
CSDR Settlement Discipline Penalties

Market Practice for Bilateral Claims

August 2021

Introduction

This document is intended to provide guidelines for AFME members to handle bilateral claims between trading counterparties, related to penalties applied under CSDR on settlement instructions that match late, after their intended settlement date and settlement instructions that fail to settle on their intended settlement date. According to CSDR, a penalty is debited from the participant responsible for the non-settlement of an instruction and credited to its counterparty. It is envisaged that the underlying context cannot always be understood by the CSD, and thus the CSD will not always be able to correctly identify the 'at fault' counterparty. Given the limited circumstances in which a CSD is permitted to consider a direct appeal, there may be a requirement for the two parties to bilaterally agree a cash payment to reimburse these penalties.

By way of example, if Party B provides incorrect information to Party A, causing Party A to send a late settlement instruction, the CSD will charge the penalty to Party A. In this scenario, Party A should be able to issue a claim to Party B to recover the penalty amount.

This market practice is intended to provide more detailed guidelines on how the claims process should be managed by both parties.

The document has been created collaboratively by AFME members and is subject to change. The AFME guidelines should be applied from the date of entry into force of cash penalties under the CSDR Settlement Discipline Regime, which is expected to be 1st February 2022.

Please note that this document is published as a recommendation only, and adoption by any market participant is strictly voluntary. This document does not relieve any person or entity of its obligation to comply with any relevant regulation or law.

Penalties Process

The CSD is responsible for the calculation, reporting, collection and distribution of penalties. The calculation and reporting will take place daily, with collection and redistribution occurring once per month.

Penalties are debited from and credited to direct CSD participants (e.g. the settlement agent or local custodian) and can then be 'passed back' through the custody chain to the final trading party.

Figure 1 provides a simplified illustration of the penalties process. This market practice is explicitly intended to cover step 3 only - bilateral claims between the trading parties. The document does not cover an appeal from the CSD participant to the CSD, or disputes arising from penalties 'passed back' through the custody chain.

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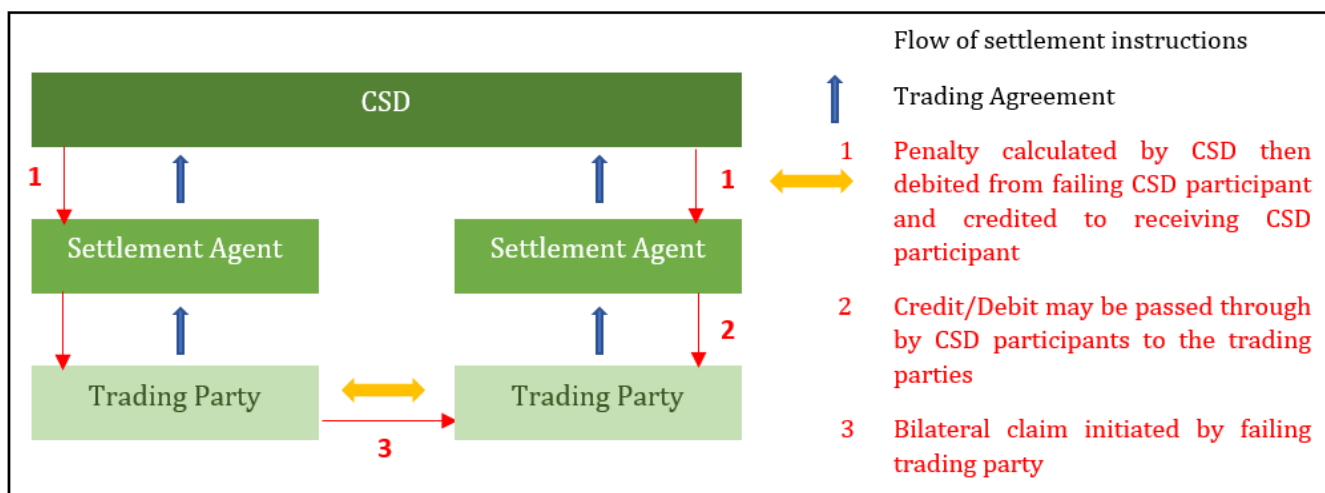
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Figure 1



AFME Guidelines

- **Minimum Threshold:** AFME members recommend that a bilateral claim is only made for claims of EUR 500 or greater (or equivalent in-currency amount) calculated at an instruction level¹. This reflects the operational and administrative cost of processing a claim.

The purpose of the claim is to recover only the penalty amount that was debited, and that the party initiating the claim was not 'at fault' for.

- **Netting:** Where applicable, parties should agree a net settlement – i.e. a single cash flow to resolve multiple claims.

Process:



Timeline:

AFME recommends that a single claim is raised per settlement instruction and should be initiated only after actual settlement takes place.

The claim should be issued no later than the 10th Business Day of the month following the actual settlement date of the failed transaction.²

¹ For example, if a failing instruction is penalised at 300 EUR per day for four business days, this would meet the threshold.

² Or, if the transaction is cancelled, no later than the 10th Business Day of the month following the cancellation of the failed transaction.

The claim should be acknowledged by the recipient within 5 business days of the issuance date.

All parties to a claim should endeavour to resolve the claim within the same month it was issued, provided it was issued by the 10th business day of that month. The settlement notification should be sent to the issuer of the claim prior to effecting the settlement. The issuer should confirm the closure of the claim, once settlement is received.

If a claim is not resolved within 30 days issuance of the claim, the issuer should escalate the issue within its organisation. However, escalation may be initiated at an earlier time at the discretion of the individuals.

See Annex 3 for example timeline.

Template:

The claim notice should be sent via email with the following verbiage:

Dear Counterparty,

This claim[s] is being issued to the extent we have incurred a penalty under the CSDR Settlement Discipline Regime that has not been caused due to our error and hence we seek compensation from yourselves.

Claim Initiator Name	<i>Name of entity initiating claim</i>
Claim Initiator BIC	<i>BIC11 of entity initiating claim</i>
Trade Date	<i>Trade date of failed settlement instruction</i>
Intended Settlement Date	<i>ISD of failed settlement instruction</i>
ISIN	<i>ISIN code for security of failed instruction</i>
Quantity	<i>Quantity of securities for failed instruction</i>
CSD	<i>CSD which has applied the penalty</i>
Common Penalty Reference	<i>PCOM reference provided by CSD</i>
Common Market Reference	<i>Any additional reference which may held the claim recipient's investigation</i>
Penalty Rate	<i>Penalty rate applied by CSD on fail</i>
Number of Days	<i>Number of days the instruction failed for (that can be legitimately claimed for)</i>
Penalty Amount	<i>Total penalty amount</i>
Currency	<i>Currency of penalty amount</i>
Claim Amount (EUR)	<i>Total claim amount converted to EUR</i>
Claim Reason	<i>Detailed rationale as to the reason for the claim</i>
Payment Details	<i>Payment information for claim initiator</i>

FAQs:

Q: Can a claim be initiated for a reason not outlined in the appendix to this document?

A: The scenarios outlined in the appendix **are for illustrative purposes only**, and are not an exhaustive list. Claims can be initiated for other scenarios at the discretion of each counterparty.

Q: Can an interest claim and a CSDR penalty claim be initiated on the same instruction?

A: Interest claims and CSDR Penalty claims should be considered separately. Both can be initiated on the same instruction.

ANNEX 1 – Scenarios

The following list of scenarios is non-exhaustive and does not preclude parties from initiating a claim for a reason not captured below. Whilst these scenarios are not definitive, claims should be issued with discretion and in good faith. All claims should be supported by evidence and justification. Please see Annex 2 for illustrative examples. All scenarios are at the discretion of two parties to bilaterally determine whether a claim is valid and has been appropriately evidenced.

Scenario	Type of Penalty	Debited Party	At Fault Party
Party A sends late settlement instruction due to Party B not providing required information [in sufficient time], e.g. <ul style="list-style-type: none"> - SSIs - Place of Settlement 	LMFP	Party A	Party B
Party A sends late settlement instruction due to Party B providing incorrect information <ul style="list-style-type: none"> - SSIs - Place of Settlement 	LMFP	Party A	Party B
Parties agree to bilaterally cancel an instruction. Cancellation instruction does not match before cut-off, and delivering party is penalised.	SEFP	Party A	
Following a partially successful buy-in, both parties cancel original instruction and input new instructions for outstanding amount. ³ Party B sends the instruction without the correct indicator, which causes Party A (as the last to instruct) to receive a backdated LMFP.	LMFP	Party A	Party B
Parties A and B bilaterally agree a manual partial settlement. Party A, as the last to instruct, receives backdated LMFP.	LMFP	Party A	
For a transaction executed in an SME-Growth Market, Party B does not apply the correct MIC code on its instruction, causing Party A (as the failing party) to receive penalty at higher rate.	SEFP or LMFP	Party A	Party B
On the last business day of the extension period, Party A (failing party) offers a partial delivery which is declined by Party B (receiving party). Party A will be penalised by the CSD for the full amount, including the available partial.	SEFP	Party A	Party B

³ This scenario is described in more detail in section 7 of the ECSDA Penalties Framework

ANNEX 2 – Examples

Example 1

Settlement instruction unmatched on ISD; Party B initially provides incorrect place of settlement to Party A

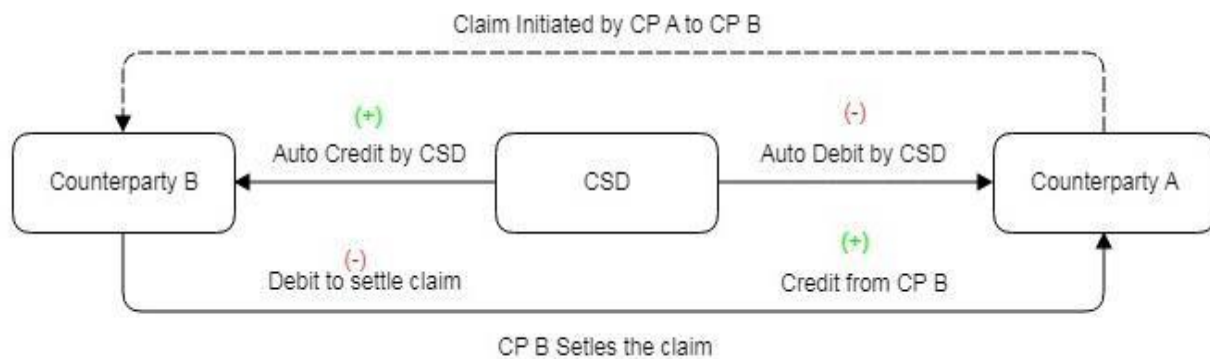
Party A instructs trade late in market

Settlement instruction gets matched on ISD+2 and settles [i.e. 2 day fail]

CSDR Penalty Charged to A

Party at Fault: B

Bilateral Penalty Claim issued to B by A



Example 2

Party B fails to deliver to Party A on matched instruction in CSD outside scope of CSDR

Party A fails on onward delivery in CSD inside scope of CSDR

CSDR Penalty Charged to A

Party at Fault: B

Bilateral Penalty Claim issued to B by A

