

ARTICLE		
CONTENT	SUBTITLE	TITLE
<div class="crrArticle">For the purposes of this Regulation, settlement instruction means a transfer order as defined in Article 2(i) of Directive 98/26/EC.</div>	Definitions	Article 1
<div class="crrArticle">The level of cash penalties referred to in the third subparagraph of Article 7(2) of Regulation (EU) No 909/2014 for settlement fails of transactions in a given financial instrument shall be calculated by applying the relevant penalty rate set out in the Annex to this Regulation to the reference price of the transaction determined in accordance with Article 3 of this Regulation.</div>	Calculation of cash penalties	Article 2
<ol class="crrNumList"> <li>The reference price referred to in Article 2 shall be equal to the aggregated market value of the financial instruments determined in accordance with Article 7 for each business day that the transaction fails to be settled.</li> <li>The reference price referred to in paragraph 1 shall be used to calculate the level of cash penalties for all settlement fails, irrespective of whether the settlement fail is due to a lack of securities or cash.</li> </ol>	Reference price of the transaction	Article 3
<div class="crrArticle">The operations of a CSD in a host Member State shall be considered to be of substantial importance for the functioning of the securities markets and the protection of investors in the host Member State where at least one of the criteria specified in Articles 5 and 6 is fulfilled.</div>	Criteria for establishing the substantial importance of a CSD	Article 4
<ol class="crrNumList"> <li> <p>The provision of notary and central maintenance services, as referred to in points 1 and 2 of Section A of the Annex to Regulation (EU) No 909/2014, by a CSD in a host Member State shall be considered to be of substantial importance for the functioning of the securities markets and the protection of investors in that host Member State where any of the following criteria is fulfilled:</p> <ol class="crrCharList"> <li>the aggregated market value of financial instruments issued by issuers from the host Member State that are initially recorded or centrally maintained in securities accounts by the CSD represents at least 15 % of the total value of financial instruments issued by all issuers from the host Member State that are initially recorded or centrally maintained in securities accounts by all CSDs established in the Union;</li> <li>the aggregated market value of financial instruments centrally maintained in securities accounts by the CSD for participants and other holders of securities accounts from the host Member State represents at least 15 % of the total value of financial instruments centrally maintained in securities accounts by all CSDs established in the Union for all participants and other holders of securities accounts from the host Member State.</li> </ol> <li>For the purposes of paragraph 1, the market value of financial instruments shall be determined in accordance with Article 7.</li> <li>Where any of the criteria set out in paragraph 1 is fulfilled, the operations of that CSD in a host Member State shall be considered of substantial importance for the functioning of the securities markets and the protection of investors in that host Member State for renewable periods of three calendar years from the 30 April of the calendar year following the fulfilment of any of those criteria.</li> </ol>	Criteria for establishing the substantial importance of notary and central maintenance services	Article 5
<ol class="crrNumList"> <li> <p>The provision of settlement services as referred to in point 3 of Section A of the Annex to Regulation (EU) No 909/2014 by a CSD in a host Member State shall be considered to be of substantial importance for the functioning of the securities markets and the protection of investors in the host Member State where any of the following criteria is fulfilled:</p> <ol		

## DOCUMENT SECTION

**class="crrCharList">** **<li>**the annual value of settlement instructions related to transactions in financial instruments issued by issuers from the host Member State and settled by the CSD represents at least 15 % of the total annual value of all settlement instructions related to transactions in financial instruments issued by issuers from the host Member State and settled by all CSDs established in the Union;**</li>** **<li>**the annual value of settlement instructions settled by the CSD for participants and other holders of securities accounts from the host Member State represents at least 15 % of the total annual value of the settlement instructions settled by all CSDs established in the Union, for participants and other holders of securities accounts from the host Member State;**</li>** **<li>**the CSD operates a securities settlement system governed by the law of the host Member State and has been notified to the European Securities and Markets Authority (ESMA).**</li>** **</ol>** **<li>** **<p>**For the purposes of points (a) and (b) of paragraph 1, the value of a settlement instruction shall be:**</p>** **<ol**  
**class="crrCharList">** **<li>**for a settlement instruction against payment, the value of the corresponding transaction in financial instruments as entered into the securities settlement system;**</li>** **<li>**for free-of-payment (FOP) settlement instructions, the aggregated market value of the relevant financial instruments as determined in accordance with Article 7.**</li>** **</ol>** **<li>**Where any of the criteria set out in paragraph 1 is fulfilled, the operations of that CSD in a host Member State shall be considered of substantial importance for the functioning of the securities markets and the protection of investors in that host Member State for renewable periods of three calendar years from the 30 April of the calendar year following the fulfilment of any of those criteria.**</li>** **</ol>**

Criteria for establishing the substantial importance of settlement services

Article 6

**<div class="crrArticle">** **<p>**The market value of financial instruments referred to in Articles 3, 5 and 6 of this Regulation shall be determined as follows:**</p>** **<ol**  
**class="crrCharList">** **<li>**for financial instruments referred to in Article 3(1) of Regulation (EU) No 600/2014 admitted to trading on a trading venue within the Union, the market value of the relevant financial instrument shall be the closing price of the most relevant market in terms of liquidity referred to in Article 4(1)(a) of Regulation (EU) No 600/2014;**</li>** **<li>**for financial instruments admitted to trading on a trading venue within the Union other than those referred to in point (a), the market value shall be the closing price derived from the trading venue within the Union with the highest turnover;**</li>** **<li>**for financial instruments other than those referred to in points (a) and (b), the market value shall be determined on the basis of a predetermined methodology approved by the competent authority of the relevant CSD that refers to criteria related to reliable market data, such as market prices available across trading venues or investment firms.**</li>** **</ol>**  
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Determination of market values

Article 7

**<ol class="crrNumList">** **<li>**The criteria referred to in Article 5(1)(a) and Article 6(1)(c) shall be applied for the first time within four months from the date of entry into force of this Regulation and shall be based on the values of financial instruments initially recorded or centrally maintained in securities accounts by the CSD on 31 December of the previous calendar year.**</li>** **<li>**The criteria referred to in Article 5(1)(b) and in Article 6(1)(a) and (b) shall be applied for the first time within four months from the date of application referred to in Article 9(2) and shall be based on the values of financial instruments centrally maintained in securities accounts by the CSD on 31 December of the previous calendar year.**</li>** **<li>** **<p>**For the period commencing on the date of entry into force of this Regulation and ending on the date

Transitional provisions

Article 8

of application referred to in the second paragraph of Article 55 of Regulation (EU) No 600/2014, the following shall apply:

- by way of derogation from Article 5(2), the market value of financial instruments shall be the nominal value of those instruments;
- by way of derogation from Article 6(2)(b), the market values of the relevant financial instruments shall be the nominal value of those financial instruments.

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.  
It shall apply from 10 March 2019.  
By way of derogation from the second paragraph:

- Articles 2 and 3 shall apply from the date of entry into force of the delegated act adopted by the Commission pursuant to Article 7(15) of Regulation (EU) No 909/2014.
- Article 7 shall apply from the date referred to in the second paragraph of Article 55 of Regulation (EU) No 600/2014;
- Article 8 shall apply from the date of entry into force of this Regulation.

Entry into  
force and  
application

Article  
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