.

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

N/A

V. Hold and release & Partial Settlement

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

We agree with the proposed amendment to Article 10 to allow matched settlement instructions to be eligible to auto-partial settlement and for it to be the default option, with the possibility to "opt-out" for an individual transaction or for an account. Indeed, auto-partial settlement is a good tool to avoid systemic risks related to non-settlement. As such, the tool should be mandated and automated across all CSDs. However, the option to opt-out could be useful when the use of auto-partial results in higher costs for firms. This possibility should therefore be retained.

To promote and incentivise the use of auto-partial, it is important that the fees applied are not cumulated. Indeed, CSDs should not be allowed to charge three time, for example, one instruction that is partially settled three time.

Warning: the drafting of the revised Article 10 should read: "*auto-partial settlement*" instead of "*partial settlement*".

We also support ESMA's proposal to require the hold and release functionality to be used consistently across all CSDs (*parag. 79*). It allows to put the instruction on hold until receiving enough cash/stocks and releasing it without needing to re-instruct. Today, although most CSDs offer this functionality, it is not standard practice.

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

See Q19. We agree in deleting Article 12 which enables CSDs to disapply the hold & release and partial settlement functionality when the settlement fails do not exceed a predefined threshold.

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

Fees applied must not be cumulated. For instance, if one instruction is partially settled 3 times over a day, participants should not be charged 3 times the fee of the instruction.

It might also be interesting to rethink the penalty mechanism when dealing with a trade that fails to settle but is resubmitted using manual partial settlement. CSD should enable already failed trades to be linked to new split shapes with same intended settlement date, same quantity and same price rather than applying late matching fail penalties.

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?

N/A

VI. Auto-collateralisation

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.

N/A

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

N/A

VII. Real-time gross settlement versus batches

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.

We agree that CSDs should be required to offer real-time gross settlement for a minimum window of time (TBD). Having real-time gross settlement helps, by avoiding high latency, to improve settlement efficiency and helps in identifying and resolving settlement issues sooner. It can be cumulated with an increased number of batches with lower time windows between them.

However, the length of the different batches is more of a CSD concern.

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.

See Q°26. This question is more of a CSD concern.

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

N/A

VIII. Reporting top failing participants

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

We agree ESMA proposal to amend point 17 and 18 of table 1 (*General information on settlement fails to be reported by CSDs (…)*) of Annex 1 (*i.e. Top 10 participants with the highest rates of settlement fails based on number and on value (EUR) of settlement instructions*), so that the top failing participants be based on two criteria i.e. fail rates and the share of the participant's fails (volume and/or value) in the total volume and/or value processed by the CSD. It allows a better view of the counterparties' impact on the CSD and on the financial market.

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 believe it is coherent to see the share of the participant's fails in the total volume/value processed by the CSD to get a rapid picture of a counterparty' significance on the financial market. Nevertheless, small actors with high settlement fail rates might notably represent a credit risk. Having the top 10 failing participants reported both in absolute and relative terms could therefore be useful.

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.

CSDs should publish high-quality, comprehensive data via a variety of channels to facilitate data exploitation and give a better understanding of the level of fails/settlement efficiency to market participants.

IX. Reporting the reasons for settlement fails

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?

Although obtaining greater visibility on the root causes of settlement fails is interesting, it shouldn't end up by imposing disproportionate cost on industry participants.

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".

Asset managers are generally recipient of positive penalties, and the majority of fails are cause by brokers/dealers usually when they are short because of a lack of securities.
Furthermore, a vast majority of fails are due to structural inefficiencies stemming from fragmentation of our post trade ecosystem notably.
Structural causes aside, here below are some of the main root causes of settlement fails that we can see :

1) Delay in confirmation/Affirmation deadlines, notably for assets whose processes are manual and not managed by matching platforms;
2) SSI mismatches;
3) Problems with multi-PSET ETFs, requiring position transfers;
4) Realignment of the positions from one market to another;
5) Failure of a funding trade higher up the chain triggering a fail to deliver cash;
6) Technical problems linked to system unavailability, preventing timely transmission or instruction of trades.

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?

N/A

X. CSDs' public disclosure on settlement fails

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.

We agree that reporting per asset class should be done. However, before wondering it new information on the breakdown of settlement fails should be added, we stress the need to get more granularity and transparency on the information. It would be particularly interesting to have a better vision on the level and root causes (due to late matching or late settlement) of fails on ETFs for instance.

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

CSD have a reporting obligation to send some data to ESMA on settlement fails.
Today the information is not transparent at all.
Actors need more transparency on data quality:

1. more granularity on fails (by asset, by market, by segment);
2. more details on the precise reasons for fails;
3. precise information on responsibility for fails (audit, parties etc.)

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

The frequency of publication of settlement fails data by CSDs could be monthly, to be consistent with the reporting of penalties.

XI. Unique transaction identifier (UTI)

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

We agree that the use of the UTI shouldn't be made mandatory. Although it could be useful to identify and track the transaction through its lifecycle and facilitate the resolution of mismatches, the way it is used today in EMIR is clearly not satisfactory.
According to swift it would be generated by the allocating party or the electronic platform that facilitates the allocations and confirmations processes between an instructing party and their executing counterparty, but we don't see, for the allocating party how it could be done notably on vanilla products, considering the high volume of transactions on these products.

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

N/A

XII. SSIs format

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?

Although we need to push further towards the use of market standards for the storage of SSIs, there is no need to treat this on a regulatory level. There could be a recommendation to adopt a standardised format (which today seems to be via Alert) but no mandatory use as it would be extremely complicated to update all SSIs (as there are SSIs for each portfolio x type of instrument x currency).
Today, SSIs are a major component of settlement fails. At the very least, it would be useful to make their transfer by electronic means compulsory.

XIII. Place of settlement (PSET) as mandatory field of written allocations

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.

Notably in a T+1 world where we'll have less time to correct any mismatches of information, PSET appears to be a useful field in the preparation of settlement instructions and notably when in presence of a cross-border transactions through different CSDs. Anyhow, before becoming compulsory, the definition of PSET should be harmonised. Furthermore, today, it seems that its usage is not in the hands of asset management companies. Indeed, PSET are used at the discretion of each player, with a bilateral agreement required before it can be used as a criterion.

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.

Although it ensures clarity and consistency and helps avoiding errors, there are still some issues that need to be assessed and notably who should define the PSET and to get a clear definition of the PSET. Therefore, we believe that it shouldn't be made mandatory for now, but actors should be recommended to improve their processes on PSET.

XIV. Place of safe keeping (PSAF) and place of settlement (PSET) as mandatory fields of settlement instructions

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

We agree that the use of PSET and PSAF should be left at the hands of the industry for now. knowing that the absence of such information is the source of a lot of settlement delay notably on certain assets like ETFs. Therefore, firm should be recommended to improve their processes on these fields.

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?

PSAF is not administered in the allocation and confirmation process. Today, PSET is used at the discretion of each player, with a bilateral agreement required before it can be used as a criterion.

XV. Transaction type

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

There is no need for the transaction type to become a mandatory matching field. Ideed, in the absence of a single codification of Trade_Type for all markets, making this data mandatory would make the prematching process slower and more complicated.

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.

N/A

XVI. Timing for sending settlement instructions to the securities settlement system (SSS)

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?

In line with our responses to questions on A&C, settlement instructions should rather be sent intra-day than in bulk at the end of the day. However, we agree that no deadlines should be set for their submissions. Indeed, depending on their location and on the custodians' cut-offs, it might not always be easy to meat intraday settlement deadlines. As

previously argued, every transmission of information (A&C, SSI) should be sent as soon as possible and intraday if possible.

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.

We don't believe it's necessary to impose a deadline. In light of T+1 the basic principle should be to send the datas as soon as and when required, and at the latest before the cut-off times. In that matter it is important for asset management companies to consider the cut-offs imposed by custodians.

XVII. Alignment of CSDs' opening hours, real-time/night-time settlement and cut-off times

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

We agree it is important for the industry to retain flexibility on the market's calendar and opening hours. However, notably in a T+1 world and with the ambition to guarantee settlement efficiency, the aim must be to promote harmonisation between CSDs. Having different calendars for each CSD, and sometimes several within the same CSD (as is the case today), will be unmanageable in T+1, and will give rise to major problems of cash management, collateral, fails, operational risk.

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.

See our answer to Q°48.

XVIII. Shaping

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.

We support not to make shaping mandatory as long as auto-partial settlement by CSDs is made mandatory (with the opt out possibility).

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

From a regulatory point of view, asset management companies remain responsible for the assets in the portfolios they manage. On the other hand, this type of service could have a non-negligible cost. It should be noted that large asset management companies already have automated lending and borrowing mechanisms in place within their structure. No regulatory action is needed and such tool should be left at the initiative of market participants and CSDs.

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.

N/A

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.

N/A

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