

NORM No. 15/2019

to apply the ESMA Guidelines on Reporting regarding the internal settlement under Article 9 from the Central Securities Depositories Regulation

Under the provisions of Art. 1 par. (2), art. 2 par. (1) letter a), art. 3 par. (1) letter b), art. 6 par. (2), as well as of art. 14 of Government Emergency Ordinance no. 93/2012 on the establishment, organization and functioning of the Financial Supervisory Authority, approved with amendments and completions by Law no. 113/2013, as subsequently amended and supplemented,

In accordance with Art. 16 of Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24th of November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No. 716/2009 / EC and repealing Commission Decision 2009/77 / EC,

Based on the provisions of art. 9 of Regulation (EU) No. 909/2014 of the European Parliament and of the Council of 23 July 2014 on the improvement of the securities settlement in the European Union and on securities central securities depositories and amending Directives 98/26 / EC and 2014/65 / EU and Regulation (EU) no. 236/2012,

Considering the provisions of art. 174 paragraph (1) and art. 234 letter b) of Law no.126/2018 regarding the financial instruments' markets.

According to the deliberations of the meeting of the Board of Financial Supervisory Authority of 12th of June 2019,

The Financial Supervisory Authority issues this norm:

Art. 1 - The Financial Supervisory Authority shall apply the ESMA Guidelines on Internal Settlement Reporting pursuant to Article 9 of the Central Securities Depositories Regulation (CSDR), set out in the Annex which forms an integral part of this Standard.

Art. 2 - This norm shall be published in the Official Gazette of Romania, Part I and shall enter into force on the date of its publication.

The Chairman of the Financial Supervisory Authority,

Leonardo Badea

Bucharest, 2019
No. 15

GUIDE
on internalised settlement reports in accordance with Article 9 of the Regulation on central securities depositories (CSDR)

I. Field of application

To whom does the guide refer? 1. This Guideline shall apply to the competent authorities designated in accordance with the provisions of Article 11 of the CSDR¹ and the settlement operators as defined in Article 2 (1) point (11) of the CSDR.

What applies? 2. This Guideline applies in relation to internalised settlement and information exchange reports between the European Securities and Markets Authority (ESMA) and the competent authorities for internalised settlement under Article 9 (1) of the CSDR.

II. Definitions

4. The terms used in this guide have the same meaning as in the CSDR and Delegated Regulation (EU) 2017/391 of the Commission².

III. Object

5. The purpose of this guide is to ensure coherent, uniform and consistent application of Article 9 of the CSDR and of the relevant provisions of the Delegated Regulation (EU) 2017/391 of the Commission and Implementing Regulation (EU) 2017/393 of the Commission³ including the exchange of information between ESMA and the competent authorities on internalisation settlement.

IV. Compliance and reporting obligations

The status of the guide

6. This document contains guidelines issued under Article 16 of the ESMA¹ Regulation. In accordance with Article 16 paragraph (3) of the ESMA Regulation, competent authorities and financial market participants must make every effort to comply with the guidelines.

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¹ Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24th of November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No. 716/2009 / EC and repealing Commission Decision 2009/77 / EC (OJ L 331, 15.12.2010, p. 84).

² Commission Regulation (EU) No 2017/391 of 11 November 2016 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council as regards the regulatory technical standards for the delimitation of the content of internalised settlement reports (OJ L 65, 10.3.2017, p. 44-47).

³ Implementing Regulation (EU) No. (EC) No 2017/393 of 11 November 2016 laying down implementing technical standards on the models and procedures for reporting and transmitting information on internalised settlements in accordance with Regulation (EU) No. 909/2014 of the European Parliament and of the Council (OJ L 65, 10.3.2017, p. 116-144)

7. The competent authorities addressed by this guide must comply, integrating them into their national legal frameworks or supervision, as appropriate, including where specific guidelines are primarily addressed to financial market participants. In this case, the competent authorities must ensure, through their oversight activities, compliance with the guidelines by financial market participants.

Request reporting

8. The competent authorities to which the Guidelines apply shall notify ESMA of compliance with, or intends to comply with, the guidelines, stating the reasons for non-compliance, within two months of the publication on the ESMA website, in all official EU languages. In the absence of an answer within this deadline, the competent authorities will be deemed not to comply. A notification model is available on the ESMA website. Once completed, the notification form will be sent to ESMA at the following e-mail address: csdr.data@esma.europa.eu.

9. Settlement operators are not required to report whether or not they comply with this guide.

V. Guide on reports regarding internal settlement

5.1 The scope of data to be reported by settlement operators

10. All of the following attributes must be present for a settlement statement to fall within the scope of internalized settlement:

a) a settlement operator receives a settlement instruction from a client regarding the settlement of a security transaction and the settlement instruction is not fully transmitted to another entity in the chain of custody;

(b) such settlement instruction causes or ought to result in a transfer of securities from one security account to another in the settlement operator's records without any parallel external movement of the securities in the holding chain.

11. The following types of transactions and operations should be considered within the scope of internalized settlements:

4. Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No. 716/2009 / EC and repealing Commission Decision 2009/77 / EC (OJ L 331, 15.12.2010, p. 84).

- a) the purchase or sale of securities (including purchases from the primary market or sales of securities);
- (b) management operations of guarantees (including tripartite guarantees management or self-guarantee operations);
- c) giving or borrowing securities;
- d) repurchase transactions;
- e) the transfer of securities between accounts of different investment funds (funds with or without legal personality must be considered as clients);
- f) the execution of transfer orders by a settlement operator in its own name, insofar as they result from transactions in securities with clients of the settlement operator;
- g) the transfer of securities between two securities accounts of the same client;
- (h) financial collateral arrangements with transfer of ownership as defined in Article 2 (1) letter (b) of Directive 2002/47 / EC⁵ (on financial guarantees contracts);
- (i) financial guarantees arrangements without transfer of ownership, as defined in Article 2 paragraph (1) letter (c) of the Directive on financial guarantees arrangements, where there is a transfer of securities between accounts;
- j) corporate flow operations represented by transformations.

12. The following types of transactions and operations should be considered outside the scope of internalized settlement:

- (a) corporate operations on shares such as cash distributions (e.g. cash dividends, interest payments), distributions of securities (e.g. dividends in the form of shares, issue of free shares); reorganizations (for example, conversion, division of shares, redemption, bidding);
- b) corporate flow operations, represented by market applications;
- c) operations in the primary market, i.e. the initial issue of securities;

5. Directive 2002/47 / EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (OJ L 168, 27.6.2002, p. 43-50)

d) creation and redemption of fund units;

e) pure cash payments, not related to transactions in securities;

f) transactions executed in a trading venue and transferred from the trading venue to a central counterparty for clearing or to a central depository of securities for settlement.

13. A settlement operator must report all settlement instructions that meet the conditions specified in this guide, regardless of the clearings made by that settlement operator. Compensation by central counterparties should not be within the scope of internalized settlement reporting.

Please see the examples in the appendix.

14. The following types of financial instruments should be considered in the reporting area of internalized settlements:

(a) financial instruments that are initially recorded and maintained in central securities depositories authorized in the EU, i.e. financial instruments for which a central securities depository in the EU acts as the central depository of securities of an issuer;

(b) financial instruments registered with a central securities depository of the EU acting as a central depository of investor securities for those financial instruments, although they may be initially recorded or held principally outside the central securities depository authorized.

15. The "other financial instruments" category referred to in Article 2 (1) paragraph (g) letter (ix) of the delegated Regulation (EU) 2017/391 of the Commission shall include financial instruments which do not fall within any of the categories explicitly referred to in Article 2 paragraph (1) letter (g) of the Regulation and which meet the conditions specified in this guide.

5.2 Entities responsible for reporting to competent authorities

16. The internalized settlement can take place at different levels of a securities holding chain (global custodian, sub-custody, etc.) and must be reported at the level at which it takes place. Each settlement operator only has to respond to the internal settlement reports from its registers.

17. A settlement operator shall transmit the information required by Article 9 paragraph (1) of the CSDR in the following reports to the competent authority of the Member State in which it is established:

(a) a report on its activity in the Member State where it has its seat (including the activity of its branches in that Member State);

- b) separate reports on the activity of its branches per Member State;
- c) a report on the activity of its branches in third countries.

Please see the following example:

A clearing operator established in Member State A, which has two branches in Member State A, a branch in Member State B, two branches in Member State C, one branch in third country D and two branches in third country E must submit four reports to the competent authority of Member State A as follows:

(a) a report on its activity in Member State A, including the activity of its branches in that Member State (specifying the country code of Member State A);

b) a report on the activity of its branch in Member State B (specifying the country code of the branch in Member State B, in addition to the country code of the settlement operator in Member State A);

c) a report on the activity of its two branches in Member State C (specifying the country code of the branch in Member State C, in addition to the country code of the settlement operator in Member State A);

(d) a report on the activity of its branches in third country D and third country E (specifying the country code of the TS branch, in addition to the country code of the settlement operator country of Member State A).

The competent authorities of Member States where branch offices of third country entities internalize settlement instructions through their registries must ensure that these branches report the information required under Article 9 paragraph (1) of the CSDR in consolidated reports covering their activity in each State member.

Please see the following example:

A settlement operator established in a third country having a branch in Member State A and two branches in Member State B shall apply the following:

a) The competent authority of Member State A must ensure that it receives a report containing the internalised settlement activity of the branch in Member State A.

b) The competent authority of Member State B must ensure that it receives a report containing the settlement activity of the two branches in Member State B.

5.3 Data Reporting Parameters

Competent authorities should ensure that settlement operators include the first two characters of the ISINs codes in their reports.

Pursuant to Article 2 paragraph (1) of Delegated Regulation (EU) 2017/391 of the Commission, the LEI code of the Central Depository of Securities Issuing must also be completed also by the settlement operator; there is the possibility of including more than one central securities depository for identification securities with the same two characters of the ISIN codes. The settlement operator does not have to fill in the country code of the central securities depository as this will be determined by ESMA's IT system for CSDR.

Settlement operators must include each internalized separate settlement statement in aggregate values (i.e., double reporting).

Volumes should be expressed in the number of internalized settlement instructions

If, for a period of one quarter that is the subject of a report, an internalized settlement instruction is not settled for several days after the expected settlement date, including if the settlement instruction is cancelled, then it must be reported as "unexecuted" taking into account each day when it is not settled. It should be reported as "executed" if it is settled during the quarter that is the subject of the report.

Please refer to the following example: If, during the quarter that is the subject of the report, an internalized \$ 100 settlement instruction is not executed for 3 days after which it will be executed, it must be reported accordingly (given the double reporting):

Executed		Non-executed		Total	
Volume	Value (EUR)	Volume	Value (EUR)	Volume	Value (EUR)

In accordance with Article 1 paragraph (1) of Commission Implementing Regulation (EU) 2017/393, (i) the period covered by the first report is 1st of April 2019 to 30th of June 2019; and (ii) the settlement operators will send the first report to the competent authorities by 12th of July 2019.

5.4 The process of submitting internal settlement reports to ESMA by the competent authorities on the basis of the reports received by the competent authorities from the settlement operators

Competent authorities should ensure that settlement operators submit data in accordance with Article 9 of the Regulation on central securities depositories (CSDR) in XML format, according to an XSD scheme defining the Candidate ISO 20022 message to be published by ESMA, and which should then be used by the competent authorities to submit data to ESMA.

Competent authorities shall submit to ESMA the individual reports they receive from the settlement operators after validating them.

Following the validation checks performed by ESMA's dedicated IT system, such as validation rules for data transmission (for example, the file is not corrupted), data format validation rules (for example, comply with the XSD schema SO-20022) and the rules for validating the content of the data (for example, the sum of the executed volume and the non-executed volume must be equal to the total volume), the competent authorities will receive a response file confirming the receipt or notifying the validation errors.

In case of validation errors notified by ESMA, the competent authorities must verify the data with the settlement operators and must provide a response to ESMA. If necessary, the competent authorities shall re-transmit the corrected data to ESMA.

5.5 The process of submitting reports to the ESMA on the potential risks resulting from the internalised settlement activity by competent authorities

Competent authorities shall provide ESMA with the necessary information on the potential risks arising from the internalized settlement activity in accordance with Article 9 of the CSDR using an online data entry form from the ESMA secure web interface, which must be completed manually and which must make possible the identification of the end user.

Competent authorities should provide valid information on erroneous fields if data errors are identified following the validation of the data entry form when submitting the data entry form to the web by the competent authority.

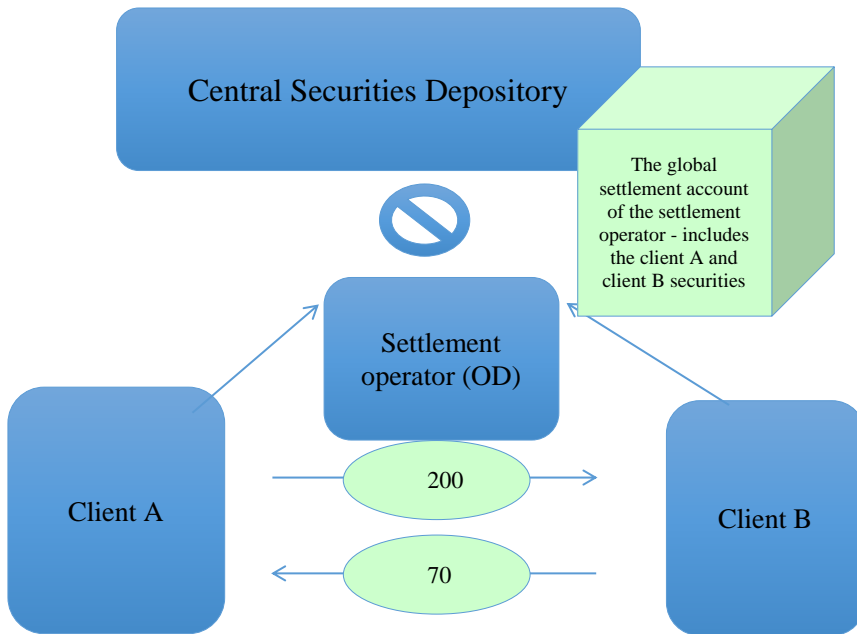
5.6 Access of competent authorities to data

Each competent authority should be able to access the data it transmits to ESMA as well as the data transmitted by other competent authorities related to its jurisdiction (relevance should be determined by the country code of settlement operator, the country code of the branches, the LEI code and the country code of the issuing CSD, the first two characters of the ISIN codes). All competent authorities should be able to access data on securities in third countries.

Annex to the Guide - Scenario charts and reporting examples

The shoulder list is not necessarily exhaustive.

1ST SCENARIO – The settlement operator has a global account with the central securities depository, which includes both client A and client B securities. The settlement operator does not send any instructions to the central depository of securities regarding the instructions received by the settlement operator from its clients.

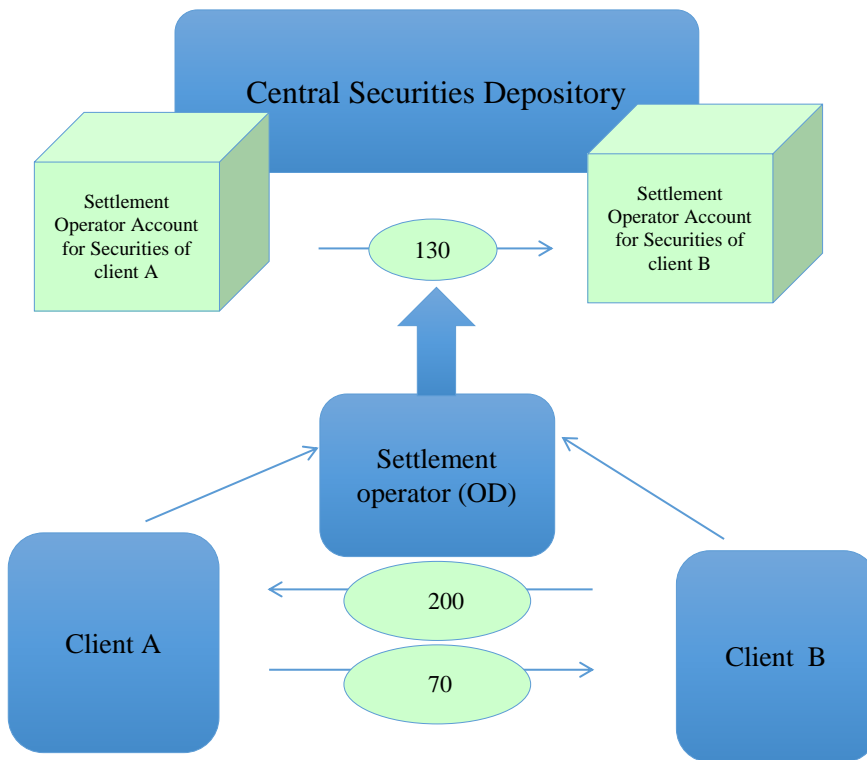


Reporting examples⁶: (The settlement operator reports all internalized settlement instructions, regardless of possible offsets) - the settlement operator reports 4 instructions: **200x2 and 70x2**

- 1) Client A handles 200 B securities to client
- 2) Client B receives 200 Securities from Customer A
- 3) Client B handles 70 securities to client A
- 4) Client A receives 70 securities from customer B

2nd SCENARIO - The settlement operator has two securities accounts with the central securities depository, one for client A and one for the client's securities B. The settlement operator sends instructions to the central securities depository to settle the net difference associated with the instructions the settlement operator received from its clients.

⁶ For simplicity, just watch the securities component.



Reporting Examples⁷ (The Settlement Operator reports all internalized settlement instructions irrespective of possible offsets) - the settlement operator reports 4 instructions (for the part that is not transmitted for settlement to the central securities depository): **70x4**

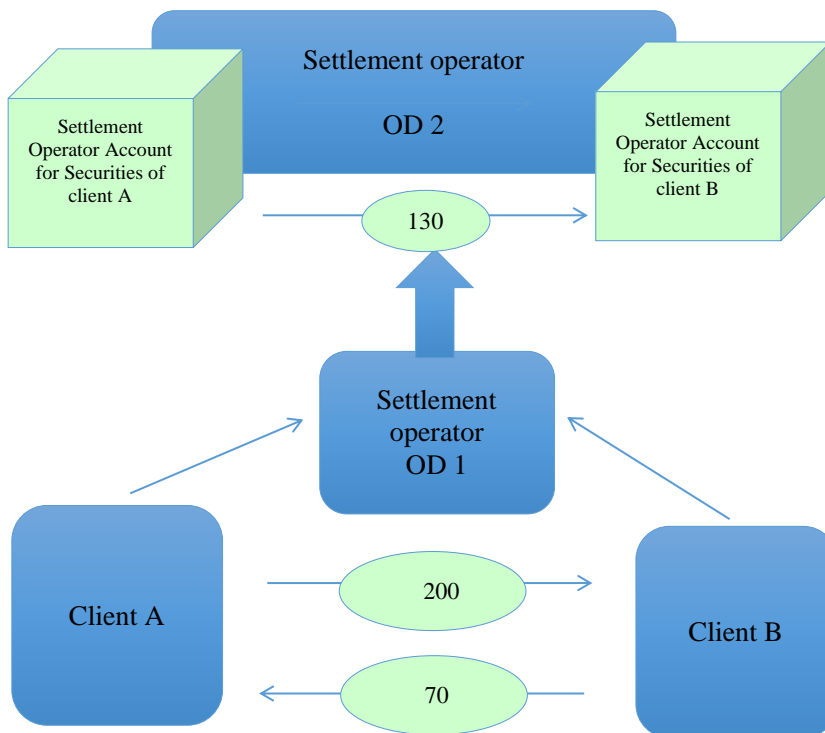
1. Client B handed over 70 securities to client A
2. Client A receives 70 securities from customer B
3. Customer A handed over 70 securities to client B
4. Customer B receives 70 securities from client A

Explication:

⁷ 6. For simplicity, just watch the securities component.

- The four instructions that need to be reported by the settlement operator:
 - o 2 instructions correspond to the transfer of securities from B to A shown in the graph.
 - o the 2 remaining instructions are not explicitly presented in the graph; they are included in the transfer of the 200 securities from A to B.
- In other words, the transfer of the 200 securities from A to B is divided into two:
 - o the first part (130) is included in the central securities depository and should not be reported as an internalized settlement.
 - o the remaining 70 are considered internalized settlement at the level of the settlement operator and should therefore be reported by the settlement operator (counted twice).

3rd SCENARIO – A settlement operator (OD 1) has two securities accounts with another settlement operator (OD 2): one for client A and one for the client's securities B. OD 1 sends instructions to OD 2 to settle the net difference of the instructions received by OD 1 from its customers.



Reporting examples⁸ (taking into account double reporting):

- OD 1 reports 4 instructions: **70x4**
 1. Customer A handed over 70 securities to client B
 2. Customer B receives 70 securities from client A
 3. Client B handed over 70 securities to client A
 4. Client A receives 70 securities from customer B

- OD 2 reports 2 instructions: **130x2**
 1. Customer A handed over 130 securities to client B
 2. Client B receives 130 Securities from Customer A

Explication:

- About the 4 instructions to be reported by OD 1:
 - o 2 instructions correspond to the transfer of securities from B to A shown in the graph.
 - o the 2 remaining instructions are not explicitly presented in the graph; they are included in the transfer of the 200 securities from A to B.
- In other words, the transfer of the 200 securities from A to B is divided into two:
 - o the first part (130) is included at OD 2 level and has to be reported as internalized settlement by OD2 (counted twice).
 - o the remaining 70 are considered internalized settlement at OD 1 level and should therefore be reported by OD 1 (counted twice).

8. For simplicity, just watch the securities component.