

Link to Consultation can be found [here](#)

**Please note that ISLA has not responded to all questions in the consultation and has tailored responses to represent the concerns of the Securities Lending and Borrowing community, as discussed within the working group forums.*

Section 4 Treatment of historical reference data for the calculation of late matching fail penalties

Q6. What are the causes of late matching? How can you explain that there are so many late matching instructions? What measures could be envisaged in order to reduce the number of late matching instructions?

ISLA would argue that the number of late matching fail penalties as a proportion of overall fails is low. Late matching fail penalties can occur for a number of reasons,

- Trade date/ Settlement date/ SSI mismatches
- Place of settlement – PSET mismatches
- Matched but lack of securities to deliver/ Matched but lack of cash to pay
- Corporate actions

This could be due to:

- Late communication of settlement instructions
- System outages
- Human error
- Having incorrect reference data for counterparties
- Use of manual partialling, where auto-partialling is not possible due to omnibus account structures of lenders. Manual partialling allows room for more error. In addition, participants will have to bilaterally cancel trades and rebook the partial amount as a new trade.

In order to reduce late matching fail penalties, ISLA advocates that where possible, firms should:

- Utilise industry matching platforms for effective pre-matching to pick up these issues prior to the intended settlement date
- Use automated vendor platforms such as centralised SSI repositories and where possible reference data should be sent well in advance of trade date
- Place of settlement – PSET should be a mandatory field.
- Review tolerance thresholds for lack of cash, these should match the thresholds at the CSD level.
- Increase use of trade confirmations where possible.
- Increase use of auto-partial functionality

Q10: In your view, where settlement instructions have been matched after the intended settlement date, and that intended settlement date is beyond the agreed number of business days in the past, the use of more recent reference data (last available data) for the calculation of the related cash penalties should be optional or compulsory? Please also state the reasons for your answer.

ISLA believes that any process should be standardised across all CSD's to ensure a consistent approach.

Section 5 Alternative methods for calculating cash penalties, including progressive penalty rates

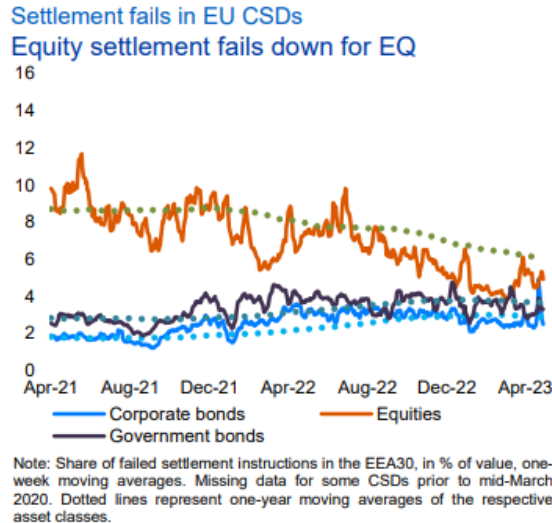
Impact of the Current Penalty Mechanism:

Q15: Based on your experience, what has been the impact of CSDR cash penalties on reducing settlement fails (by type of asset as foreseen in the Annex to Commission Delegated Regulation (EU) 2017/389 since the application of the regime in February 2022? Please provide data and arguments to justify your answer.

ISLA believes that the impact of the CSDR penalty regime, since its application in 2022 has been overall positive, and data has shown a steady decline in fails to date which suggests that they have acted as a sufficient deterrent and encouraged market participants to focus on improving their operational processes and improve system automation however, ISLA believes that considerable time is still required to assess the long-term effectiveness.

ISLA considers that penalties create a level playing field, holding all market participants accountable and encourage better market practices.

In ESMA’s own Trends Risks and Vulnerabilities Report¹ published in January 2024, it is stated that ‘Settlement fails remained broadly stable’ and ‘one and a half years after the start of the application of cash penalties under the central securities depositories regulation (CSDR) (February 2022) settlement fails are occurring less frequently’. In a previous 2023 ESMA TRV report², it also clearly demonstrates a steady decline in settlement fails particularly for equities between April 2021 and April 2023 as shown below.



ISLA has been collecting settlement rate data from our membership base since the end of 2019 (see below). During the same period, significant work was undertaken to improve settlement efficiency, not least because of CSDR Settlement Disciplines, but also because settlement failure already generates additional costs to firm’s operating expenses.

¹ https://www.esma.europa.eu/sites/default/files/2024-01/ESMA50-524821-3107_TRV_1-24_risk_monitor.pdf

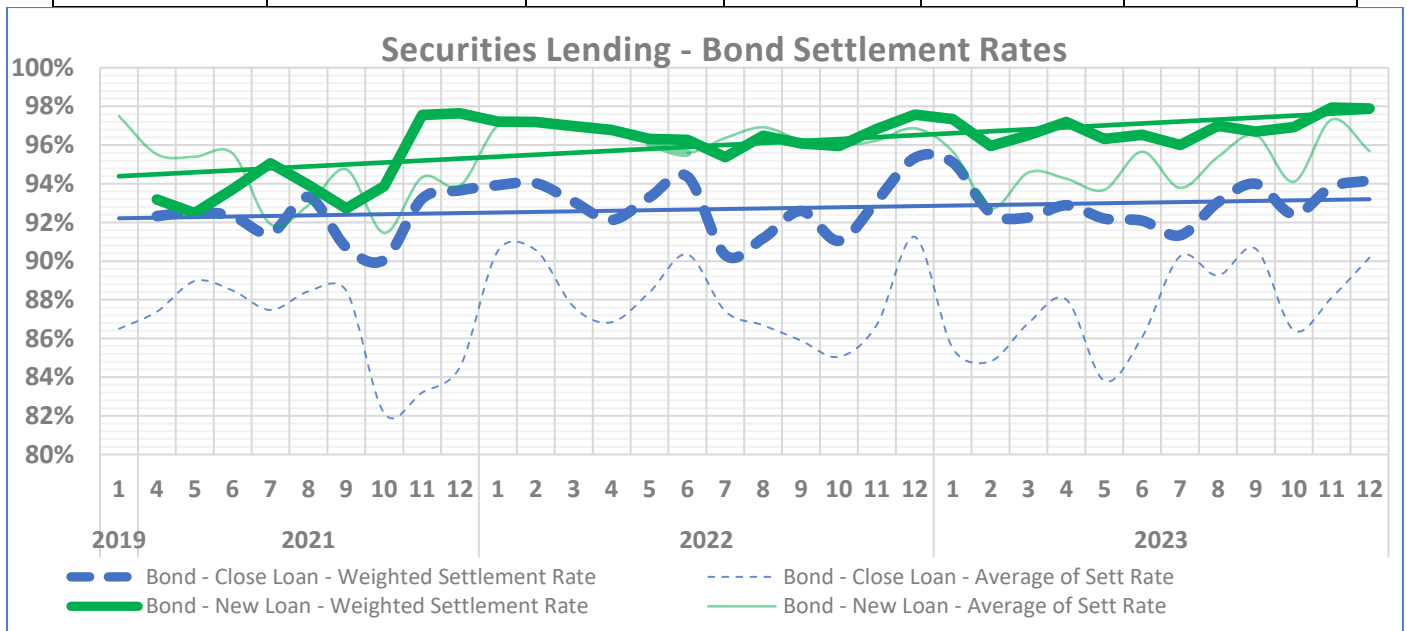
² https://www.esma.europa.eu/sites/default/files/2023-08/ESMA50-1389274163-2681_trv_2-23_risk_monitor.pdf

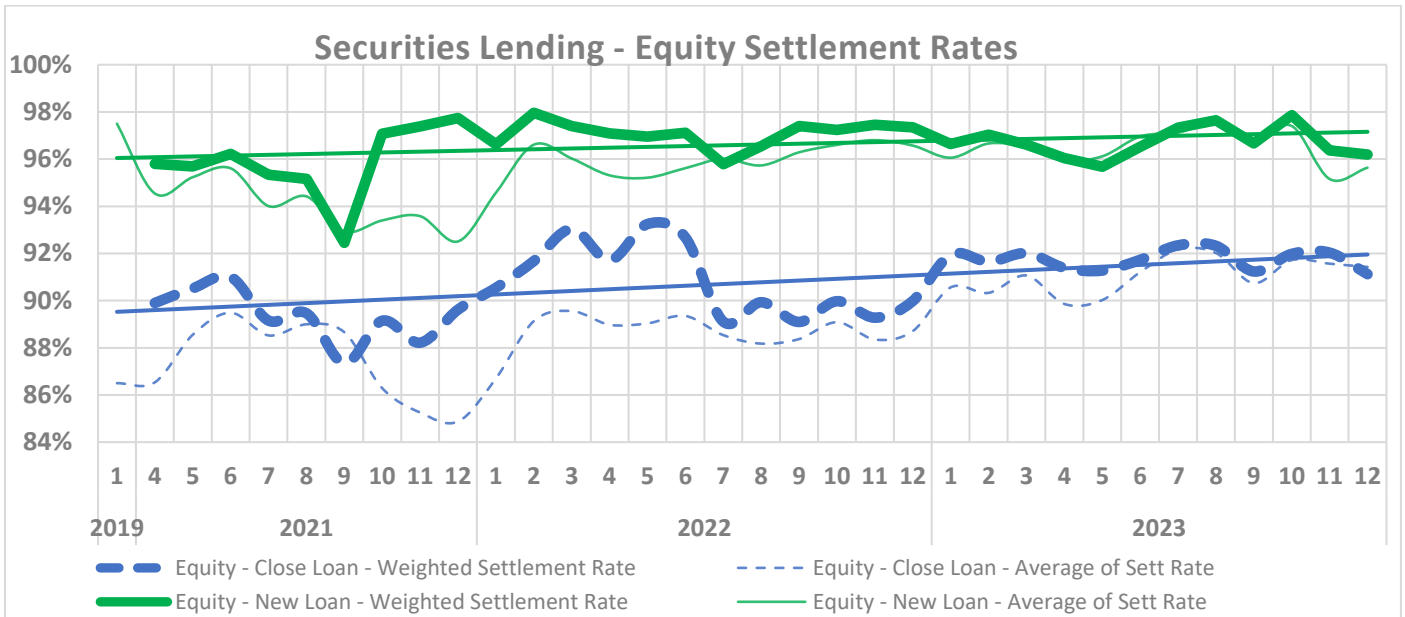
We have noted large scale developments in many firms' operating models, specifically in the tracking and resolution of the settlement process but also in the identification of weak points. This has resulted in an overall positive trend which can be observed in the below graphs and statistics.

Please note that the first table is a simple average over the period that data has been collected and by comparison, the graphs show both simple average and weighted average based on transaction volumes. It is important to note that the weighted average, giving more weight to firms with higher volumes, indicates the ability of those larger firms to invest in the settlement process more so than smaller firms.

The overall trend clearly illustrates a positive and significant improvement in settlement rates with ~98% of new loans settling on ISD and loan returns at ~92%.

Securities Lending - Settlement Fail Rates					
Asset Class	Direction	2021	Jan-23	Change	Change
Bonds	New	6.81%	2.62%	-4.19%	-1.18%
	Close	7.67%	9.50%	1.82%	
Equity	New	4.20%	1.78%	-2.43%	-0.90%
	Close	10.10%	10.74%	0.64%	





Q16: In your view, is the current CSDR penalty mechanism deterrent and proportionate? Does it effectively discourage settlement fails and incentivise their rapid resolution? Please provide data and arguments to justify your answer.

ISLA notes that the introduction of a legislative regime for settlement fails has certainly caused firms to look more closely at the root cause of fails and firms have made significant investments in their infrastructure since before the go-live. Most firms have invested in vendor platforms to assist with pre-matching as well as on the execution side. There has also been a shift between lenders and borrowers in the market to prepay collateral where possible to ensure smoother settlement on ISD. It is important to note that securities borrowing is one of the primary tools being used to help facilitate settlement in other markets and thus it must be viewed in a different vein to other products when analysing the respective settlement rates. When market participants foresee an incoming fail in the cash market, their first port of call due to lack of securities, may be to borrow the stock temporarily to ensure settlement. As such, many arrangements to borrow are made on a T+0 basis making the timelines for accurate settlement on ISD shorter. The purpose however, of facilitating T+0 borrowing is to aid settlement.

It is also important to note that the activity of making securities available for lending, is a discretionary activity for many lenders such as pension funds, UCITS, and Sovereign Wealth funds, for example. The practice of securities lending is fundamental to the well-functioning of capital markets and provides a vital source of liquidity. Securities Lending is deemed a low-risk activity for underlying lenders who utilise it to generate additional portfolio income to benefit their investors however, any additional perceived risk, such as increased penalties that may be passed down, could cause them to limit the practice which could have negative impacts on the provision of liquidity and further exacerbate settlement efficiency.

Therefore, ISLA believes, that the current penalty rates as they stand today have been a sufficient deterrent and have shown to incentivise rapid resolution of fails. As noted in response to Question 15, further time should be allowed by ESMA with a full cost benefit analysis being performed before we can assess the true impacts of the regime and its proportionality/ effectiveness. ISLA supports ESMA's statements that confirm the cost of borrowing to remediate settlement failure should always be less than any penalty imposed (See further detail in response to Question 42) and thus ISLA believes that the current penalty rates particularly for liquid equities is suffice, as

demonstrated by the significant reduction in fails, where prior to the implementation of the regime, it could be argued that equities were the worst offender.

Q17: What are the main reasons for settlement fails, going beyond the high-level categories: “fail to deliver securities”, “fail to deliver cash” or “settlement instructions on hold”? Please provide examples and data, as well as arguments to justify your answer.

For ISLA members the majority of fails occur on the return leg of loan transactions as shown in graphs provided for in Question 15, however, settlement fails can occur for a number of reasons. In 2019, ISLA conducted a study with members of the association to identify the key settlement issues and causes of fails faced by the market.

- The processes for managing Standard Settlement Instructions were found to be a key cause of failed settlements. This was due to both manual updates of account details, and in some cases the presence of complex account structures. Pre-matching rates prior to the implementation of CSDR were low and pre-matching was considered a low priority. However improved pre-matching which includes SSI comparisons has had a significant impact in reducing market settlement fails. ISLA Best Practices related to SSI's can be found [here](#).
- Prior to CSDR, available automated [vendor] solutions may not have met market needs and were not consistently utilised by firms. Post implementation, many vendors offer fails monitoring and resolution services that many of our members utilise.
- Differing booking practices and in particular cut-off timings had a negative impact on settlement success. However, after considerable discussion through large market working group forums and issuance of best practice, we gained agreement on more efficient cut off periods to facilitate same day transactions, as well as promoting an increase in manual partialling of trades, which has improved settlement and increased communication either manually or via an automated process between lenders and borrowers.
- DVP (Delivery versus Payment) settlement is generally prioritised above FOP (Free of Payment) settlement by market participants and intermediaries, which creates challenges for efficient securities lending settlement. Pro-active intraday collateral management for both DVP and FOP settlements will help improve liquidity and reduce same day loan settlement fails caused by mismatched settlement deadlines.
- Inventory management of borrowers can be complex and thus as previously outlined, we see the majority of fails in the return of loans, where trading based on contractual (assumed) settlement versus actual settlement occurs. As a result, the market has worked on best practice to allow borrowers to return loans on a T+0 basis where possible, allowing them to book returns based on actual availability of stock. This change in behaviour as well as the increase of partial returns on a T+0 basis has also improved the settlement rates for return legs, as borrowers can manage their inventory accordingly. The introduction of auto-partial functionality between lenders and borrowers would have a dramatic impact on improving settlement fails of this nature. However, the omnibus structure of many agent lenders as of today can be complex. ISLA has issued best practice to say that auto-partial facilities should be applied by default for failing securities lending trades where its use does not disadvantage either party.

Further details on Settlement Discipline Impact to Securities Lending can also be found in our paper³ that provides recommendations, guidance, and best practices to the industry to improve settlement efficiency in our market.

³ <https://www.islaemea.org/wp-content/uploads/2019/03/ISLACSDRSettlement-Discipline-Impact-to-Securities-LendingPhase-2.pdf>

Q18: What tools should be used in order to improve settlement efficiency? Please provide examples and data, as well as arguments to justify your answer.

Please see further detail in response to Question 17.

Q19: What are your views on the appropriate level(s) of settlement efficiency at CSD/SSS level, as well as by asset type? Please provide data and arguments to justify your answer.

ISLA believes that to some degree settlement fails are a necessary pressure valve. The original purpose of the introduction of the penalty regime was to increase market stability and reduce risk in the settlement system by seeing a sustainable improvement in settlement fails. ISLA feels that this has been achieved by the market through the adoption of new technologies and increased automated processes by market participants, as well as increased focus on resolving the root causes of fails. ISLA also supports the statements made by ESMA in this consultation paper that acknowledges ‘100% settlement efficiency may not be a realistic target, and that some flexibility in the penalty mechanism should be tolerated’. ISLA would not recommend that ESMA propose an appropriate level of settlement efficiency but rather ensure that a sustainable reduction in settlement fails is maintained by the market, with evidence of improvement over a period of time. Again, ISLA would like to reiterate that the outcome of the current regime cannot be fully assessed within a short period of time, taking into account that several external factors since its implementation have impacted EU settlement efficiency rates. Any appropriate level that is proposed should ensure that it doesn’t introduce additional risk to market liquidity.

Q20: Do you think the penalty rates by asset type as foreseen in the Annex to Commission Delegated Regulation (EU) 2017/389 are proportionate? Please provide data and arguments to justify your answer.

In order to assess the proportionality, as raised above, it is important that the cost of borrowing to remediate a failure, remains lower than the cost of the penalty imposed as discussed further in response to Question 42.

Progressive penalty rates

Q22: In your view, would progressive penalty rates that increase with the length of the settlement fail be justified? Please provide examples and data, as well as arguments to justify your answer.

ISLA members do not support the introduction of progressive penalty rates in any form (both options 1 and 2) for the following reasons:

- There has not been sufficient time since the implementation of the regime in 2022 to be able to accurately determine its effectiveness on reducing settlement fails.
It is acknowledged in paragraph 45 that there is a ‘*need to have a longer observation period since the start of the application of cash penalties [in order] to have a meaningful assessment of the impact of cash penalties on settlement efficiency, as well as to allow for sufficient time to ensure an adequate level of data quality regarding the settlement fails reports.*’ This analysis must be performed before any potential changes to the penalty regime are contemplated.
It is important to acknowledge, that as part of the analysis, ESMA should establish whether fails are attributable to behavioural issues or structural issues, with the assumption that further changes to the penalty rates will not impact fails resulting from structural issues. It is important for ESMA to distinguish

between these two causes of fails when examining whether an increase in penalty rates would even be effective.

- The introduction of progressive penalty rates will significantly increase operational complexity for all market participants. Both proposals from ESMA outlining substantial changes to the methodology and calculation of penalties is undesirable for the industry that has only recently implemented the original regime. This could act as a barrier to investment in the EU, going against the CMU's objective to increase the competitiveness of Capital Markets.
- The additional complexity would further exacerbate settlement failure with a potential move to an accelerated T+1 settlement cycle. It should be noted that an overhaul to the penalty regime would take considerable resource away from a focus on T+1, although it is acknowledged by the industry that in order to be successful in accelerating the settlement cycle, there must also be high settlement rates across the EU.
- The introduction of progressive penalty rates will significantly increase costs for all market participants. A significant rebuild will require considerable additional investment, which is disproportionate and unnecessary when there has been no evidence to suggest that the current regime is ineffective.
- Introducing either Option 1 or 2 for progressive penalty rates could reduce EU market liquidity and impede a smooth functioning stable market.

Q23: What are your views regarding the introduction of convexity in penalty rates as per the ESMA proposed Option 2 (settlement fails caused by a lack of liquid financial

Please see response to Question 22 - ISLA members do not support the introduction of progressive penalty rates in any form

Q24: Would it be appropriate to apply the convexity criterion to settlement fails due to a lack of illiquid financial instruments as well? Please justify your answer by providing quantitative examples and data if possible.

Please see response to Question 22 - ISLA members do not support the introduction of progressive penalty rates in any form

Q25: What are your views regarding the level of progressive penalty rates:

- a) as proposed under Option 1?
- b) as proposed under Option 2?

Please see response to Question 22 - ISLA members do not support the introduction of progressive penalty rates in any form.

Q26: If you disagree with ESMA's proposal regarding the penalty rates, please specify which rates you believe would be more appropriate (i.e., deterrent, and proportionate, with the potential to effectively discourage settlement fails, incentivise their rapid resolution and improve settlement efficiency). Please provide examples and data, as well as arguments to justify your answer. If relevant, please provide an indication of further proportionality considerations, detailed justifications and alternative proposals as needed.

ISLA would support a recalibration of rates incrementally, per asset type under the current regime i.e., not progressive, if ESMA was able to sufficiently evidence via the cost benefit analysis that the current rates were not contributing to a sustainable improvement in settlement rates over time.

However, ISLA would like to note that Securities Borrowing/ Lending transactions are (as agreed by ESMA) a useful tool for the cash market to utilise, to limit their settlement fails and thus, even without a penalty regime in place, there is already a voluntary mechanism in place i.e. in the event of a failing equity sale, a market participant may choose to pay for borrowed securities to facilitate that sale. This is already an additional premium to ensure settlement and to remain efficient. Therefore, the natural cost of failing should take into account the total cost of borrowing. More on this can be found in response to question 42.

Q28: What costs and benefits do you envisage related to the implementation of progressive penalty rates by asset type (according to ESMA’s proposed Options 1 and 2)? Please use the table below. Where relevant, additional tables, graphs and information may be included in order to support some of the arguments or calculations presented in the table below.

Progressive penalty rates (by asset type) - ESMA’s proposal Option 1	Please see ESMA’s proposed Option 1 in Section 5.3 of this CP.	
	Qualitative description	Quantitative description/ Data
Benefits	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Compliance costs: - One-off - On-going	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Costs to other stakeholders	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Indirect costs	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Progressive penalty rates (by asset type) - ESMA’s proposal Option 2	Please see ESMA’s proposed Option 2 in Section 5.3 of this CP.	
	Qualitative description	Quantitative description/ Data
Benefits	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Compliance costs: - One-off - On-going	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Costs to other stakeholders	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Indirect costs	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

Please see response to Question 22 - ISLA members do not support the introduction of progressive penalty rates in any form

Q29: Alternatively, do you think that progressive cash penalties rates should take into account a different breakdown than the one included in ESMA’s proposal above for any or all of the following categories:

- (a) asset type;**
- (b) liquidity of the financial instrument;**
- (c) type of transaction;**
- (d) duration of the settlement fail.**

If you have answered yes to the question above, what costs and benefits do you envisage related to the implementation of progressive penalty rates according to your proposal? Please use the table below. Where relevant, additional tables, graphs and information may be included in order to support some of the arguments or calculations presented in the table below.

Progressive penalty rates – respondent's proposal (if applicable)		
	Qualitative description	Quantitative description/ Data
Benefits	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Compliance costs: - One-off - On-going	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Costs to other stakeholders	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Indirect costs	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

Please see response to Question 22 - ISLA members do not support the introduction of progressive penalty rates in any form.

Q30: Another potential approach to progressive penalty rates could be based not only on the length of the settlement fail but also on the value of the settlement fail. Settlement fails based on instructions with a lower value could be charged a higher penalty rate than those with a higher value, thus potentially creating an incentive for participants in settling smaller value instructions at their intended settlement date (ISD). Alternatively, settlement fails based on instructions with a higher value could be charged a higher penalty rate than those with a lower value. In your view, would such an approach be justified? Please provide arguments and examples in support of your answer, including data where available. What costs and benefits do you envisage related to the implementation of this approach? Please use the table below. Where relevant, additional tables, graphs and information may be included in order to support some of the arguments or calculations presented in the table below.

Progressive penalty rates – based on the length and value of the settlement fail	Settlement fails based on lower value settlement instructions could be charged a higher penalty rate than those based on higher value settlement instructions		Settlement fails based on higher value settlement instructions could be charged a higher penalty rate than those based on lower value settlement instructions	
	Qualitative description	Quantitative description/ Data	Qualitative description	Quantitative description/ Data
Benefits	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Compliance costs: - One-off - On-going	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Costs to other stakeholders	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Indirect costs	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

Please see response to Question 22 - ISLA members do not support the introduction of progressive penalty rates in any form

Q31: Besides the criteria already listed, i.e., type of asset, liquidity of the financial instruments, duration and value of the settlement fail, what additional criteria should be considered when setting proportionate and effective cash penalty rates? Please provide examples and justify your answer.

ISLA does not support a change to the current methodology for calculating penalty rates.

Q32: Would you be in favour of the use of the market value of the financial instruments on the first day of the settlement fail as a basis for the calculation of penalties for the entire duration of the fail? ESMA would like to ask for the stakeholders' views on the costs and benefits of such a measure. Please use the table below. Where relevant, additional tables, graphs and information may be included in order to support some of the arguments or calculations presented in the table below.

Use the market value of the financial instruments on the first day of the settlement fail as a basis for the calculation of penalties for the entire duration of the fail		
	Qualitative description	Quantitative description/ Data
Benefits	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

Compliance costs: - One-off - On-going	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Costs to other stakeholders	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Indirect costs	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

ISLA does not support a change to the current methodology for calculating penalty rates.

Q33: How should free of payment (FoP) instructions be valued for the purpose of the application of cash penalties? Please justify your answer and provide examples and data where available.

ISLA does not support a change to the current methodology for calculating penalty rates.

Q34. Do you think there is a risk that higher penalty rates may lead to participants using less DvP and more FoP settlement instructions? Please justify your answer and provide examples and data where available.

No, ISLA does not believe that a higher penalty rate will impact whether participants instruct DvP vs FoP.

Q39: To ensure a proportionate approach, do you think the penalty mechanism should be applied only at the level of those CSDs with higher settlement fail rates? Please provide examples and data, as well as arguments to justify your answer. If your answer is yes, please specify where the threshold should be set and if it should take into account the settlement efficiency at:

- a) CSD/SSS level (please specify the settlement efficiency target);
- b) at asset type level (please specify the settlement efficiency target); or
- c) other (please specify, including the settlement efficiency target).

No, ISLA believes that a level playing field should be kept in order to reduce fragmentation across the EU for the facilitation of cross border transactions.

Q41: Do you think penalty rates should vary according to the transaction type? If yes, please specify the transaction types and include proposals regarding the related penalty rates. Please justify your answer and provide examples and data where available. Please specify what costs and benefits you envisage related to the implementation of your proposal. Please use the table below. Where relevant, additional tables, graphs and information may be included in order to support some of the arguments or calculations presented in the table below.

Applying penalty rates by transaction types		
	Qualitative description	Quantitative description/ Data

Benefits	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Compliance costs: - One-off - On-going	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Costs to other stakeholders	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Indirect costs	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

ISLA does not support further changes to the current regime and thus does not support differing penalties by transaction type.

Q42: Do you think that penalty rates should depend on stock borrowing fees? If yes, do you believe that the data provided by data vendors is of sufficient good quality that it can be relied upon? Please provide the average borrowing fees for the 8 categories of asset class depicted in Option 1. (i.e., liquid shares, illiquid shares, SME shares, ETFs, sovereign bonds, SME bonds, other corporate bonds, other financial instruments).

As stated in response to previous questions, ISLA supports ESMA’s statements made in the consultation paper that note ‘to be effective and efficient, the cash penalty should be unequivocally more expensive than remedial action, like borrowing the securities or funding the cash’ as well as stating that ‘securities borrowing is usually the easier way to prevent or resolve a settlement fail caused by the lack of securities.

ISLA does not believe however, that penalty rates should depend on the stock borrowing fees, as there are other factors that need to be taken into consideration when examining the true cost of borrowing. Direct costs other than borrowing fees can include; transaction fees, collateral costs, cost of funding and borrower creditworthiness. For example, the cost of collateral and taking into account all of the exposure at default (EAD) and Risk Weighted Assets (RWA) based upon the different categorisations of what has been sourced as collateral, has to be taken into account. The cost of funding is also linked to interest rates, where there is strong correlation between stock borrowing charges.

In addition, there are times when there may not be availability of stock to borrow to remediate a fail particularly for less liquid securities. For those a ‘special’ rate would be applied and thus it would not be appropriate to link the penalty charge to the cost of borrowing in this instance. Furthermore, securities lending transactions usually have minimum terms/ durations for which they can be borrowed, that may not coincide with the fail.

ESMA also state that in order for the penalty regime to be effective it ‘should be certain in terms of calculation and forecasting, to facilitate cost/benefit calculations in terms of remedial investments.’ As there are several things that need to be taken into account to determine the cost of borrowing, linking the penalty rates to the stock lending fee alone would cause significant complexity for the market in terms of certainty of calculation, as well as cause a potential significant increase in bilateral claims made between parties. If you take all of the components that are built into the average cost of borrowing, this will always be variable and thus you will lack certainty in calculation, if average lending fees were to be used, without incorporating the other various costs.

As a result of Basel III, market participants will need to be more aware of the capital costs associated with their transactions. Whether you conduct your securities lending transactions via OTC or through a CCP or via a pledge versus a title transfer structure, can impact the cost of capital associated with the transaction.

ISLA also does not believe that the data provided by data vendors is of sufficient good quality that it can be relied upon to provide the true cost of borrowing, as the fee on transactions take into account a combination of factors as described above that are variable. All fees are negotiated on a bilateral basis. Data aggregators can only provide averages based upon the data they are provided with by market participants and thus, it cannot be deemed a 'reliable source'. Data providers offer pricing information however, there is not one golden source of information.

ISLA would like to stress that we do not believe the penalty mechanism should be fundamentally revised before significant time has passed, in order to conduct a full impact assessment of the regime that is in place today and understand its effectiveness. This also comes in light of the Commission and ESMA's desire to accelerate settlement from a T+2 to T+1 basis in the near future. Having fundamental changes to CSDR becoming effective in a similar time frame could cause significant market disruption.

Q43: Do you have other suggestions to simplify the cash penalty mechanism, while ensuring it is deterrent and proportionate, and effectively discourages settlement fails, incentivises their rapid resolution and improves settlement efficiency? Please justify your answer and provide examples and data where available. Please specify what costs and benefits you envisage related to the implementation of your proposal. Please use the table below. Where relevant, additional tables, graphs and information may be included in order to support some of the arguments or calculations presented in the table below.

Respondent's proposal (if applicable)		
	Qualitative description	Quantitative description/ Data
Benefits	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Compliance costs: - One-off - On-going	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Costs to other stakeholders	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Indirect costs	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

ISLA stresses the importance of a simple cash penalty mechanism that is easy to apply and note that any reform should not add operational complexity.

Q44: Based on your experience, are settlement fails lower in other markets (i.e., USA, UK)? If so, which are in your opinion the main reasons for that? Please also specify the scope and methodology used for measuring settlement efficiency in the respective third-country jurisdictions.

ISLA notes that the US/UK and EU settlement infrastructures differ considerably in several key aspects, reflecting their unique historical, legal, and regulatory frameworks and thus comparing settlement efficiency between the EU and the US/UK would be imprecise. Differences include:

- Several CSD's across EU Member States vs A much smaller No. of financial infrastructures/ CSD's
- Less central clearing in the EU vs the US/UK
- Structural barriers in the EU for cross border transactions that are not apparent in the US/UK

- Differing market practices, for example, in the US, delivery of securities is possible without matching. At the end of day, it is also possible to DK your securities and essentially start again the next day.
- Differing regulatory environments, for example around settlement finality.

Q47: What would be the time needed for CSDs and market participants to implement changes to the penalty mechanism (depending on the extent of the changes)? Please provide arguments to justify your answer.

As discussed in other areas of this consultation, ISLA does not support an overhaul of the current penalty mechanism in any form before there has been a cost benefit analysis performed by ESMA, on the effectiveness of the current regime. However, ISLA would like to note that if a significant overhaul to the regime was recommended, ESMA would need to allow time for restructuring of systems of market participants to account for the recalibrated penalties, with a period of testing, taking into account lessons learned from the previous implementation. There would also be significant additional cost required by market participants to facilitate this change, which could cause unnecessary market stress, particularly where this coincides with a potential move to a T+1 settlement cycle.