MFSA MALTA FINANCIAL SERVICES AUTHORITY

Circular

27 January 2022

Circular on Regulation (EU) 909/2014 – the Central Securities Depositories Regulation ('CSDR')

This Circular is being addressed to all interested stakeholders, in particular to Central Securities Depositories ('CSDs'), its participants, and investment firms.

This Circular should be read in conjunction with the Regulation, its Delegated Regulations and previous Circulars issued by the Authority, as the case may be.

Entry into force of the Settlement Discipline Regime

The Authority would like to inform market participants that on 25 May 2018, the EU Official Journal published Commission Delegated Regulation (EU) No 2018/1229 (the 'RTS on Settlement Discipline' or the 'Settlement Discipline Regime'), supplementing CSDR with regards to the regulatory technical standards on settlement discipline. May you be kindly reminded that **the RTS enters into force on 1 February 2022**.

The Settlement Discipline Regime brings about new measures to prevent and address settlement fails and to encourage settlement discipline. The new rules will apply directly to all transactions in transferable securities, money market instruments, units in collective investment undertakings, and emissions allowances settled on an EU CSD. Moreover, the rules will also be applicable to certain types of Securities Financing Transactions ('SFTs') and derivative contracts.

The New Rules on Settlement Discipline

A. Preventing Settlement Fails

i. Trade Allocation and Confirmation Requirements

Article 6 of CSDR lays out several measures aimed at preventing settlement fails applicable not only to market infrastructures, but also to MiFID authorised investment firms. This means that buy-side clients, irrespective of their country of establishments, will be required to sign up to a revised set of agreements with their EU Counterparties and implement new procedures related to the allocation and confirmation of trades.

- *Allocation*

Article 2 of the Settlement Discipline Regime introduces a new requirement on Investment Firms in which their professional clients will be required to send them written allocation of securities or of cash which identify the accounts to be debited or credited in relation to the transactions referred to in Article 5(1) of CSDR.

Entities are being reminded that the format and details to be included in the 'written allocations' referred to above, should be delivered in compliance with Article 2 of the RTS.

- *Confirmation*

Further to the above, Investment Firms must ensure, through revised contractual arrangements, that the professional client confirms its acceptance of the terms of the transaction in writing, within the timeframes stipulated in Article 2(2) of the RTS.

- *Timing*

Written allocations and confirmations are to be received by the investment firm by the close of business on the business day on which the transaction has taken place. This deadline will be extended to noon of the following business day where one of the following occurs: (i) if there is a time zone difference of more than two hours between the investment firm and the professional client and (ii) the orders have been executed after 16:00 CET of the business day within the time zone of the investment firm.

B. Addressing Settlement Fails

i. Cash Penalties

Article 16 of the Settlement Discipline Regime stipulates that cash penalties, as referred to in Article 7(2) of CSDR, will be calculated and applied by the CSD for each business day that a settlement instruction that fails to settle.

ii. Buy-Ins

The RTS on Settlement Discipline will also introduce a mandatory buy-in regime, of which implementation will be delayed following the feedback received by market participants on the challenges being faced.

Next Steps

The application and supervision of the Settlement Discipline Regime requirements, in particular the settlement fails reporting and the cash penalties regimes, will go ahead as planned and become applicable as from 1 February 2022.

Further to the above, the European Securities and Markets Authority ('ESMA') expects National Competent Authorities ('NCAs') not to prioritise supervisory actions in relation to the application of the buy-in regime until the provisions for postponing the application of the buy-in regime is formally in place.

Further communication on the buy-in regime shall be issued accordingly.

Contacts

Should you have any queries on the above, please do not hesitate to contact the Authority's Market Infrastructures team on MarketInfrastructures@mfsa.mt for any further clarifications.