



# The Impact of CSDR Settlement Discipline on SIX x-clear

SIX Securities Services Red Paper

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# 1. Client Essentials

CSDR aims to improve securities settlement in the European Union, by harmonising certain aspects of the settlement cycle and settlement discipline and providing a set of common requirements for CSDs. In particular, CSDR intends to reduce failures of securities transactions by introducing a standardized penalty and buy-in regime. The details are regulated in the Regulatory Technical Standards on Settlement Discipline (**SD RTS**). CSDR not only impacts CSDs but all parties involved in the settlement lifecycle. As a provider of clearing-services in the EU, SIX x-clear Ltd (SIX x-clear) is therefore affected by CSDR.

SIX x-clear already ensures the highest degree of settlement efficiency for its Members. While ensuring compliance with CSDR, SIX x-clear strives to maintain this efficiency and high settlement service level for its clients in EU/EEA interoperating markets. SIX x-clear has therefore initiated a taskforce with its Co-CCPs to discuss and analyze the CSDR settlement discipline regime and to align its solution with interoperating Co-CCPs and ensure an efficient collaboration.

As a result of CSDR's settlement discipline regime, SIX x-clear introduces the following changes:

Topic	Operational impact	Cost impact
Matching Process	Yes	No
Matching Process Trade Date	Potentially, see chapter 3.1	No
Matching Process Transaction Type	Potentially, see chapter 3.2	No
Matching Process Place of Clearing	Yes, see chapter 3.3	No
Matching Process Place of Trading	Potentially, see chapter 3.4	No
Cash Penalties Late matching penalty	Yes, see chapter 4.1	Yes, see chapter 4.1
Cash Penalties Late settlement penalty	Yes, see chapter 4.2	Yes, see chapter 4.2
Cash Penalties Calculation of penalties	Yes, see chapter 4.3	Yes, see chapter 4.3
Cash Penalties Appeal	No	No
Buy-in Process	Yes, see chapter 5	Yes, see chapter 5
Cash Compensation Process	Yes, see chapter 6	Unclear as of today, see chapter 6

SIX x-clear is investing great efforts to support its Members in their preparation for the changes resulting from the CSDR settlement discipline regime as far as they relate to CCPs. SIX x-clear is keen to help its Members master the transition as smoothly as possible, and will strive to answer any questions Members may have as promptly as possible.

## 2. Regulatory Background

SIX Group Ltd (SIX) is domiciled in Switzerland and thus governed as a company by Swiss law. In some areas of business, however, European Union (EU) regulation applies, either directly or indirectly. In order to provide a framework for smooth business practice, SIX therefore often pro-actively adapts certain aspects of EU regulation.

Regulation (EU) No. 909/2014 on improving securities settlement in the European Union and on central securities depositories (CSDR) and the corresponding Regulatory Technical Standards (RTS) is one of the key regulations adopted in the aftermath of the 2008 financial crisis. Among others, one of the aims of CSDR is to harmonize certain aspects of the settlement cycle and settlement discipline and to provide a set of common requirements for central securities depositories (CSDs) operating securities settlement systems across the EU. The final provisions of CSDR with regard to settlement discipline are set to become effective on 01 February 2022.

As a provider of clearing services, SIX x-clear is affected by CSDR. However, as a Swiss company, SIX x-clear is not directly subject to CSDR but has to comply with the equivalent Swiss regulation, the Swiss Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (FMIA or FinfraG). FMIA has been in effect since 1 January 2016 and therefore any necessary changes were introduced in the course of 2015 and 2016. The Swiss Financial Market Supervisory Authority (FINMA) confirmed that SIX x-clear complies with FMIA when it awarded SIX x-clear its CCP license on 28 March 2018.

As a CCP, SIX x-clear clears a range of trading venues for Clearing Members whose trades will settle in the EU/EEA area. SIX x-clear wishes to continue offering its services in the EU and EEA. Therefore, SIX x-clear aims to fulfill its duties as a clearing service provider under CSDR and support the EU and EEA CSDs in which it participates to fulfill their legal obligations under CSDR, thereby ensuring the highest degree of settlement efficiency for SIX x-clear's Members. SIX x-clear also aims to align its solution with interoperating Co-CCPs in order to maintain efficiency and a high settlement service level for our clients in EU/EEA interoperating markets. SIX x-clear is therefore affected by the EU regulation and changes are being, as a result, introduced in the following areas.



# 3. Impact on Matching Process & Settlement Instructions

As participants in CSDs, CCPs must follow the matching criteria for settlement instructions as laid out by CSDR and the corresponding RTS. CCPs and their Clearing Members are particularly impacted by the following matching fields: Trade Date, Transaction Type, Place of Clearing and Place of Trading.

## 3.1 Trade Date

Article 5(3) SD RTS states that the trade date is a mandatory matching field for settlement instructions. This means that CCPs and their Clearing Members are obliged to state the trade date in their settlement instructions.



### Implementation by SIX x-clear and impact on Members

As SIX x-clear utilizes a trade date netting model (TDN), Members should always populate the trade date field with the day of trading. SIX x-clear already sends trade date information in all of their own settlement instructions as well as in Members' instructions that are created by SIX x-clear under a Power of Attorney (PoA) agreement. For Members that do not have a PoA agreement in place with SIX x-clear, the Member itself or the Member's settlement agent will be responsible for populating the correct trade date in the settlement instruction. **Action might be required by individual Members.**

## 3.2 Transaction Type

Article 5(4) SD RTS mandates a transaction type indication for all settlement instructions. This field serves to monitor and report settlement fails as required by Article 13(1)(d) SD RTS.



### Implementation by SIX x-clear and impact on Members

SIX x-clear already indicates an appropriate transaction type in all of their own settlement instructions as well as in Members' instructions that are created by SIX x-clear under a PoA agreement. The transaction type for cleared transactions is "TRAD". For Members that do not have a PoA agreement in place with SIX x-clear, the Member itself or the Member's settlement agent will be responsible for populating the appropriate transaction type in the settlement instruction. **Action might be required by individual Members.** The full list of values that are and will be used by SIX x-clear as transaction type can be found in the Business Partner Specifications – Volume 5 (SIX SIS Private Site > Business Partner Specifications).

### 3.3 Place of Clearing

A CCP needs to identify its own transactions by specifying either the BIC or LEI in the field “place of clearing” (PoC). PoC is not a mandatory matching field. It is SIX x-clear’s understanding that the PoC field is required by CSDR, however, not all CSDs will support or use this field.



#### Implementation by SIX x-clear and impact on Members

Wherever applicable, SIX x-clear will use BIC to specify the PoC in its own settlement instructions as well as in Members’ instructions that are created by SIX x-clear under a PoA agreement. For Members that do not have a PoA agreement in place with SIX x-clear, the Member itself or the Member’s settlement agent will be responsible for populating the PoC in the settlement instruction with either SIX x-clear’s BIC or LEI (if applicable). **Action will be required by all Members, which do not have a PoA agreement in place with SIX x-clear.**

### 3.4 Place of Trading

According to Article 13(1)(e) SD RTS, CSDs must also collect the place of trading (PoT) where applicable. SIX x-clear clears and nets trades executed on multiple trading venues. Currently, SIX x-clear sends such net transactions to CSDs with the PoT “VARI” (for various places of trading).

Since transactions in SME growth markets are subject to different penalties and buy-in regimes under CSDR, CCPs need to create separate netted instructions for SME growth markets and non-SME growth markets. Only when both settlement instructions (the CCP leg as well as the Member leg) show the same SME growth market PoT code shall the reduced penalty rate applicable to SME growth market transactions be applied by the CSD.

For transactions from non-SME growth markets SIX x-clear will continue to populate the PoT in the same way as today. This means that SIX x-clear will always use “VARI” as PoT in cases where the Member has opted for cross-venue netting. This rule is adhered to irrespective of the number of trading venues an instrument was actually traded on. For Members applying single-venue netting or settling on a gross basis, SIX x-clear will indicate the exact PoT in the settlement instruction to the CSD. This means the universally recognized Market Identifier Code (MIC) as shown in table 1 will be populated in the PoT field.

An SME growth market transaction<sup>1</sup> will be identified on the basis of the PoT. SIX x-clear has agreed with its Co-CCPs to use the actual Segment MIC (the segment in which the transaction took place) as PoT. This also means that no cross-venue netting will be applied for SME growth market transactions.

SIX x-clear will continue to monitor developments closely in the area of MICs used in the market. Should a generic MIC for SME growth markets be created (i.e. equivalent to the VARI code for SME growth markets), SIX x-clear will consider the introduction of cross-venue netting for SME growth market transactions.



#### Implementation by SIX x-clear and impact on Members

SIX x-clear will populate the correct PoT in its own settlement instructions as well as in Members’ instructions that are created by SIX x-clear under a PoA agreement. For Members that do not have a PoA agreement in place with SIX x-clear, the Member itself or the Members’ settlement agent will be responsible for populating the correct PoT in the settlement instruction.

For non-SME growth market transactions, the population of the PoT will remain unchanged. Settlement instructions related to SME growth market transactions will need the actual segment MIC of that growth market as PoT.

**Action might be required by all Members, which do not have a PoA agreement in place with SIX x-clear.**

Please use the table on page 7 for reference. Members with a cross-venue netting setup should refer to column “SI: Cross Venue Nett.”. Members with single-venue netting or a gross settlement setup should refer to column “SI: Single Venue Nett. & Gross Sett”.

<sup>1</sup> ESMA determines the group of SME growth markets. The list of current authorized SME Growth Market Trading Venues can be found on the ESMA website: [https://registers.esma.europa.eu/publication/searchRegister?core=esma\\_registers\\_upreg](https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_upreg)  
The filter in selection field “SME” needs to be set to “YES” in order to see the full list. The MIC can be found in the detailed view “More Info”.

Description	Operating or Segment	SME Segment	Operating MIC	Segment MIC	Trade Reporting to Members	SI: Single Venue Nett. & Gross Sett.	SI: Cross Venue Nett.
Aquis Exchange Europe	O	N	AQEU	AQEU	AQEU	AQEU	VARI
Aquis Exchange PLC	O	N	AQXE	AQXE	AQXE	AQXE	VARI
CBOE Europe – BXE Order Books (Bate)	S	N	BCXE	BATE	BATE	BATE	VARI
CBOE Europe – CXE Oder Books (Chix)	S	N	BCXE	CHIX	CHIX	CHIX	VARI
CBOE Europe – DXE Order Books (NL)	S	N	CCXE	CEUX	CEUX	CEUX	VARI
Sigma X MTF	O	N	SGMX	SGMX	SGMX	SGMX	VARI
Sigma X Europe	O	N	SGMU	SGMU	SGMU	SGMU	VARI
Turquoise Europe	O	N	TQEX	TQEX	TQEX	TQEX	VARI
Turquoise Europe – Dark	S	N	TQEX	TQEM	TQEX	TQEX	VARI
Turquoise Plato Europe – Lit Auctions	S	N	TQEX	TQEA	TQEX	TQEX	VARI
Turquoise	O	N	TRQX	TRQX	TRQX	TRQX	VARI
Turquoise Plato	S	N	TRQX	TRQM	TRQX	TRQX	VARI
Turquoise Lit Auctions	S	N	TRQX	TRQA	TRQX	TRQX	VARI
Turquoise Nylon Cash Order Book	S	N	TRQX	TRQB	TRQX	TRQX	VARI
Boerse Berlin Equiduct Trading	S	N	XBER	XEQT	XEQT	XEQT	VARI
Nasdaq Copenhagen A/S	O	N	XCSE	XCSE	XCSE	XCSE	VARI
First North Denmark – SME Growth Market	S	Y	XCSE	DSME	DSME	DSME	DSME
Nasdaq Helsinki Ltd	O	N	XHEL	XHEL	XHEL	XHEL	VARI
First North Finland – SME Growth Market	S	Y	XHEL	FSME	FSME	FSME	FSME
Blockmatch	S	N	XIEL	BLOX	BLOX	BLOX	VARI
London Stock Exchange (LSE)	O	N	XLON	XLON	XLON	XLON	VARI
London Stock Exchange – MTF	S	N	XLON	XLON	XLON	XLON	VARI
London Stock Exchange – AIM MTF	S	Y	XLON	AIMX	AIMX	AIMX	VARI <sup>2</sup>
Euronext Expand Oslo (Oslo Axess)	S	N	XOSL	XOAS	XOAS	XOAS	VARI
Oslo Bors	O	N	XOSL	XOSL	XOSL	XOSL	VARI
Euronext Growth – Oslo	S	N	XOSL	MERK	MERK	MERK	VARI
First North Sweden	S	N	XSTO	FNSE	FNSE	FNSE	VARI
Nasdaq Stockholm AB	O	N	XSTO	XSTO	XSTO	XSTO	VARI
First North Sweden – SME Growth Market	S	Y	XSTO	SSME	SSME	SSME	SSME
SIX Swiss Exchange	O	N	XSWX	XSWX	XSWX	XSWX	VARI
UBS MTF Limited	O	N	XUBS	XUBS	XUBS	XUBS	VARI
Traiana Inc	O	N	TRAI	TRAI	TRAI	TRAI	VARI

**Table 1:** MICs used by SIX x-clear in reporting and creation of settlement instructions. Naming conventions according to ISO 10383 MIC list.

<sup>2</sup> AIMX may be considered an SME growth market but will not be treated as an SME growth market under CSDR since the UK confirmed they will not be implementing the CSDR Settlement Discipline Regime.

# 4. Cash Penalties

CSDR introduces a standardized penalty regime that all CSDs must enforce towards their participants in order to encourage them to match and settle transactions on time. As direct or indirect participants at CSDs, SIX x-clear as well as its Members are affected by this.

## 4.1 Late settlement penalty

Settlement instructions that are matched but fail to settle at a CSD on and after ISD are subject to cash penalties under CSDR. Cash penalties will apply to all failed settlement instructions, including cleared transactions. A cash penalty due to a failed settlement instruction will be debited from the failing participant and credited to the non-failing participant.

## 4.2 Late matching penalty

Article 16(3) SD RTS states that when settlement instructions are matched after the Intended Settlement Date (ISD), cash penalties for the period between ISD and the business day prior to the matching day shall be paid by the last participant who has entered or modified the relevant settlement instruction. Consequently, penalties do not only apply to the seller of a security. Under CSDR, receiving parties may also incur a late matching penalty if they were late with their settlement instruction.

## 4.3 Calculation of penalties

The methodology used to calculate penalties is provided by CSDR and the Commission delegated Regulation (EU) 2017/389 of 11 November 2016 as regards the parameters for the calculation of cash penalties for settlement fails (RTS on Penalty Calculation). CSDs must ensure the correct calculation of penalties. Participants failing to deliver securities on and after ISD will pay an ad valorem penalty on the value of the undelivered securities.

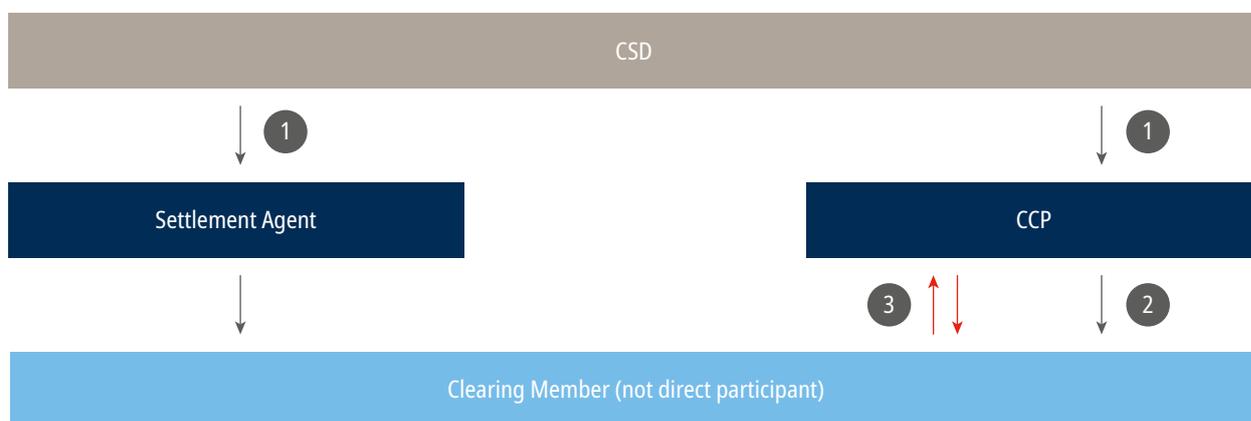
## 4.4 Reporting and charging of Penalties: Operational Procedures

CSDR requires CSDs to perform all calculations of CSDR penalties – this will be the sole responsibility of CSDs for cleared and non-cleared transactions. The calculation and the reporting of CSDR related cash penalties is done on a daily basis. All the penalties are reported directly from the CSD to the CSD participants (including CCPs or their settlement agents). The penalty calculation period is one calendar month.

CSDs will be using SEMT.044 or MT537 messages or CSV files for their reporting (to be decided by each CSD). For each business day, CSDs will send a daily penalty report with new, amended, removed or re-included penalties. SIX x-clear will report all penalties that are related to a transaction cleared by SIX x-clear to the Clearing Members as received from the penalty computing CSD. All penalties will be reported to the Clearing Members, regardless of whether the penalties fall under Article 19 SD RTS or Article 17 SD RTS.

The collection and distribution of cash penalties will be done once a month. The handling of collection and distribution of penalties in one uniform process for cleared and non-cleared transactions (delegation of obligations under Article 19 SD RTS from CCPs to CSDs) has unfortunately been abandoned until further notice by the EU Regulators. Although SIX x-clear is still in favour of a unified process as it would be beneficial for the whole market, the EU authorities were unable to give CSDs and CCPs sufficient legal comfort in time for the delegation to be feasible for the implementation by 01 February 2022. CSDs and CCPs have therefore agreed to implement Article 17 and 19 SD RTS as specified by the law.

According to the Article 7(11) CSDR, cash penalties shall not apply to CSD participants which are a CCP. In these cases, Article 19 SD RTS will apply. Therefore, whenever SIX x-clear is a direct participant of the CSD Article 19 SD RTS will apply and SIX x-clear will be responsible for the collection and distribution of CSDR related penalties. Please find below a table specifying in which settlement markets SIX x-clear is a direct participant and Article 19 SD RTS applies and markets where SIX x-clear is an indirect participant and Article 17 SD RTS will apply.



- 1 Daily and monthly report of penalties from the CSD to its direct participants
- 2 Monthly report of penalties from the CCP to its Clearing Members
- 3 CCP will collect and distribute penalty amounts from/to Members for transactions/penalties falling under Article 19 SD RTS)

Note: CCP cleared transaction, Clearing Member is not direct participant at CSD and CCP is direct participant at CSD

**Figure 1:** Penalty reporting and charging process for the scenario in which one of the counterparties is a CCP and a direct participant of the CSD and the second counterparty is a Clearing Member, which is not a direct participant of the CSD.

Securities from 16 different EU/EEA markets are cleared and settled through SIX x-clear. SIX x-clear has established direct connectivity to 6 CSDs. For markets where SIX x-clear is not a direct participant, a settlement agent model is used:

Market	Connectivity	CSD / Settlement agent	Article 19 or 17 SD RTS	Entity responsible for collection/distribution of CSDR related cash penalties
Austria	Indirect	Settlement agent	17	CSD
Belgium	Indirect	Settlement agent	17	CSD
Czech Republic	Indirect	Settlement agent	17	CSD
Denmark	Direct	VP Denmark	19	CCP (SIX x-clear)
Spain	Direct	Iberclear	19	CCP (SIX x-clear)
Finland	Direct	Euroclear Finland	19	CCP (SIX x-clear)
France	Indirect	Settlement agent	17	CSD
Germany	Indirect	Settlement agent	17	CSD
Hungary	Indirect	Settlement agent	17	CSD
Ireland	Indirect	Settlement agent	17	CSD
Italy	Direct	Monte Titoli	19	CCP (SIX x-clear)
Netherlands	Indirect	Settlement agent	17	CSD
Norway	Direct	Euronext VPS Norway	19	CCP (SIX x-clear)
Portugal	Indirect	Settlement agent	17	CSD
Sweden	Direct	Euroclear Sweden	19	CCP (SIX x-clear)
Euroclear Bank	Indirect	Settlement agent	17	CSD

**Table 2:** SIX x-clear's supported settlement markets including type of connectivity

#### 4.4.1 Penalty calendar

As other CCPs, SIX x-clear will align the management of penalties to ECSDA's monthly timetable as described in Chapter 2 of the ECSDA CSDR Penalties Framework, wherever possible. SIX x-clear will therefore trigger the reporting, collection and redistribution of penalties as follows:

- 14th Business Day: Monthly report of aggregated penalty amounts will be delivered;
- 17th Business Day: Aggregated penalty amounts will be charged and redistributed to the relevant Clearing Members.

The Business Day refers to the calendar agreed upon between the interoperable CCPs.

#### 4.4.2 Penalty reporting

SIX x-clear will provide its Members with a wide range of reporting options: there will be a daily report including all penalty details, a monthly penalty reporting including all penalty details as well as a monthly aggregated report indicating all aggregated amounts that are subject to be credited or debited in the payment process.

##### **Option 1: Daily penalty report – reports the daily penalty statement details**

The daily penalty report will be offered in MT537 as well as CSV format. The SWIFT format report will be on GCM/ICM level, however, the basic information on penalty level and on the involved NCMs (if any) will be present in the report, including instruction references. The CSV format report will be limited to the most important penalty attributes, such as penalty amount, date, reference and instrument ID.

The daily penalty reports will contain all active penalties, both those charged by the CSDs (reported with :17B::CMPU//N, or with the corresponding aggregation indicator in the CSV report respectively) as well as those managed by the CCP (reported with :17B::CMPU//Y, or with the corresponding aggregation indicator in the CSV report respectively).

##### **Option 2: Monthly aggregated penalty report – reports monthly penalty statements with the cumulative net amount of all the (active) penalties received for the previous penalty period (previous month)**

The monthly aggregated penalty statement will be offered in MT537 as well as CSV format. The report will be on GCM/ICM level and will indicate the net penalty amount (Global Net Amount) per penalty currency per market. The report will also contain all the individual active penalty transactions, indicating the respective NCM (if any) as well as the transaction reference and net reference of the underlying transaction as bilaterally known between the Clearing Member and SIX x-clear (and not a reference known in the market). The SWIFT format report will additionally contain the aggregated net penalty amount per NCM per penalty currency per market in the underlying repeating sub-blocks of the message. The CSV format reports will be limited to the most important attributes, such as penalty amount, date, reference and instrument details.

The monthly aggregated penalty reports will contain all active penalties, both those charged by the CSDs (reported with :17B::CMPU//N, or with the corresponding aggregation indicator in the CSV report respectively) as well as those managed by the CCP (reported with :17B::CMPU//Y, or with the corresponding aggregation indicator in the CSV report respectively). As opposed to the daily MT537, the monthly aggregated MT537 will neither have the penalty calculation details nor the transaction details blocks. It will, however, carry the individual penalty common reference assigned by the CSD and the reference to the underlying failed transaction as bilaterally known the Clearing Member and SIX x-clear.

##### **Option 3: Monthly pre-advice report – reports the pre-advice statements for the penalty bookings**

The monthly penalty “pre-advice” report will be offered in MT537 as well as CSV format and will be shared on the 14th business day of the month. The report will be on GCM/ICM level and will contain the aggregated net penalty amounts on GCM/ICM level per penalty currency per market that will be credited or debited to the Member. If applicable, the CSV format report will additionally contain the net penalty amounts per NCM and for a GCM's own transactions (if any) per penalty currency per market. These values are for information only, the aggregated amounts will be the amounts to be credited or debited on the 17th business day of the month following the previous penalty period. Compared to the monthly aggregated report (option 2), the pre-advice report will not contain any individual penalty references.

The pre-advice amounts do **not** include the penalties charged by the CSD directly (:17B::CMPU//N on the report Options 1 and 2, or with the corresponding aggregation indicator in the CSV report respectively). The aggregated amounts submitted in this report are considered final and the report serves as a pre-advice for the credit or debit payment to be expected on the 17th business day of the subsequent month.

Daily	End of month	10 days of subsequent month	14 days of subsequent month	17 days of subsequent month
Daily reporting of penalties computed for last business day of previous month (Report option 1)	End of period for aggregating penalty amounts	End of appeal period	Monthly aggregated amounts for penalties of previous month (Report options 2 and 3)	Payment: Collection & Redistribution

**Table 3:** Timeline for monthly CSDR Penalty Events

Members are invited to request SIX x-clear to set up the preferred reporting options. Detailed specifications of the MT537 penalty messages can be found on SIX x-clear's Business Partner Specifications, Volume 5, available at: [www.six-group.com](http://www.six-group.com) > **Login** > **Securities Services Private** > **Business Partner Specifications** > **SIX x-clear Business Partner Specifications – Volume 5** > **Member Specifications** > **Reports** > **MT 537 Statement of Pending Transactions Penalty Detail**.

Clearing Members connected to the SECOM clearing platform can choose between all of the above options. Clearing Members currently connected to the CLARA platform can subscribe to the monthly aggregated report (option 2) in CSV format. No other options are available for Clearing Members currently connected to the CLARA platform.

#### **4.4.3 Payment method for CSDR cash penalties in markets where SIX x-clear is a direct participant (Art. 19 SD RTS)**

For penalties that SIX x-clear is required to collect from and distribute to the Clearing Members under Article 19 SD RTS, SIX x-clear has implemented the use of direct debits and credits of a Member's SIX SIS cash accounts, i.e.:

- For the distribution of penalties, SIX x-clear will directly credit a Member's SIX SIS cash account..
- For the collection of penalties, SIX x-clear will directly debit a Member's SIX SIS cash account.

For Clearing Members currently connected to the CLARA platform, the collection and distribution of CSDR related cash penalties will be performed manually via invoice (debit) or credit note (credit).

Members are not required to set up dedicated cash accounts for managing the direct debit and credit of CSDR penalties. Where Members already have cash accounts in the penalty currencies with SIX SIS, Members are free to use their existing accounts or they can open up dedicated cash accounts for this purpose. This is up to each Member. Members are invited to request such a setup in due time if this is the preferred option.

Members are easily able to detect and link the MT900/910 booking confirmation to the pre-advice report by using field :20C::CPRF// of MT537. The same reference will be used in the MT900/910 booking confirmations as well as in the corresponding MT950.

#### **4.4.4 Payment method for CSDR cash penalties in markets where SIX x-clear is not a direct participant (Art. 17 SD RTS)**

With regard to penalties for which the respective CSD is in charge of collecting and distributing, Members are advised to get in touch with each CSD to understand how the penalty payment process is designed. For penalties that are treated under Article 17 SD RTS and for which SIX x-clear is one of the counterparties, SIX x-clear will be treated the same way as any other market participant and will follow the same penalty payment processes as any other market participant.

#### **4.5 CCP Penalties mismatch scenarios**

Due to market inefficiencies that are not adequately taken into account in CSDR, there are potential scenarios where SIX x-clear may be charged a greater amount of penalties than it receives in compensations. However, in SIX x-clear's view, Article 7(11) CSDR excludes CCPs from carrying such a loss.

SIX x-clear will therefore distribute these potential losses resulting from penalties mismatch scenarios among its Members, based on the settlement efficiency of each Member in the relevant markets. In order to derive the settlement efficiency per Member per market and per currency, SIX x-clear will take the ICM or GCM's total amount of all intended settlements into account and compare this to the amount of failing settlements as reported by the CSDs for which the Member is reportedly the source of the failing settlement. Upon request, SIX x-clear can provide the calculation of the settlement efficiency to its Members (including a breakdown per NCM per market per currency if applicable).

#### **4.6 Appeal**

CSDs will apply a dedicated appeal period for CSD participants to assess penalty calculations for single settlement fails. Appeals shall be lodged by CSD participants to the relevant CSD directly. Indirect participants must lodge their complaints via their settlement agent. As a CCP, SIX x-clear is not involved in the calculation of any penalties and will not be involved in any appeals activities.

## 5. The Buy-in Process

CSDR's settlement discipline regime provides a detailed buy-in process for CCP cleared transactions. After the intended settlement date, Members are granted an extension period to fulfill their obligation and during which they are charged penalties. After the expiry of the extension period of 4, 7 or 15 days depending on the type of instrument, the buy in is initiated by the CCP. The initiation of the buy-in triggers the delivery period of 4 to 7 days depending on the type of instrument. Should the buy in continue to fail, the CCP may choose to continue with the buy-in over a deferral period of 4 to 7 days or opt for cash compensation. Should the buy-in become impossible or not have been successful until the end of the deferral period, the mandatory cash compensation process is triggered. Late settlement penalties are raised until the finalization of a successful buy-in or until the payment of the cash compensation (regarding cash compensation please see next chapter).

SIX x-clear already has a functioning buy-in process. However, the new buy-in process introduced by CSDR requires amendment of SIX x-clear's current buy-in process. In order to be compliant with the regulation, SIX x-clear is introducing the buy-in process:

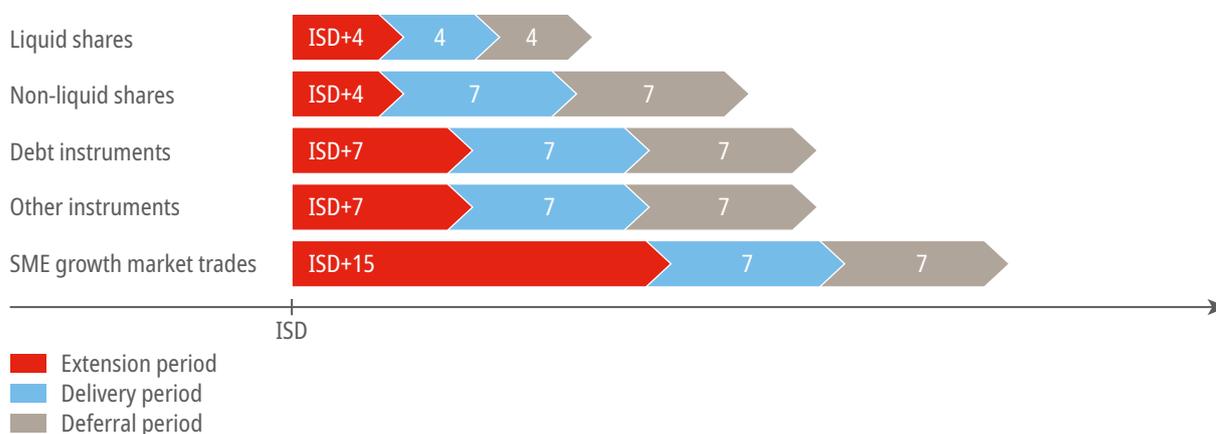


Note: The figure doesn't intend to show specific dates and days but rather to visualize the buy-in process and its period

**Figure 2:** Timeline of the buy-in process

### 1. Buy-in pre-information on last day of the extension period (no change to the current process):

Clearing Members failing to deliver securities on the last day of the extension period will receive a buy-in pre-information from SIX x-clear at 13:30 CET on the last day of the extension period. The buy-in will subsequently be executed on the following business day at 16:00 CET if the securities are not delivered prior to this cut-off time.



**Figure 3:** CSDR Buy-In Timeframes – All periods are measured in business days except the SME growth market extension period, where calendar days are noted

### 2. Buy-in notification on the first business day following the expiry of the extension period (change to the current process):

If the Clearing Member still fails to deliver securities by 16.00 CET on the first business day following the extension period, SIX x-clear will issue a buy-in notification to the failing Clearing Member to inform them about the forthcoming execution of the buy-in at 16:00 CET of the business day following the extension period.

Upon receipt of this notification, the failing Clearing Member is required to put the relevant settlement instruction on hold. After the notification has been received, the failing Clearing Member will not be allowed to deliver any securities related to the settlement instruction subject for buy-in.

If the Clearing Member fails to put the instruction on hold and securities are delivered for the settlement instruction subject for buy-in, the Clearing Member must accept buying back all securities bought in by SIX x-clear related to the buy-in notification at the buy-in price and cover any buy-in related costs incurred by SIX x-clear (this is a change to the current process). The corresponding CSDR related amendments to SIX x-clear's internal rules and regulations are planned for the end of the year 2021.



#### Implementation by SIX x-clear and impact on Members

In case a buy-in needs to be initiated, SIX x-clear will request the failing Clearing Member to set the failing instruction on hold. No securities related to the failing instruction can be delivered from the failing Clearing Member to SIX x-clear after the Clearing Member has received the request to hold the transaction.

#### Action is required by Clearing Members, which don't have a PoA agreement in place with SIX x-clear.

The Clearing Member itself or the Clearing Member's settlement agent will be responsible to ensure that they monitor and process SIX x-clear's request to put a failing instruction on hold. SIX x-clear is currently analyzing together with the relevant Clearing Members and their settlement agents whether it will be possible for SIX x-clear to put a settlement instruction on hold on behalf of a Clearing Member, which has a PoA agreement in place with SIX x-clear.

### 3. Buy-in confirmation once the buy-in has been completed (change to the current process):

Once the buy-in has been completed and the buy-in details have been received by SIX x-clear, SIX x-clear will notify the failing Clearing Member through a buy-in confirmation. The results of the buy-in will further be reported to the relevant CSD.

If the buy-in is only partially executed, the buy-in confirmation will include the quantity and price of the bought-in instruments, as well as the calculated cash compensation amount. The cash compensation process is described in Section 6.



#### Implementation by SIX x-clear and impact on Members

SIX x-clear is required to report successful buy-ins (and cash compensations) to the CSDs. SIX x-clear will also inform its failing Clearing Members of the buy-in details. In case a buy-in is only partially successful, the failing Clearing Member will be notified of the bought-in as well as the remaining amount. The failing Clearing Member is still required to keep the original failing instruction on hold. Once the bought-in shares have settled successfully and have been delivered to the receiving Member, SIX x-clear will inform the failing Clearing Member and advise on the next step regarding the remaining part of the securities (either cancellation and re-instruction of the remaining amount set on hold, or cancellation and cash compensation of the remaining amount).

#### Action is required by all Clearing Members.

The Clearing Member itself or the Clearing Member's settlement agent will be responsible to ensure that they monitor and process SIX x-clear's advice on next steps after buy-in or a partial buy-in or a cash compensation. As long as no information is received from SIX x-clear, failing Clearing Members are required to keep the original failing instruction on hold.

### 4. Settlement of the bought-in securities (change to the current process):

SIX x-clear will accept and pay for the bought-in securities on behalf of the failing Clearing Member and will deliver the bought-in securities directly to the receiving Clearing Member. The bought-in securities will be delivered from SIX x-clear to the receiving Clearing Member within the timeframe specified by SD RTS (see Figure 3).

The failing Clearing Member must continue to keep the failing transaction on hold until the bought-in securities have been delivered to the receiving Member and SIX x-clear advises the failing Clearing Member of the next action they must take.



#### Implementation by SIX x-clear and impact on Members

Securities that SIX x-clear needs to buy in are not delivered to the failing Clearing Member anymore. Under the process as described by CSDR, SIX x-clear will deliver any bought-in securities directly to the receiving Clearing Member. Throughout this buy in and delivery process, the failing Clearing Member is required to keep the original failing instruction on hold. Once the bought-in securities have been delivered to the receiving Clearing Member (in part or in full), SIX x-clear will inform the failing Clearing Member and advise on any next steps (e.g. the cancellation of the original failing instruction once the bought-in securities have been delivered to the receiving Clearing Member).

#### Action is required by all Clearing Members.

The Clearing Member itself or the Clearing Member's settlement agent will be responsible to ensure that they monitor and process SIX x-clear's request to put a failing instruction on hold. SIX x-clear is currently analyzing together with the relevant Clearing Members and their settlement agents whether it will be possible for SIX x-clear to put a settlement instruction on hold on behalf of a Clearing Member, which has a PoA agreement in place with SIX x-clear.

## 5. Cancellation of the original settlement instructions for which the buy-in was executed (change to the current process):

Once the bought-in securities have been delivered in full to the receiving Clearing Member(s), the failing Clearing Member is obliged to cancel the settlement instruction relating to the buy-in.

If the bought-in securities are only partially delivered, the failing Clearing Member is required to cancel the original settlement instruction related to the partial buy-in at the end of each business day a partial buy-in has occurred. The failing Member must ensure that a new settlement instruction for the remaining quantity and amount are sent to the market and put on hold. SIX x-clear will inform the failing Clearing Member about the new quantity and amount of the new Settlement Instruction. In such cases, in order to avoid the retroactive application of late matching penalties for the new instruction, both counterparties (SIX x-clear as well as the Member) are required to populate the instruction with the relevant indicator. Please refer to SIX x-clear's Q&As for more details regarding the codes to be used.



### Implementation by SIX x-clear and impact on Members

In case a buy-in is only partially successful, SIX x-clear will request the failing Clearing Member to cancel the failing instruction, re-instruct with the outstanding amount and put the new settlement instruction on hold.

**Action might be required by Clearing Members, which don't have a PoA agreement in place with SIX x-clear.**

The Clearing Member itself or the Clearing Member's settlement agent will be responsible to ensure that they monitor and process SIX x-clear's request to cancel the original failing instruction, re-instruct with the new amount and put the new settlement instruction on hold. SIX x-clear is currently analyzing together with the relevant Clearing Members and their settlement agents whether it will be possible for SIX x-clear to perform these activities on behalf of a Clearing Member, which has a PoA agreement in place with SIX x-clear.

## 6. Fees, buy-in related costs and cash compensation charged to the failing Member (change to the current process):

SIX x-clear will charge the failing Clearing Member the incurred cost of the buy-in. Where the price of the securities of the buy-in is greater than the price in the failing Clearing Member's original failing transaction, the difference in price (and, consequently, settlement amount) is charged to the failing Clearing Member as soon as the buy-in is executed.

In addition to the cost of the buy-in, a separate buy-in fee will be invoiced. Any other fees resulting from compliance with CSDR SDR as pertains to buy-ins will also be passed on to the failing Clearing Member.

In case a buy-in fails in part or in full, the cash compensation process comes into effect for the non-delivered share of the securities.

## 7. Reporting of successful buy-ins (change to the current process)

SIX x-clear is required to report successful buy-ins (as well as cash compensations) to the CSD.

## 6. The Cash Compensation Process

If a buy-in is not possible after the extension period, SIX x-clear will charge the failing Clearing Member with a cash compensation and distribute the cash compensation to the receiving Clearing Member(s).

Once SIX x-clear has delivered the full cash compensation amount to the receiving Member, both the receiving and failing Clearing Members are required to cancel the settlement instruction relating to the failed transaction by the end of the day of the receipt of the payment.

If a buy-in fails in part, it is possible that the cash compensation component is paid out prior to the settlement of the partially bought-in securities. In this case, both the receiving and the failing Clearing Member are required to cancel the original settlement instructions related to the failed transaction by the end of each business day on which a cash compensation is executed. Both the receiving and the failing Clearing Member must ensure that the new settlement instructions for the remaining quantity of securities are released to the market. The failing Clearing Member is additionally required to ensure that its settlement instruction is put on hold. SIX x-clear will inform both parties about the quantity and amount for the new settlement instruction.

# 7. Next Steps

As the discussions about the interpretation of specific points in CSDR are still ongoing, there are some ambiguities in the market. Various points, some of them as yet unsolved, need to be incorporated into SIX x-clear's own requirements and rules. SIX x-clear sees it as an important next step to precisely align and clarify these open points with CSDs and CCPs and other market participants. SIX x-clear, as a Member of EACH, is supporting EACH in working closely with ECSDA to define and agree on operational details.

SIX x-clear's amended rules and regulations in accordance with CSDR will be published as soon as all outstanding topics are resolved and incorporated into SIX x-clear's documents.

Should there be new information, findings, specifications, or a changed understanding of the regulation in the market, SIX x-clear will analyze the impact and inform its Members adequately. SIX x-clear is in continuous dialogue with its Members and Co-CCPs and will issue further communication to its Members as necessary.

For additional information, please consult the Q&A, which will be continuously updated. The Q&A can be found [here](#).

For Testing, a separate SIX x-clear FrontLine is published including all the relevant information.

# 8. Glossary

<b>BIC</b>	Bank Identifier Code
<b>CCP</b>	Central Counterparty
<b>CSD</b>	Central Securities Depositories
<b>CSDR</b>	Regulation (EU) No. 909/2014 of 23 July 2015 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012
<b>EACH</b>	European Association of CCP Clearing Houses
<b>EEA</b>	European Economic Area
<b>EU</b>	European Union
<b>FINMA</b>	Financial Market Supervisory Authority
<b>FMIA / FinfraG</b>	Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (Financial Market Infrastructure Act, FMIA) of 19 June 2015, SR 958.1
<b>ISD</b>	Intended Settlement Date
<b>LEI</b>	Legal Entity Identifier
<b>MIC</b>	Market Identifier Code
<b>PoA</b>	Power of Attorney
<b>PoC</b>	Place of Clearing
<b>PoT</b>	Place of Trading
<b>RTS</b>	Regulatory Technical Standards
<b>RTS on Penalty Calculation</b>	Commission delegated Regulation (EU) 2017/389 of 11 November 2016 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council as regards the parameters for the calculation of cash penalties for settlement fails and the operations of CSDs in host Member States
<b>SDN</b>	Settlement Date Netting
<b>SD RTS</b>	Commission Delegated Regulation (EU) 2018/1229 of 25 May 2018 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on settlement discipline
<b>SI</b>	Settlement Instruction
<b>SIX</b>	SIX Group Ltd
<b>SIX x-clear</b>	SIX x-clear Ltd
<b>SME</b>	Small and Medium-sized Enterprises
<b>TDN</b>	Trade Date Netting

In this context, SIX x-clear Ltd draws the Members' attention to clause 7.1 and chapter 16.0 (liability) of the Rulebook of SIX x-clear Ltd stipulating that the Member is responsible for compliance with the applicable laws (in particular domestic and foreign tax, foreign exchange and stock market regulations as well as with company law and articles of association) with respect to the Clearing services obtained from SIX x-clear Ltd.

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