

# Guidelines

**on standardised procedures and messaging protocols under Article  
6(2) of Regulation (EU) No 909/2014**





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# 1 Scope

## Who?

1. These guidelines apply to investment firms and to competent authorities of investment firms.

## What?

2. These guidelines apply in relation to the requirements under Article 6(2) and in particular to the standardised procedures and messaging standards to be used for complying with the second subparagraph of Article 6(2) of Regulation (EU) No 909/2014.

## When?

3. These guidelines apply from the date of entry into force of the 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.

# 2 Legislative references and abbreviations

## 2.1 Legislative references

Regulation (EU) No 909/2014	Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directive 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 <sup>1</sup>
Commission Delegated Regulation (EU) 2018/1229	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
Regulation (EU) No 1095/2010	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 <sup>2</sup>

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<sup>1</sup> OJ L 257, 28.8.2014, p. 1-72

<sup>2</sup> OJ L 331, 15.12.2010, p. 84.



Directive 2014/65/EU

Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU

Commission Delegated Regulation (EU) 2017/565

Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive

## 2.2 Abbreviations

EC

European Commission

ESFS

European System of Financial Supervision

ESMA

European Securities and Markets Authority

EU

European Union

## 3 Purpose

4. These guidelines are based on Article 6(2) of Regulation (EU) No 909/2014. The objectives of these guidelines are to establish consistent, efficient and effective supervisory practices within the ESFS and to ensure the common, uniform and consistent application of the second subparagraph of Article 6(2) of Regulation (EU) No 909/2014 as supplemented by Article 2 of Commission Delegated Regulation (EU) 2018/1229.
5. The requirement laid down in Article 6(2) of Regulation (EU) No 909/2014 and further specified in Article 2 of Commission Delegated Regulation (EU) 2018/1229 is focused on the preparation of the settlement process: investment firms should ensure that they have all the necessary settlement details as much as possible on the business day on which the transaction takes place. To achieve this, investment firms that do not already have the necessary settlement information should communicate with their clients in order to obtain the respective information, which should include standardised data useful for the settlement process.



6. In particular, under Article 6(2) of Regulation (EU) No 909/2014, investment firms are expected, where applicable, to take measures to limit the number of settlement fails. Pursuant to this article, ESMA has developed regulatory technical standards to specify inter alia the details of the allocation and confirmation measures and of the procedures between investment firms and their professional clients facilitating settlement, which have been included in Article 2 of the Commission Delegated Regulation (EU) 2018/1229.
7. To complement this, ESMA is also expected pursuant to the same article to develop guidelines on the standardised procedures and messaging protocols to be used to comply with this requirement.
8. These guidelines therefore aim to clarify the scope of the requirement contained in Article 6(2) of Regulation (EU) No 909/2014 and provide guidance on the standardised procedures and messaging standards used for the purposes of compliance with such requirement.

## **4 Compliance and reporting obligations**

### **4.1 Status of the guidelines**

9. In accordance with Article 16(3) of the Regulation (EU) No 1095/2010, competent authorities and financial market participants must make every effort to comply with these guidelines.
10. Competent authorities to which these guidelines apply should comply by incorporating them into their national legal and/or supervisory frameworks as appropriate, including where particular guidelines are directed primarily at financial market participants. In this case, competent authorities should ensure through their supervision that financial market participants comply with the guidelines.

### **4.2 Reporting requirements**

11. Within two months of the date of publication of the guidelines on ESMA's website in all EU official languages, competent authorities to which these guidelines apply must notify ESMA whether they (i) comply, (ii) do not comply, but intend to comply, or (iii) do not comply and do not intend to comply with the guidelines.
12. In case of non-compliance, competent authorities must also notify ESMA within two months of the date of publication of the guidelines on ESMA's website in all EU official languages of their reasons for not complying with the guidelines.
13. Financial market participants are not required to report whether they comply with these guidelines.



## 5 Guidelines

### 5.1 Scope

**Guideline 1:** Investment firms should ensure that, where applicable, the requirements set out under Article 6(2) of Regulation (EU) No 909/2014 are complied with by them and their professional clients considering their roles in each securities transaction.

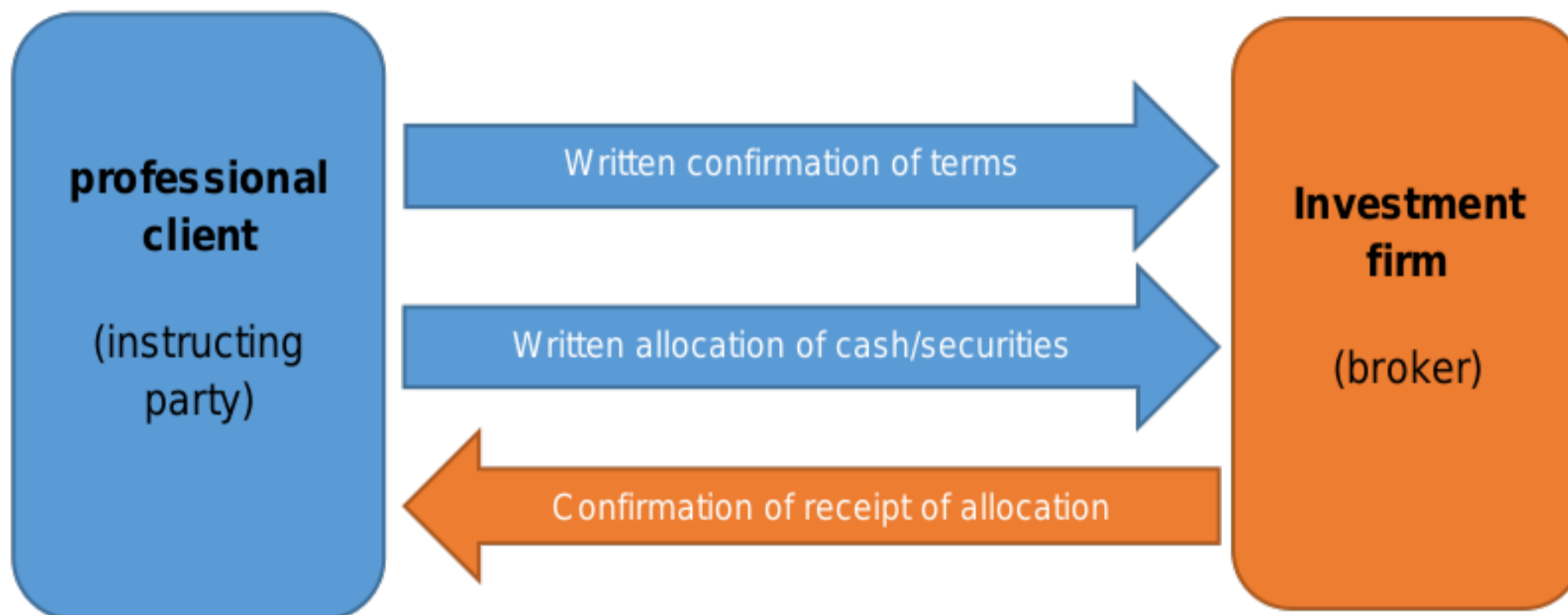
14. When two entities licensed as investment firms are facing each other in a transaction on financial instruments referred to in Article 5(1) of Regulation (EU) No 909/2014, the respective roles of each entity in the concerned transaction should be analysed in order to identify which entity should be considered as the investment firm and as the client for the purposes of applying these requirements.
15. The requirements set out under Article 6(2) of Regulation (EU) No 909/2014 should apply only to relationships involving an investment firm and a professional client within the scope of Directive 2014/65/EU. This means that when Directive 2014/65/EU does not apply to certain persons (e.g. persons exempted under Article 2 of Directive 2014/65/EU), such requirements should not apply either.
16. For the avoidance of doubt, an entity which belongs to the list provided for by Section I of Annex II to Directive 2014/65/EU should be considered a professional client for the purposes of Article 6(2) of Regulation (EU) No 909/2014, irrespective of the fact that the investment firm might have, generally or for some specific transactions or services, categorized it as an eligible counterparty, within the meaning of article 30(2) of Directive 2014/65/EU, or a non-professional client.

**Guideline 2:** The requirements set out in Article 6(2) of Regulation (EU) No 909/2014 should apply in respect of transactions in financial instruments referred to in Article 5(1) of Regulation (EU) No 909/2014, i.e.:

- a. transferable securities, as defined in point 35 of Article 2(1) of Regulation (EU) No 909/2014;
- b. money-market instruments, as defined in point 37 of Article 2(1) of Regulation (EU) No 909/2014,
- c. units in collective undertakings, as defined in point 38 of Article 2(1) of Regulation (EU) No 909/2014, and
- d. emission allowances, as defined in point 39 of Article 2(1) of Regulation (EU) No 909/2014.

## 5.2 Standardised procedures and messaging protocols

**Guideline 3:** An investment firm should contractually agree with its professional client on the communication procedures and messaging protocols to be used between them to implement the measures aiming at limiting settlement fails described in Article 6(2) of Regulation (EU) No 909/2014, which measures could be illustrated as follows:



17. The investment firm and its professional client may arrange for the prompt communication of this information in various ways:

- a. **Sending of both a written confirmation and a written allocation** by the professional client to its investment firm, as specified in Article 2(1) of the Commission Delegated Regulation (EU) 2018/1229; or
- b. **No sending of a written confirmation:** Where the written confirmation is included in the written allocation in accordance with Article 2(1), third subparagraph, of the Commission Delegated Regulation (EU) 2018/1229, the investment firm and the professional client may agree that the written confirmation of the terms of the transaction could be provided in an additional field included in the written allocation, or implied in the sending of the written allocation corresponding to that transaction; or
- c. **No sending of written confirmation nor written allocation:** Where no written confirmation or allocation is sent in accordance with Article 2(3) of the Commission Delegated Regulation (EU) 2018/1229, the investment firm should ensure that it is provided with the necessary settlement information referred to in Article 2(1) of the Commission Delegated Regulation (EU) 2018/1229 in respect of that transaction in advance of the timeframes referred to in Article 2(2) thereof, including orally or through systems granting to the investment firm access to the relevant information (such as through the access to a centralised database).



18. The consequences of the late communication of, or failure to communicate, the written allocation and confirmation (or of part of the information requested therein) to the investment firm are not addressed in Regulation (EU) No 909/2014, nor in the Commission Delegated Regulation (EU) 2018/1229. The consequences of such delay or failure could be addressed by the investment firm and the professional client in their contractual agreement.

19. The arrangements agreed between the investment firm and its professional client could be included in any contractual agreement, including in the framework agreement governing their relationship such as the document referred to in Article 25(5) of Directive 2014/65/EU and specified in Article 58 of Commission Delegated Regulation (EU) 2017/565.

**Guidelines 4:** Where the investment firm and the professional client agree that the professional client should send a written confirmation and/or allocation in accordance with Article 2(1) of the Commission Delegated Regulation (EU) 2018/1229, any communication procedure allowing for written communication through mail, faxes or electronic means should be accepted.

20. Where electronic means are used, the investment firm should offer to its professional clients the option of using the international open communication procedures and standards for messaging and reference data as defined in Article 2(1)(34) of Regulation (EU) No 909/2014, except in the following two cases:

- a. where such internationally accepted standards are not “available on a fair, open and non-discriminatory basis to any interested party” or do not exist, until international standards become available; and
- b. where the use of internationally accepted standards does not allow to “limit the settlement fails” for an investment firm and its professional clients, as long as such lack of efficiency can be evidenced.

21. If the investment firm offers to use both international and internal (or domestic) messaging standards, the professional client can decide to use either of them.

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