

Stockholm, March 2026

## **The SSMA's views regarding the settlement finality regulation and the financial collateral directive in the European Commission's market integration and supervision package**

The Swedish Securities Markets Association (SSMA)<sup>1</sup> welcomes the European Commission's proposal on market integration and supervision (MISP) and the opportunity to comment on it. The SSMA supports the Saving and Investment Union objectives of integrating capital markets in the European Union, and of enhancing the competitiveness of participants in these markets.

In this paper we present our views regarding the proposals of a settlement finality regulation (SFR) and amendments in the financial collateral directive (2002/47/EC) (FCD).

### **General comments**

The SSMA welcomes a review and modernisation of the settlement finality provisions, which are currently found in the settlement finality directive (98/26/EG) (SFD), to make sure that they are future proof. In our view, the provisions of the existing directive, as well as the legislation transposing them into Swedish law, have worked well, but we have no objections to the directive being replaced by a regulation, as proposed by the Commission. It is quite a few years since the SFD came into force and given the ongoing technological development, it is appropriate to review the legislation to make sure it is still fit for purpose and to, as far as possible, make it technology neutral and e.g. ensure that it works well for DLT infrastructures.

The Commission has only proposed a few, minor amendments in the FCD. The SSMA would welcome a review of additional provisions in the FCD in the ongoing legislative process, e.g. the conflict of laws provisions, which should be clarified in coordination with the conflict of laws rules in the SFR (see further comments below). Regarding the scope of the directive, the legislator should consider also including natural persons in the list of collateral takers and providers in article 1(2). In practice there are natural persons that enter into agreements regarding financial collateral arrangements and not including them in the scope of the directive makes it more difficult to get the necessary legal opinions and lower capital requirement under the capital requirement regulation (575/20132/EU). As a consequence,

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<sup>1</sup> The Swedish Securities Markets Association is a trade association representing the interests of banks and investment firms conducting business on the Swedish securities market.

credits and transaction based financial services, including an exposure, come with a higher capital cost, which leads to higher fees/rates than necessary for natural persons (consumers).

### Third country systems

The SSMA supports a harmonisation of the requirements for registration of third-country systems. From a Swedish perspective, we have good experience with registration of third country systems, with the Swedish legislator being forward-looking and introducing the necessary legislation at quite an early stage.<sup>2</sup> From the market participants' point of view, this has also worked well in practice.<sup>3</sup> Some aspects of the proposed provisions regarding third country systems do however merit further discussions.

According to the proposed article 1(2), the insolvency protections in the specified articles should only apply in relation to transfer orders entered into a registered third-country system. With this limitation, registered third-country systems would have more limited protection against the insolvency of their EU participants than the SFR (or the existing SFD) confers on designated (EU) systems in relation to their EU participants. As the current Swedish legislation works well, we would like to see the same level of protection being upheld. The SSMA would therefore like to encourage the legislator to make sure that the wording of the provisions in the regulation gives the same level of protection as under existing national regimes that extend the protection of SFD to third-country systems.

Moreover, the wording of the second subparagraph in article 1(2) and in article 12 limits the protection to cases where the third-country system's EU participants are credit institutions, investment firms, public authorities, publicly guaranteed undertakings, payment institutions or electronic money institutions. The legislator should consider including other types of potential participants as well in the scope of the provisions (cf. the list of participants in article 2(1), point (15)), to avoid unnecessary restrictions on the type of actors that are allowed as participants in third country systems.

In article 12 it should also be clarified that a third country system can be registered where that system *has admitted or intends to admit* a member established in that Member State, to allow for a registration before a member is admitted, since the registration is likely to be a pre-condition for the admittance.

We support including transitional provisions that allow for systems designated under the SFD to be considered as designated under the SFR as well (article 28). We would however like to suggest a re-wording of the article in order to allow already designated systems to continue to

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<sup>2</sup> See for example the descriptions of the Swedish market in the report on the review of settlement finality in payment and securities settlement systems including its application to domestic institutions participating in third-country systems and of financial collateral arrangements under Directives 98/26/EC and 202/47/EC, [REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL](#)

<sup>3</sup> The rules were e.g. applied in the process of registration of some British systems post Brexit (Swedish news source): [FI beslutar om likställande av avvecklingssystem | Finansinspektionen](#)

benefit from the protections conferred by the SFR where the application for designation is made before the end of the five-year transitional period, even if the re-designation is not finalised by the end of that period, to make allowances for unforeseen delays.

### **Irrevocability of transfer orders and settlement finality**

Regarding article 20, The moment of irrevocability of transfer orders, our experience is that the corresponding provision in the SFD has worked well with respect to the existing technology for clearing and settlement of securities. In view of the technological advancement, we agree that it is appropriate to review the provision, to ensure it is fit for purpose in relation to e.g. DLT infrastructures as well.

Concerning the provision on final settlement in article 21, we note that there are descriptions in the memo indicating that problems have been identified with regards to the corresponding provision in the SFD. The description of the stated problems is however not very detailed, and we would welcome more information about the perceived problems, as well as the purpose of the proposed amendments. Our view is that the wording of the current provision in the SFD works well, and that the proposed amended wording would not lead to any material changes regarding settlement finality.

### **Collateral security and conflict of laws provisions**

The SSMA believes that it is of importance that provisions regarding applicable law and conflict of laws are clear. As regards the provision on applicable law in article 25, Collateral security, it should be clarified what is meant by the collateral security being legally recorded on a register, account or centralised deposit system. The meaning of the wording in article 9(2) in the SFD, which is similar to the proposed wording in article 25(2), has been subject to a lot of discussions. In 2018 the Commission published a communication on the applicable law to the proprietary effects of transactions in securities, in which the topic was addressed.<sup>4</sup> Despite the communication there are still uncertainties regarding when and where the collateral security is considered to be legally recorded and what is meant by the word account in this context. Does “account” include custody accounts provided by banks and investment firms or only security accounts at CSD level? Neither the definition of account in article 2(1)(26), nor the provision in article 25 clarifies this. A bank or investment firm might have branches in other countries than its home member state and provide its clients with custody or security accounts from the branch, which is the applicable law in that scenario? Are securities kept as collateral considered to be legally recorded even when they are not in scope of the relevant national legislation regarding book-entry securities? For example, the provisions on the effects of legal recording in the Swedish Central Securities Depositories and Financial Instruments Accounts Act (1998:1479) do not cover securities registered in CSDs outside of Sweden, nor units in non-exchange traded funds that are held at a client’s custody

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<sup>4</sup> Communication COM(2018) 89 on the applicable law to the proprietary effects of transactions in securities, [EUR-Lex - 52018DC0089 - EN - EUR-Lex](#)

account. Furthermore, for securities held at custody accounts, the requirements in rem, i.e. the action that is required for protection against creditors, under Swedish law is a notice of assignment of claim, rather than the recording that is done in the bank's or investment firm's custody account system. Are these still considered to be legally recorded and covered by the protection given by the article?

Moreover, we note that the Commission has not proposed any amendment to clarify the conflict of laws provisions in the FCD, article 9(1) and (2) even though the meaning of the wording in those provisions have also been subject to discussions and the Commission's communication from 2018. The SSMA thinks that this is unfortunate and would welcome a coordinated review of the conflict of laws rules in both the FCD and the proposed SFR. It is essential that the rights to collateral security is protected – for all types of financial instruments, held either at a CSD securities account or at a custody account – and that the provisions on how to determine the applicable law in all of the relevant directives and regulations are clear. There are still questions outstanding regarding the meaning of the wording of the provisions in the legal acts currently in force, and we believe that the legislator should strive to clarify any uncertainties in the ongoing legislative process.

Additionally, the structure and wording of article 25 is not very transparent and accessible and would in our opinion benefit from a rephrasing. We would also welcome further description of the background to the proposed provision and a clarification as to whether the proposed wording is intended as an adaptation to better include DLT infrastructure, or if there are other reasons behind the chosen structure.

THE SWEDISH SECURITIES MARKETS ASSOCIATION