CSDR – SDR in the context of Clearstream Securities Lending and Borrowing products

Frequently Asked Questions

Clearstream Banking
CSDR – SDR in the context of Securities Lending and Borrowing

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Clearstream has issued various guidance documentation regarding the services and functionalities in relation to its compliance with EU Central Securities Depositories regulation No 909/2014 of the European Parliament and of the Council of 23 July 2014 (CSDR). For detailed information, please refer to the following Clearstream website:

- Central Securities Depositories Regulation (CSDR)
- Customer Readiness

The following frequently asked questions (FAQs) are designed to address the application of Settlement Discipline Regime (SDR) in the context of "cash penalties" in relation to Clearstream Banking SA's (CBL) Securities Lending and Borrowing Products. These FAQ shall be continuously updated to reflect customer queries in relation to the following products: ASLplus, ASL principal and ASL

CSDR – SDR in the context of CBL's Securities Lending & Borrowing products		
1.	**What is the scope of the cash penalty regime in CBL?**	The CBL or the T2S Penalty Mechanism calculates and applies cash penalties for all settlement instructions in relation to: • Matches made after the Intended Settlement Date (ISD) (late matching fail penalties – LMFP); • Fails to be settled (in part or in full) on and after ISD (settlement fail penalties – SEFP). For detailed information relating to external settlement and the penalty mechanism applicable on the domestic market, please refer to the Clearstream Banking Market Links Guides or Customer Readiness section on the Clearstream website.
2.	**Are securities lending & borrowing services subject to cash penalties?**	CBL proposes Automated Securities Lending and Borrowing Service (ASL) to enhance settlement efficiency. If a borrower fails to deliver/return the securities following a recall, then the settlement fail will be subject to cash penalties. Even though the actual lender of the securities is not known by the borrower, CBL will redistribute the cash penalties to the actual lender. This statement holds true for the ASLplus, ASL principal and ASL service as well.
3.	**How are the penalty rates calculated?**	Penalties are calculated daily and charged/credited by the CSDs to their participants on a monthly basis. Daily rates for settlement fails range from 0.15 to 1.0 basis point depending on the type of instrument. Please refer to Annex 1 of the EU delegated regulation 2017/389 for full details.
4.	**How are the cash penalties allocated according to the involved parties in CBL's Securities Lending & Borrowing Products such as ASLplus, ASL principal, ASL?**	Any failure to settle at ISD in a context of securities lending attributable to the borrower will be subject to the Articles 28 and 29 of the GTCs, i.e. subject to the Late Matching Fail Penalties and Settlement Fail Penalties (as these will/are be defined in the GTCs). CBL will collect the penalty from the borrower and pay the impacted lender. Any failure to settle at ISD attributable to CBL as operator of the securities settlement system will be subject to the liability clause and regime of CBL. Any indemnification of

		losses suffered by the lender will be assessed and analysed as per the usual claims process. In other words, the penalty mechanism set forth in the Article 7.2, last paragraph of CSDR is a mechanism of cash penalties applicable to the participants that cause settlement fails. The text refers to failing participants. It does not cover the CSD operating the system, as the CSD cannot qualify as a failing participant. Hence a late release by the system operator of securities to its participants is an operational failure. Such settlement fails caused by CBL as operator of its system are covered by the general liability scheme of the CSD in the securities lending documentation, including the GTCs.
5.	**Is there any specific notice to be taken into account regarding market claims/ manufactured payments in relation to securities lending and borrowing ?**	Regarding the market claims and manufactured payment, the challenges resulting from a possible late payment due to lack of cash at payment date is addressed by the new clause of the GTCs, Article 29.5.
6.	**How does CBL process settlement instructions with a counterparty in Euroclear Bank (EB)? (Bridge CBL – EB)**	Cash penalties on CBL deliveries are calculated and applied by the CBL Penalty Mechanism. Cash penalties on CBL receipts are calculated and applied by the EB Penalty Mechanism. For further reference, please refer to "Settlement Discipline Cash Penalties: Functional Specifications" which is also available to logged in users on the Clearstream website.
7.	**How does CBL process Late Matching Fail Penalties?**	CBL follows the general principal of allocating the penalties from the failing party to the underlying lenders in the programme. In case of "failing to match instructions", no penalty fees shall be charged if the trade instruction remains unmatched in the system. Once the trade is matched and assuming that the borrower was the party at fault, the system shall calculate the late matching fees (i.e. for the period between the matching date and the requested settlement date of the instructions). The calculated penalty fee shall be redistributed to the underlying lenders.
8.	**What is the proposed approach from CBL on "Partial Settlement functionalities"?**	In order to limit impacts on our Securities Lending activity, limit the penalties computation and follow ISLA Best Practice, we strongly recommend the use of: Partial Settlement functionalities as much as possible "IBP-125 : Automatic Partial Settlement is a facility to settle incremental quantities of a failing transaction. Auto-partial facilities should be applied by default for failing securities lending trades where its use does not disadvantage the failed-to party." Unless expressively requested by the customer and assuming the consequences of any failure/delay in the

		matching process are understood by all parties, the standard approach for our System/Operations team will be: • to push each counterparty to flag instructions as eligible for Automated Partial Settlement (i.e. not partial manually any trade but use the existing option for a STP solution)
9.	**How best can customers instruct a Partial Closing to minimise penalty fees?**	In order to limit impacts on our Securities Lending activity, limit the penalties computation and follow ISLA Best Practice, we strongly recommend to instruct: Partial Closing as per below "IBP-330 : A Partial Loan Close is the return of some part of an existing stock loan. The remaining part of the original loan remains with the borrower. Regarding the notification to partially close, and subsequent settlement instruction(s), both parties should communicate and instruct a delta quantity and value rather than a full close and re-opening of the remaining loan. This practice aligns with SFTR Best Practices [SFTR-337]" Unless expressively requested by the customer and assuming the consequences of any failure/delay in the matching process are understood by all parties, the standard approach for our System/Operations team will be: • to instruct only the delta quantity in case of partial closing request
10.	**What actions can customers take to prevent instructing any trade with a back-value?**	In order to limit impacts on our Securities Lending activity, limit the penalties computation and follow ISLA Best Practice, we strongly recommend to prevent: Instructing any trade with back-value (Requested Settlement date in the past) "IBP-308 : Back-dated Activity Back dated trades may only be processed if permitted by each counterparty's internal policies and are agreed bilaterally. Due to additional approval requirements for back dated trades, and potential for manual intervention, notification times should be agreed bilaterally between parties." Unless expressively requested by the customer and assuming the consequences of any failure/delay in the matching process are understood by all parties, the standard approach for our System/Operations team will be: • to instruct or re-instruct trades with past values - that were missed or that needed to be amended/cancelled - with same day value date instead of initial agreed value date (for borrowers having opted for default trade date being the date when closing action has been notified, the closing action date is changed to current date)