

Frequently Asked Questions

CENTRAL SECURITIES DEPOSITORIES REGULATION
SETTLEMENT DISCIPLINE REGIME

SEPTEMBER 2021

Definitions and Abbreviations

BNY Mellon	This is the corporate brand of The Bank of New York Mellon Corporation and may be used as a generic term to reference the corporation as a whole and/or its various subsidiaries generally
RTS	Regulatory Technical Standards
ISD	Intended Settlement Date
RTP	Receiving Trading Party
FTP	Failing Trading Party
LMFP	Late Matching Fail Penalty
SEFP	Settlement Fail Penalty
SFT	Securities Financing Transaction
CSD	Central Securities Depository
CCP	Central Counterparty
EEA	European Economic Area covers the European Union and the three additional countries of Norway, Liechtenstein, and Iceland
ESMA	European Securities and Markets Authority

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Background Information

On September 13, 2018, a delegated regulation setting out regulatory technical standards (RTS) on settlement discipline, was published in the Official Journal of the European Union (EU). Under the current timetable, this delegated regulation will enter into force on February 1, 2022.

The Central Securities Depositories Regulation (CSDR) rules on the settlement discipline regime that introduces several measures to prevent settlement fails by ensuring that all transaction details are provided to facilitate settlement, as well as further incentivising timely settlement through cash penalty fines and buy-ins. In addition, CSDs are required to provide functionality to participants to ensure harmonisation and automation of settlement processes across all European Economic Area (EEA) markets to improve settlement efficiency.

This document seeks to address the Frequently Asked Questions being asked by clients to assist their understanding of the CSDR settlement discipline regime, how it will impact them and how BNY Mellon is responding.

Further information on CSDR can be found on the BNY Mellon website [here](#).

What is the Central Securities Depositories Regulation (CSDR) settlement discipline regime?

The CSDR settlement discipline regime covers two main sets of measures:

- a. measures to prevent settlement fails by improving matching and settlement rates, and
- b. measures to address settlement fails: cash penalties and mandatory buy-ins.

Who is affected by CSDR settlement discipline regime?

All parties in the settlement chain involved in transactions in securities settling via a European Union (EU) Central Securities Depository (CSD) will be affected by the settlement discipline regime, including where the trading parties are not located in the European Economic Area (EEA). The regulatory obligations will affect both the receiving and delivering parties in a given failing transaction.

When will the settlement discipline regime enter into force?

The new settlement discipline regime will take effect on February 1, 2022.

Measures to prevent settlement fails

Written allocations and confirmations:

1. What does the regulation require?

The regulation sets out detailed rules relating to the message flows between an investment firm (typically, a broker) and its client once an investment firm has executed a trade on behalf of its client. The regulation requires that the investment firm include these rules in the contractual arrangements with its client.

Once the investment firm has sent the confirmation of the execution to a professional client, the client is obliged to confirm its acceptance of the terms of the transaction. The client is also obliged to send to the investment firm a set of specific details relating to the allocations of securities or of cash. The client is obliged to send both these messages by a specific deadline (see below for details). The client can combine both messages in a single message.

Investment firms shall confirm receipt of the confirmation and allocation messages within two hours of receipt.

Investment firms are under the obligation to offer their professional clients the option of sending the confirmation and allocation messages electronically using international communication standards.

What is the impact to clients?

Professional clients will need to ensure that they provide the investment firm with the confirmation message, and with all required information in an allocation message within specified timeframes. The investment firm should receive the confirmation and allocation messages by close of business on the business day that the transaction took place. If the two parties are in time zones with more than a 2-hour difference, or if the order has been executed after 16:00 CET, then there is an extension of the deadline until 12:00 CET on the following business day.

Any contractual agreements between a professional client and BNY Mellon as an investment firm, must include the communication requirements of the confirmation and allocation messages, the information to be provided, what method of communication will be used, and the timeframes by which messages should be sent.

How will BNY Mellon support?

Where BNY Mellon acts as an investment firm, we will provide a confirmation to the professional client where required and offer clients the option of sending via an electronic messaging method.

Matching and population of settlement instructions

2. What does the regulation require?

CSDs are required to provide functionality to participants with fully automated, continuous real-time matching of settlement instructions.

CSDs require their participants to populate additional fields in their settlement instructions and have made the following changes:

i. Transaction type:

The transaction type must be included on settlement instructions (qualifier 22F::SETR// on MT540-543) and passed on to CSD for reporting purposes.

What is the impact to clients?

The transaction indicator is an existing mandatory field for settlement instructions. Clients must send the most appropriate value which represents the nature of the trade.

The transaction type field is the Type of Settlement Transaction Indicator (SETR) on SWIFT settlement instruction messages.

22F	:4!c/[8c]/4!c	:(Qualifier)/[(Data Source Scheme)]/(Indicator)	:SETR/TRAD
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How will BNY Mellon support?

BNY Mellon will enhance its system to ensure that all required transaction type indicators are supported and passed to the CSDs.

BNY Mellon will not validate the transaction type instructed by its clients, however in some instances BNY Mellon may transform the instructed transaction type into an acceptable value in the market to avoid any rejections.

ii. Place of Trade and Place of Clearing:

In some instances, CSDs will also require participants to instruct the place of trade, and the place of clearing.

The place of trade will be used to derive the correct cash penalty rate for the relevant financial instrument for Small Medium Enterprise (SME) growth markets. If clients do not notify this, then they may be subject to receive a higher cash penalty, as CSDs will default the transactions as not having been executed on a trading venue.

The place of clearing is used to identify if the transaction was cleared through a central counterparty (CCP). If cleared through a central counterparty, then the CCP will be responsible for the collection and distribution of cash penalties.

What is the impact to clients?

Clients will need to ensure that they instruct all relevant details necessary as this could affect whether their transactions settle on time and are subject to settlement discipline penalty or buy-in. BNY Mellon recommends that the Place of Trade field is always populated, and the Place of Clearing should always be completed for transactions settling with a CCP.

B	94B	Place: Place of Trade	M/O	:4!c[8c]/4!c[30x]	:TRAD//EXCH/XSTO or the MIC of the MTF
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or

B	94B	Place: Place of Trade	M/O	:4!c[8c]/4!c[30x]	:TRAD//VARI
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B	94B	Place: Place of Clearing	M/O	:4!c//4!a2!a2!c[3!c]	:CLEA//ABCDEFGHXXX
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How will BNY Mellon support?

BNY Mellon is making changes to its SWIFT MT54x settlement instruction message processing to enable clients to instruct these fields.

CSD functionality to assist matching and settlement

3. Tolerance matching – what does the regulation require?

CSDs will need to have a functionality to allow matching even if the cash amounts on the two settlement instructions differ. In such a case, matching will occur providing that the difference in cash amounts is not greater than a standard tolerance level. There will be two bands of tolerance:

- EUR 2 for up to EUR 100,000 or currency equivalent
- EUR 25 for over 100,000 or currency equivalent

Any settlement instructions with a broker cash amount above these tolerances will not match until one party amends their instruction to within the tolerance level.

What is the impact to clients?

Clients will not need to make any changes to their existing settlement instruction process.

How will BNY Mellon support?

BNY Mellon already supports the matching process and any mismatches will be notified to clients through their existing settlement status messaging.

4. Bilateral cancellation – what does the regulation require?

CSDs are obliged to operate a bilateral cancellation facility that requires participants to bilaterally cancel matched settlement instructions.

Most EU/EEA CSDs currently operate with bilateral cancellation and those remaining unilateral cancellation markets will be updated to follow the new process.

What is the impact to clients?

Clients will need to ensure that both parties to a matched settlement instruction will need to instruct a cancellation of the settlement instruction in order to prevent the transaction from settling.

How will BNY Mellon support?

BNY Mellon already supports bilateral cancellation. BNY Mellon will send out a communication to clients if there are any market changes.

5. Hold and release – what does the regulation require?

CSDs must provide a hold and release mechanism to facilitate blocking pending instructions from settling, as well as the capability to release pending settlement instructions that are blocked and therefore allowing them to settle.

The regulation also requires Failing Trading Parties to use the hold and release mechanism to put a settlement instruction on hold when it is subject to a buy-in (see also question 36).

What is the impact to clients?

Clients will need to request BNY Mellon to place all delivery instructions on hold upon receipt of a buy-in notification from the Receiving Trading Party (RTP).

How will BNY Mellon support?

BNY Mellon will provide the ability for clients to request a settlement instruction that is subject to a buy-in to be placed on hold or release from hold via SWIFT MT530 or via our online portal, NEXEN®.

Clients will be able to place an existing NEWM instruction on hold via MT530 by quoting NPRE in field 22F::SETT//:

MT530 - HOLD

:16R:GENL
:20C::SEME//Client Reference
:23G:NEWM
:97A::SAFE//99999
:16S:GENL
:16R:REQD
:20C::PREV//123456789
:22F::SETT//NPRE
:16S:REQD

BNY Mellon will report the status of a Hold request to clients via SWIFT MT548 settlement status message or NEXEN, using information received from the CSDs and Sub-custodians and is dependent upon their rules, procedures and reason codes.

BNY Mellon is also intending to introduce a Release functionality via MT530 and NEXEN (provided the CSDs and the sub-custodians offer the service). We will provide additional information on when this functionality will become available as soon as possible.

6. Partial settlement – what does the regulation require?

CSDs are required to provide participants with functionality to partially settle transactions. Early partial settlement (between intended settlement date (ISD) and buy-in deadline date -1) can reduce the penalty fines payable by the delivering party.

On the deadline date of the buy-in extension period (e.g., ISD +4 for liquid securities) the regulation states that any available stock must be used to partially settle, unless the settlement instruction is on hold.

What is the impact to clients?

BNY Mellon is expanding its partial settlement service to enable clients to maximise settlement of its transactions as detailed below.

How will BNY Mellon support?

BNY Mellon’s service will be expanded to allow auto-partial settlement at all EU/EEA markets for all instructions (receipts and deliveries), unless the instruction is place on hold.

6.1.What is Partial Settlement?

Partial settlement is where a transaction cannot be fully settled as the quantity of securities required to satisfy the total delivery is unavailable in the delivering party’s account. Therefore, anything less than the full delivery is considered to be a partial settlement. There is no limit to how many partial settlements can be made until full delivery is satisfied. CSDs are required to provide participants with functionality to partially settle transactions. Partial settlement (made on intended settlement date (ISD) and up to the buy-in deadline date -1 business day) can reduce the penalty fines payable by the delivering party. On the deadline date of the buy-in extension period (e.g., ISD +4 for liquid securities) the regulation states that any available securities in the delivering party’s account must be used to partially settle, unless the settlement instruction is on hold.

The Association for Financial Markets in Europe (AFME) have produced a paper on the best practice.

Auto-partial settlement is the possibility to have a transaction automatically included in the partial settlement process run by the CSD. This differs from ‘Hold & Partial Release’, which is the possibility to release part of a transaction placed on hold to allow settlement.

6.2. How does Auto-Partial Settlement work?

EU/EEA CSDs run their auto-partial settlement processes throughout the day, whereby available positions are automatically partially settled, providing the transaction has matched and both trading parties agree to a partial settlement. This is to ensure settlement performance is maximised and settlement fines are not applied to the full trade quantity. If settlement instructions contain the settlement transaction condition indicator (STCO) to partial (PART), and with some CSDs if the STCO is not provided (blank), then the CSD's settlement cycle will allow the matched instruction to partially settle, and this will send BNY Mellon a settlement status message for the amount that has settled. BNY Mellon will automatically split the original (parent) transaction and two new child instructions will be created, one for the amount that can be settled, and a second for the remaining unsettled amount.

6.3. For which EU/EEA markets does BNY Mellon provide an Auto-Partial Settlement Service?

BNY Mellon provides auto-partial settlement service in the following markets:

Country	CSD/ Sub-custodian Name	BNY Mellon Auto- Partial Settlement Service Available	T2S Market Y/N	Partial possible if STCO = blank
Austria	OeKB/Unicredit Bank	Yes (implementation date to be confirmed)	Y	Y
Belgium	Euroclear Belgium/NBB	Yes	Y	Y
Czech Republic	SKD and CDCP/Citibank	SKD – No partial settlement	N	N/A
		CDCP – Yes (implementation date to be confirmed)	N	Not currently
Denmark	VP Securities/SEB Denmark	Yes	Y	Y
Euromarket – ICSD	Clearstream Banking SA (Luxembourg)	Internal – Yes External – Yes, with markets where auto-partial settlement is possible Bridge – Yes	N	Y (See third column for specific limitations)
Euromarket – ICSD	Euroclear Bank	Internal – Yes External – Yes, with markets where auto-partial settlement is possible Bridge – Yes	N	Y
Finland	Euroclear Sweden/SEB Finland	Yes	N	Y
France	Euroclear France	Yes	Y	Y
Germany	Clearstream Banking AG (Frankfurt)	Yes	Y	Y
Greece	BoG/BNP Paribas Athens	Yes	Y	N
Hungary	Keler/Citibank	Yes, a limited service will be provided until KELER introduce a partial release service (implementation date to be confirmed)	N	Y (See third column for specific limitations)
Italy	Monte Titoli	Yes	Y	Y
Netherlands	Euroclear Netherlands	Yes	Y	Y
Norway	Euroclear Norway/SEB Norway	Yes	N	Y
Portugal	Interbolsa/Citibank	Yes	Y	Y
Spain	Iberclear/Banco Bilbao Viscaya Argentaria	Yes for receives only. Partial settlement for deliveries (implementation date to be confirmed)	Y	Y (See third column for specific limitations)
Spain	Iberclear/Banco Santander	Yes for receives only.	Y	Y (See third)

Country	CSD/ Sub-custodian Name	BNY Mellon Auto- Partial Settlement Service Available	T2S Market Y/N	Partial possible if STCO = blank
		Partial settlement for deliveries (implementation date to be confirmed)		column for specific limitations)
Sweden	Euroclear Sweden/SEB Sweden	Yes, for equities, no for debt instruments	N	Y
Switzerland	SIS SIX/Credit Suisse	Yes, on T2S for EUR settlement, for receives only	Y	Y
United Kingdom	Euroclear UK & Ireland	Yes	N	Y

Further EU/EEA CSDs are expected to implement auto-partial settlement prior to February 1, 2022. Where BNY Mellon uses a sub-custodian, then the sub-custodian will also need to support auto-partial settlement for BNY Mellon to provide this service. BNY Mellon will notify clients of these market changes as they take place and advise when we will switch the market to our auto-partial settlement service. This will be delivered via NetInfo®.

EU/EEA CSDs can apply under CSDR Settlement Discipline RTS Article 12, for derogation from auto-partial settlement if either the rate or value of settlement fails are below certain thresholds, and BNY Mellon will not therefore be able to offer an auto-partial settlement service in those markets.

6.4. How does BNY Mellon support Auto-Partial Settlement?

Auto-Partial Settlement

BNY Mellon’s auto-partial settlement service has been expanded to allow partial settlement in all EU/EEA markets, provided the CSDs and the sub-custodians offer the service. It is now possible to instruct on a trade-by-trade basis by using the transaction condition indicator (STCO) PART or NPAR, or to set up standing instructions per Custody account according to the below criteria:

EU/EEA Direct and Sub-custodian Markets	Segregated market account:	Omnibus market account:
	Standing instruction on receipts and deliveries	Standing instruction on receipts only

See question 6.6. below for standing instruction preferences.

Please note that BNY Mellon is no longer applying the default of non-partial settlement (NPAR) to client instructions received without a settlement transaction condition (STCO) indicator and without any standing instruction set up and will send to the market with a blank STCO indicator. Consequently, this may result in a partial settlement depending on the CSD’s auto-partial process and/or trading parties’ instruction. Clients not wanting partial settlement can set up a standing instruction of NPARALL on their Custody accounts.

Hold and Partial Release

BNY Mellon is intending to introduce Hold and Partial release functionality via SWIFT MT530) and NEXEN on deliveries from omnibus accounts (provided the CSDs and the sub-custodians offer the service), which will be controlled by the position management process within BNY Mellon’s settlement system application. We will provide additional information on when this functionality will become available as soon as possible.

Please note that auto-partial settlement is not currently supported for Free of Payment asset movements related to BNY Mellon's Triparty Collateral Management service and transactions relating to this activity will not be included in the auto-partial settlement service implementation. We will provide further guidance should auto-partial settlement become possible in the future on transactions relating to accounts linked to the Triparty Collateral Management service.

6.5. How can Auto-Partial Settlement be instructed?

Clients can instruct BNY Mellon using the settlement transaction condition indicator (STCO) populated with values of either PART (Partial) or NPAR (No Partial) on their SWIFT MT54x settlement instructions or can be added on instructions entered through the BNY Mellon NEXEN web portal.

Leaving the settlement transaction condition indicator (STCO) as blank will be processed depending how the CSD runs its auto-partial settlement matching process and may result in auto-partial settlement being allowed.

The SWIFT MT54x settlement instruction messages can be populated to partial or non-partial as follows:

Example:

MT542:

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:16R:GENL
:20C::SEME//Client Reference
:23G:NEW
:16S:GENL
:16R:TRADDET
:98A::SETT//YYYYMMDD
: 98A::TRAD//YYYYMMDD
: 35B:ISIN FR1234567890
:16S:TRADDET
:16R:FIAC
:36B::SETT//UNIT/1500
:97A::SAFE//999999
:16S:FIAC
:16R:SETDET
:22F::SETR//TRAD
:22F::STCO//PART or NPAR
:16R:SETPRTY
:95P::REAG//ABCDEFGHXXX
:97A::SAFE//000000000611
:16S:SETPRTY
:16R:SETPRTY
:95P::BUYR//ABCDEFGHXXX
:97A::SAFE//92835
:16S:SETPRTY
:16R:SETPRTY
:95P::PSET//SICVFRPPXXX
:16S:SETPRTY
    
```

The full SWIFT MT54x messaging formats can be referenced in BNY Mellon's MyStandards [here](#).

6.6. Can I create a standing instruction to default all my settlement instructions?

Yes, clients can request BNY Mellon to set up a standing instruction for their Custody account(s) that will default and automatically enrich all their EU/EEA market settlement instructions with either NPAR or PART before sending the transaction to the market to settle where an auto-partial settlement service is made available by the CSD and offered by the sub-custodian. Setting up an auto-partial settlement standing instruction can be selected from the NEXEN web portal, or by using the BNY Mellon account opening/modification Smartform. Clients wanting to set up a standing instruction in advance should contact their Client Activation representative or their BNY Mellon Client Service representative.

Auto-Partial Settlement options available for default selection per Custody account are as follows:

Preference	Receives	Deliveries
PARTALL - Partial Settlement Both Deliver or Receive	Adds PART	Adds PART
PARTDEL - Partial Settlement Deliver Only	Adds NPAR	Adds PART
PARTREC - Partial Settlement Receive Only	Adds PART	Adds NPAR
NPARALL - No Partial Settlement Both Deliver or Receive	Adds NPAR	Adds NPAR
NPARDEL - No Partial Settlement Deliver Only	Blank	Adds NPAR
NPARREC - No Partial Settlement Receive Only	Adds NPAR	Blank

Important notes:

The service is dependent on account structure at the market e.g., segregated, or omnibus (refer to question 6.4.).

Client instructions with the settlement transaction condition indicator (STCO) populated will override any client standing instruction that is set up with BNY Mellon on their Custody account(s).

Fax instructions received by BNY Mellon will not be defaulted by the standing instruction service and clients should include any settlement transaction condition indicator (STCO) on their faxed settlement instruction.

CREST auto-partial settlement functionality does not allow non-partial settlement and therefore cannot be overridden by the new auto-partial settlement standing instruction service.

The following transaction types are excluded from the application of partial settlement:

- Block transactions (BLCH, BLPA)
- Securities Lending/Borrowing, (SECL/SECB)
- Transactions with the following Settlement Transaction Indicator (SETR):
 - Lending/Borrowing Reallocation (SLRE/SBRE)
 - Internal Account Transfers (OWNI)
 - Turnaround (TURN)
 - Repurchase Agreement (REPO/RVPO/TRPO/TRVO)

Definition of the above Swift qualifiers can be referenced in BNY Mellon’s MyStandards [here](#).

BNY Mellon will automatically instruct all the above transaction types with NPAR in the message when sending to the market.

6.7. What settlement confirmation message will Clients receive?

Based on the auto-partial settlement confirmation (i.e., MT545 - with :22F::PARS//PAIN) received from the CSD or sub-custodian, BNY Mellon will automatically split the original settlement instruction into two shapes reflecting the partially settled quantity and the outstanding quantity remaining as pending settlement. Depending on the Client account partial settlement reporting setup (optional - see below), BNY Mellon will then generate a MT544-547 settlement confirmation message for the partially settled quantity only and will continue to provide settlement status messages for the remaining outstanding quantity. The remaining outstanding quantity can, in turn, be settled partially.

Partial Settlement SWIFT Reporting Options for MT 544-547 Confirmations

Options	System Behaviour Description
1	No partial indicators are present in the outbound settlement MT544-547 confirmation
2	Partial indicators PARS (+PAIN/PARC) in sequence A Field 22 option F is sent out in the outbound MT544-547 confirmation Partial indicator RSTT in Sequence C Field 36 option B is sent out in the outbound MT544-547 confirmation
3	Only partial indicators PARS (+PAIN/PARC) in Sequence A Field 22 option F is sent out in the outbound MT544-547 confirmation

BNY Mellon will report the status of the pending shape to clients e.g., via MT548 settlement status message, according to the messages received from the CSDs and sub-custodians and is dependent upon their rules, procedures, and reason codes.

6.8. How will Auto-Partial Settlement be reported in statement messages?

The MT535 sent by BNY Mellon will include the quantity of securities partially settled. Similarly, the MT950 will report the cash credited/debited related to the partial quantity settled. The MT537 will instead contain the quantity of securities still pending settlement.

6.9. How will a partial settlement indicator be amended?

BNY Mellon will be extending the functionality further to enable clients to amend the partial settlement condition indicator on an individual transaction already instructed by instructing via SWIFT MT530 settlement instruction amendment message, or through the NEXEN web portal. BNY Mellon will pass amendments to the original instruction to the market where the CSD or sub-custodian allows this (refer to in scope partial settlement markets list above).

The following changes will be allowed:

From	To
PART	NPAR
NPAR	PART
BLANK	PART
BLANK	NPAR

Clients will be able to amend the partial settlement condition indicator by sending BNY Mellon a SWIFT MT530 amendment message based upon the original instruction with either of the following values populate: PART (allow) or NPAR (do not allow) in field 22F::PRTL// as applicable:

MT530 - PART	MT530 - NPAR
:16R:GENL	:16R:GENL
:20C::SEME/Client Reference	:20C::SEME//Client Reference
:23G:NEWM	:23G:NEWM
:97A::SAFE//99999	:97A::SAFE//99999
:16S:GENL	:16S:GENL
:16R:REQD	:16R:REQD
:20C::PREV//123456789	:20C::PREV//123456789
:22F::PRT//PART	:22F::PRTL//NPAR
:16S:REQD	:16S:REQD

Clients will be able to receive MT548 settlement status messaging to notify if the message is either acknowledged or if rejected. This is a specific preference that clients can select in NEXEN or request through their BNY Mellon representative.

The NEXEN web portal will also allow clients to amend the partial settlement condition indicator on an existing transaction by either an individual transaction amendment or via a bulk amendment upload file. The original transaction will need to be in a status of 'Acknowledged' before the user will be able to Amend the transaction and then choose one of the following values:

- Y – PART – eligible for partial settlement or
- N – NPAR – not eligible for partial settlement

If a transaction is selected in a market that is not eligible for partial settlement amendment this will provide the user with a warning message and prevent the amendment.

BNY Mellon will provide additional information as soon as possible.

6.10. How can a partially failing transaction be cancelled?

Clients can bilaterally cancel a transaction that is partially failing by indicating the client reference of the original ('parent') instruction they intend to cancel and the remaining amount and quantity to be settled. A standard cancellation message should include the transaction reference of the parent transaction, and the quantity of the child transaction to be cancelled.

7. Settlement instruction status update reporting – what does the regulation require?

CSDs are required to provide participants with access to real-time information on the status of their settlement instructions. CSDs must also offer participants either a minimum of 3 settlement batches spread across the business day or real-time gross settlement throughout the business day.

What is the impact to clients?

Clients will not need to make any changes to their existing settlement instruction process.

How will BNY Mellon support?

BNY Mellon already supports real-time settlement status messaging to clients, so there will not be any impact on clients.

8. Consistent and systematic failure to deliver securities – what does the regulation require?

CSDs will need to identify the criteria by which a participant is deemed to be a consistent offender of late matching and settlement failure. CSDs will need to establish a system that enables them to monitor the number and value of settlement fails over a period covering 10% of days of activity during the course of a year.

If settlement efficiency falls below 15% of that securities settlement system, then a participant will be deemed to be a consistent offender. Working arrangements will be set up with participants who cause high levels of settlement fails within the CSD.

What is the impact to clients?

Clients should monitor their fails to ensure that they maintain a high settlement rate.

How will BNY Mellon support?

BNY Mellon can provide Management Information Statistics (MIS) on settlement rates to support client oversight management of their fails, and help clients identify their settlement fails through fail management reporting. For further details, please contact your relationship manager.

Measures to address settlement fails

I. Cash Penalties – General information

9. What does the regulation require?

CSDs are required to establish penalty mechanisms for late matching and failed settlement and will debit failing CSD participants and credit the non-failing CSD participant.

10. Which type of instructions will be subject to cash penalties?

All settlement instructions, free or against payment, settling at an EU/EEA CSD, which are matched on or after their Intended Settlement Date (ISD), and failing to settle on and after their ISD.

11. Which instructions are not subject to cash penalties?

- Settlement transactions that do not represent "transfer orders" according to the [Settlement Finality Directive](#);
- Corporate action transactions on stocks;
- Technical instructions, (e.g., T2S automatic realignments)

12. What are the types of cash penalties?

- a. Late Matching Fail Penalty (LMFP); penalty that applies due to the matching taking place after the ISD.
- b. Settlement Fail Penalty (SEFP); penalty that applies due to the non-settlement of a matched transaction on or after its ISD.

13. What instruments are in-scope for cash penalties?

All transferable securities are in scope where admitted for trading or traded on an EU/EEA trading venue or Cleared by an EU/EEA CCP as follows:

- i. transferable securities as defined in point (a) of Article 4(1)(44) of Directive 2014/65/EU;
- ii. sovereign debt as defined in Article 4(1)(61) of Directive 2014/65/EU;
- iii. transferable securities as defined in point (b) of Article 4(1)(44) of Directive 2014/65/EU, other than sovereign debt referred to in point (ii);
- iv. transferable securities as defined in point (c) of Article 4(1)(44) of Directive 2014/65/EU;
- v. exchange-traded funds (ETFs);
- vi. units in collective investment undertakings, other than ETFs;

- vii. money-market instruments, other than sovereign debt referred to in point (ii);
- viii. emission allowances;
- ix. other financial instruments

14. What is the difference between a late matched and settlement fail trade?

A late matched trade is any trade settling at an EU/EEA CSD that matches after intended settlement date. The last party to match the trade, post settlement date, is liable for the late matching fail penalty.

A settlement fail is any matched trade settling at an EU/EEA CSD that has not settled on the intended settlement date (ISD) where the reason for failure is either due to a lack of securities or cash.

15. What is the Settlement fail cash penalty rates?

The daily cash penalty rates use the basis points in the following table:

Reason for Failure	Type of security	Liquidity indicator	SME Growth Market	Penalty rate (in bps)
Lack of securities	Share	Liquid	No	1.00
		Illiquid		0.50
		N/A	Yes	0.25
	Sovereign debt		N/A	0.10
	Corporate debt		No	0.20
	Money-Market Instruments		Yes	0.15
	Other Instruments (including Exchange Traded Funds, Units in collective investment undertakings, emission allowance, etc.)		No	0.50
			Yes	0.25
Lack of cash	N/A	N/A	N/A	Official interest rate for overnight credit charged by the central bank issuing the settlement currency with a floor of 0

16. How are cash penalties calculated?

Cash penalties are calculated daily and per day as from the ISD until the actual settlement or cancellation date of the instruction:

- For Late Matching Fail Penalty (LMFP): penalties apply retroactively from the ISD until the actual matching date.
- For Settlement Fail Penalty (SEFP): once the instruction is matched, penalties apply earliest from the ISD or the matching date to the date of actual settlement or cancellation of the instruction.

The formulas to calculate the penalty imposed by a Settlement Fail Penalty (SEFP) are the following:

a. For a failing DVP, DF or RF Settlement Instruction (including when on hold):

$$\text{SEFP} = \text{Security Penalty Rate} * \text{Reference Price} * \text{Quantity}$$

b. For a failing RVP Settlement Instruction (including when on hold):

$$\text{SEFP} = \text{Cash Discount Penalty Rate} * \text{Reference Price} * \text{Quantity}$$

The same penalty calculation method applies to Late Matching Penalties and Settlement Fail Penalties.

17. Will BNY Mellon pass on cash penalties to its clients?

Yes, BNY Mellon intends to pass on the Late Matching and Settlement Fail Penalties to its clients.

18. When will CSDs report, and collect cash penalties?

- Cash penalties will be reported by CSDs daily per transaction to the CSD participant. Where BNY Mellon is direct in the market the CSD will report directly to BNY Mellon. Where BNY Mellon uses a sub-custodian the CSD will report directly to the sub-custodian who will then provide reporting to BNY Mellon.
- Net cash penalties will be reported by CSDs monthly to the CSD participant.
- Net cash penalty amounts will be collected and distributed by CSDs each month on the 17th business day to the CSD participant's cash account. Where the instruction is cleared through a CCP then the CCP will collect and distribute the penalties.

19. How does BNY Mellon intend to report cash penalties to clients?

BNY Mellon will offer its clients the choice to receive daily cash penalty reporting via either MT537 or MT548 and/or via NEXEN. On a monthly basis, BNY Mellon will offer clients the choice of MT537 or NEXEN reporting of the net cash amount. Nil reporting will also be available on MT537 reports only. SWIFT formats for MT537/MT548 (PENA) messages have been published in the SWIFT Release 2019 and can be referenced [here](#).

What is the impact to clients?

Clients may want to prepare to receive daily SWIFT cash penalty reporting messages or use the NEXEN report, as well as any internal processes to identify and manage the penalties.

How will BNY Mellon support?

BNY Mellon will provide further details to clients of the SWIFT messaging formats and fields that will be populated, and how this will show on your invoice or cash statement.

20. How will BNY Mellon apply cash penalty fees?

BNY Mellon will include the aggregated monthly cash penalty amount as an out-of-pocket expense on client's invoices, together with a detailed, transaction level breakdown of each penalty. BNY Mellon will also provide the option to have the monthly cash posting applied to the client's cash account rather than included in the invoice.

Please note that for customers of the Corporate Trust Service and Triparty Collateral Service it is not possible to apply a cash posting mechanism. Instead, cash penalty amounts will be captured in the existing monthly invoices for the service and will be recovered through the existing payment process.

21. Will CSDs charge for administering the penalties regime and will BNY Mellon pass on the CSD's charges?

CSDs have the option to charge separately to recover the costs of operating the cash penalty mechanism. Several CSDs have stated that they intend to charge a fee for operating the penalty mechanism, but it is not yet clear how they will communicate these charges and what will be the basis of their calculation for the charges. BNY Mellon is reaching out through its CSD and sub-custodian network, and through industry working groups, e.g., AFME, to obtain more information regarding the approach and fees to be charged. At point of publication Euroclear Bank, and the National Bank of Belgium have said that they will charge their participants.

What is the impact to clients and how will BNY Mellon support?

Once we receive more information from CSDs and sub-custodians then BNY Mellon can determine its approach and further communications will be sent to advise our clients.

22. How can clients submit an appeal to dispute a penalty, and what information should be included?

CSDs have set out that they will require an appeal to be made within 10 business days from the beginning of the month after the penalty was calculated. The details of the appeal process have not yet been defined by CSDs however it is likely that CSDs will require the reasons for making the appeal and the information of the underlying transaction.

BNY Mellon is working with its sub-custodians to identify timeframes and will provide a further update once more information becomes available.

23. Will BNY Mellon accept appeals for cash penalties?

BNY Mellon will implement a process for clients to raise any appeals related to penalties received, investigate, and support relevant penalty appeals made against the market. If it is determined that BNY Mellon was at fault, then erroneous fees will be reversed.

24. Will BNY Mellon agent lenders accept liability for any financial detriment to the client (including penalties, price differences on buy-in and losses on subsequent disposal of stock in falling markets), where the stock is not returned in time to deliver against a trade?

BNY Mellon is actively engaged in industry working groups to determine how the regulation impacts open loans versus term loans. As soon as we have more information, BNY Mellon will be communicating with our agency lending clients.

25. Where BNY Mellon provides a collateral management service, will the custodian accept liability for any financial detriment to the client (including penalties, price differences on buy-in and losses on subsequent disposal of stock in falling markets), where the stock is not returned in time to deliver against a trade?

Under the triparty collateral management service, BNY Mellon can only return client securities pledged to client counterparties when sufficient alternative collateral securities have been made available and there has been sufficient time to affect a substitution. In circumstances where either insufficient client alternative securities are available or where insufficient time has been allowed, BNY Mellon will not accept any liabilities where stock is not returned in time to deliver against a trade.

26. Where the client uses a third-party collateral manager, will BNY Mellon be able to automatically pass any penalties on to the collateral manager agent where the stock is not returned in time?

BNY Mellon will pass on Late Matching (LMFP) and Settlement Fail (SEFP) fines to our clients. Where clients believe a fine has been incurred due to the error of a third-party collateral manager it will be the clients' responsibility to directly discuss any resulting penalties with that collateral manager.

II. Mandatory Buy-in and Cash Compensation

27. What does the regulation require?

CSDR imposes a mandatory buy-in process on any financial instrument which has not been delivered within a set period after the intended settlement date (ISD). CSDR places an obligation on the Receiving Trading Party (RTP) to invoke a buy-in within set timeframes and sets out 3 different processes for buy-ins to occur, dependent upon where the transaction is cleared and how it is executed.

28. What is a buy-in?

In the event of a settlement fail, a buy-in process provides a buyer of securities with the right to source the securities elsewhere, cancel the original instruction(s), and settle between the two original counterparties any differences arising from the net costs of the original transaction and the buy-in transaction.

29. What are the timeframes of the mandatory buy-in requirements?

The extension period for initiating a buy-in varies based on asset type, liquidity or whether quoted on a Small and Medium Enterprise (SME) Growth market:

- ISD+4 business days for liquid securities
- ISD+7 business days for illiquid securities
- ISD+15 for SME Growth Markets

ESMA maintain a register of SME Growth Markets which can be accessed [here](#).

What is the impact to clients?

Clients should be prepared to be able to identify when securities are due to be bought in and establish communications procedures with their counterparties.

How will BNY Mellon support?

BNY Mellon's reporting of clients failed trades will include the number of days since Intended Settlement Date (ISD) that a transaction has been failing.

30. Will BNY Mellon be notified of a buy-in by the CSD?

No, CSDs will not notify participants of settlement instructions that are due for buy-in.

31. Who executes the buy-in process?

CSDR mandates the RTP to initiate a buy-in for the outstanding, undelivered stock at the expiration of the extension period. In the case that the transaction is cleared by a central counterparty, then they will be responsible for initiating the buy-in.

If the buy-in is unsuccessful, the process will be settled by means of cash compensation.

What is the impact to clients?

Clients need to prepare for buy-ins by establishing internal processes to identify buy-ins and the management of them. One important consideration for clients will be whether they will execute the buy-in themselves or if their broker will execute on their behalf.

How will BNY Mellon support?

See below for further information on how BNY Mellon will support clients.

32. What trading activity is in scope for buy-ins?

- Transactions cleared by a central counterparty (CCP)
- Transactions not cleared by a central counterparty (CCP) but executed on a trading venue
- Transactions not cleared by a central counterparty (CCP) and not executed on a trading venue

What is the impact to clients?

Clients will need to be able to identify how their transaction was cleared and where executed to follow the correct buy-in process.

How will BNY Mellon support?

See below for further information on how BNY Mellon will support clients.

33. Which transaction types will be subject to buy-ins?

- Purchases and sales
- Securities lending transactions (see also question 34)
- Repurchase transactions (see also question 34)
- Collateral transactions (see also question 34)

All other transactions which do not represent a “trade” (e.g., Own account transfers) should not qualify for buy-ins.

34. Do mandatory buy-ins apply to securities financing transactions?

The regulation provides an exemption for securities financing transactions (SFTs) where the term of the SFT is less than 30 business days. This applies to securities lending and collateral management transactions and includes both start and end legs. Longer term SFTs of 30 business days or more, however, are in scope for buy-ins.

What is the impact to clients?

Clients will need to be able to identify securities financing transactions and therefore when they could be subject to buy-in.

How will BNY Mellon support?

BNY Mellon already provides a range of settlement status reporting through SWIFT status messages and in NEXEN which shows the transaction type and settlement date period. Please contact your BNY Mellon Client Service representative for further information.

35. What instruments are in scope for buy-ins?

Only securities which are listed in the ESMA database registers are in scope instruments. These financial instruments can be found [here](#).

What is the impact to clients and how will BNY Mellon support?

Clients will need to be able to identify whether the financial instruments are in or out of scope and the timeline for when they will be due for buy-in by reviewing the ESMA database registers.

How will BNY Mellon support?

Clients can use the link provided above to identify whether financial instruments are in scope for buy-ins.

36. What actions will clients need to take in relation to mandatory buy-ins?

a. Allow Partial Settlement:

On the last day of the extension period (i.e., ISD +4, ISD+7, ISD+15), the Failing Trading Party (FTP) must offer partial delivery of any available securities to the Receiving Trading Party (RTP) which cannot refuse.

b. Set instruction on Hold:

At the end of extension period, it is mandatory for the Failing Trading Party (FTP) to place delivery instructions on hold upon receipt of buy-in notification from the Receiving Trading Party (RTP). This is in order to ensure that settlement cannot be released even if the stock becomes available until either the RTP advises, or the instruction is bilaterally cancelled.

For a Receiving Trading Party, it is not mandatory to put the receive trade on hold by its clients, however it will be market practice in order to prevent the original trade from settling.

c. Verify that buy-in is possible:

On the next business day of the extension period (i.e., ISD +5, ISD+8, ISD+16), the Receiving Trading Party (RTP) must verify that a buy-in is due to be initiated by checking the following:

- Security is on list of in-scope instruments (see ESMA database)
- Transaction is settling through an EU/EEA CSD
- The nature of the trade (i.e., Transaction Type) is an actual trade

d. Buy-in Agent appointment:

The Receiving Trading Party (RTP) must appoint a Buy-in Agent and inform the Failing Trading Party (FTP) of the appointment.

The Failing Trading Party sets his instruction on hold and inform its CSD participant.

Buy-In Agent confirms the appointment for “guaranteed delivery” and goes to the market to purchase the instruments subject to buy-in.

e. Buy-in execution:

The Buy-in agent confirms the execution of buy-in to the Receiving Trading Party (RTP) and immediately transmits to its CSD participant the information to instruct the bought-in instruments.

f. Cancellation of original instruction:

Upon the delivery of securities from the buy-in agent, the Receiving Trading Party (RTP) instructs the failing party to cancel the original instruction.

After the buy-in has settled the Receiving Trading Party (RTP) issues an invoice of the buy-in costs to the Failing Trading Party (FTP).

g. Buy-in costs and Cash compensation:

All buy-in costs and/or cash compensation arrangements should be agreed between the trading parties. Cash compensation may include the Buy-in agent fee, price difference where the Receiving Trading Party was disadvantaged, FX rate change, and corporate event entitlements due to the Receiving Trading Party.

37. When does the buy-in execution need to be completed by?

The Receiving Trading Party (RTP) will be given a period of business days equal to the same number of business days before the buy-in was invoked e.g., an equity due for buy-in after ISD +4 would have an extension period of 4 business days.

What is the impact to clients?

Clients will need to identify when a buy-in is due to occur in order to meet with their buy-in obligations.

How will BNY Mellon support?

BNY Mellon will provide the number of days that a transaction is unsettled after Intended Settlement Date on its NEXEN fail settlement reporting to support clients in identifying when a buy-in may be due.

38. What happens if the buy-in is ineffective?

If the buy-in is unsuccessful, the process will be settled by means of cash compensation. This will require the original trade to be cancelled and a payment being made by the failing trading entity to the failed-to trading entity based on the difference between the current market price and the original transaction price.

What is the impact to clients?

Clients will need to be prepared if a buy-in may not succeed and result in cash compensation.

How will BNY Mellon support?

BNY Mellon already supports the processing of cancellation instructions.

39. Does BNY Mellon plan to update their contractual arrangements with clients?

Yes, BNY Mellon will amend client contracts for buy-ins and cash penalties, as required under Article 25 of the Delegated Regulation on Settlement Discipline (EU 2019/1229). More detail will be communicated in due course.

What is the impact to clients?

Clients will receive notification of any contract changes and can review and refer any questions to their BNY Mellon relationship manager.

How will BNY Mellon support?

BNY Mellon will provide clients with notification of contract changes and address any queries raised.

40. What are the Buy-in status reporting requirements?

CSDs are required to report the number and the value of Buy-ins executed to their National Competent Authority.

Receiving Trading Parties must report the Buy-in status to the CSD at the latest on the last business day of the buy-in extension period.

Status information to be provided in the buy-in reporting for each buy-in will be:

- Successful Buy-in
- Failed Buy-in
- Partially Executed Buy-in

What is the impact to clients?

Clients who are the Receiving Trading Party will need to report the buy-in status to BNY Mellon.

How will BNY Mellon support?

BNY Mellon will support this requirement by providing clients with the ability to communicate the buy-in status via either SWIFT MT530 message type, or our NEXEN web portal, and BNY Mellon will forward the message to the CSD or sub-custodian.

41. Will BNY Mellon provide a Buy-in service?

BNY Mellon will not be providing a buy-in execution service. Clients should therefore establish appropriate arrangements to cover their buy-in obligations.

BNY Mellon's approach to CSDR as our clients' custodian and settlement agent is to focus on enabling our clients to reduce their failing trades and therefore minimise the impact to clients of the settlement discipline rules.

Contact Us:

For further information and/or clarification, please either contact your BNY Mellon Client Service representative, otherwise inquire [here](#).

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