

EU CSDR cash penalties: impact on primary markets

On 9 September 2024, ICMA submitted a [response](#) to ESMA's [consultation paper](#), *Technical Advice on the Scope of CSDR Settlement Discipline*.

From a primary market perspective (the secondary markets perspective is separately covered in this edition of the ICMA Quarterly Report and mentions 144A/RegS conversions in passing), the response again reiterated ICMA's concerns with cash penalties in the primary market context (notably following issuer bond delivery during the US working day) and ICMA's consequently suggested one-day grace period for all fails of transactions in a new bond due to settle on the issue date of that new bond. (Regarding the preceding iteration, in the context of a 29 February ICMA response to ESMA, see article at page 28 of the [Second Quarter 2024 edition](#) of this Quarterly Report.)

The response additionally noted:

- (a) that ESMA seemed to be proposing an alleviation for settlements related to new issuances, but that:
 - (i) it was not clear that the proposal complies with ESMA's "immunisation principle" – unlike ICMA's suggestion and particularly given ESMA does not seem to think that a failed delivery caused by a market issuance delay should be outside the penalties regime;
 - (ii) the proposal seemed to assume a single/local CSD approach to primary issuance (rather than cross-border bridges between different CSDs);
 - (iii) it was not clear how the proposal would technically map to the context of the ICSDs (though no discrimination is presumably intended); and
- (b) the hopefully relatively minor costs of ICMA's suggestion (CSDs recalibrating their penalty processes – on an *ex-ante* "filtering out" basis rather than *ex-post* "appeal" basis and with no need for transaction classification), as well as the benefits (a lowering of unfairly levied penalties).

ICMA will continue to engage on this topic as it progresses.



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