

**ICMA Secondary Market Rules & Recommendations
Consultation on Rule 407
February 20 2018**

The ICMA SMR&Rs

ICMA regularly looks to review and update its Secondary Market Rules & Recommendations ([‘the Rule Book’](#)) and where appropriate will consult with members as part of this process. ICMA aims to ensure that its Rules remain relevant and consistent with market practice and market regulation, and that they are supportive of robust, stable, and efficient international debt capital markets. Changes to the Rules will be approved by the ICMA Executive Committee (‘ExCom’), based on guidance from the ICMA Secondary Market Practices Committee ([SMPC](#)).

Rule 407

Rule 407 (‘Claim against the seller’) was introduced in response to a low/negative interest rate environment in a number of markets, in order to create symmetry with Rule 405 (‘Interest claim against buyer’) in the event of losses incurred due to settlement fails. The Rule was introduced in response to requests by members and followed approval by the SMPC and ICMA Executive Committee.

Rule 407

Claim against seller

Where the seller or its clearing agent has caused the failure of settlement, either for one or several of the reasons stated in rule 401 or because the securities were not presented on time for settlement to take place on the value date, the buyer shall have the right to claim from the seller the loss resulting from the funds payable by the buyer in exchange for the securities being subject to a negative interest rate from the date of presentation of such funds until the date that settlement takes place or a buy-in in accordance with Section 450 in respect of the transaction concerned, taking into consideration any partial deliveries, is completed.

Recommendation to rules 405 and 407

If the amount of a claim in accordance with rule 405 or rule 407 is less than US \$ 100 or the equivalent in other currencies per transaction, no claim shall be made by the seller or buyer.

No claims in accordance with rule 405 or rule 407 shall be made after the lapse of thirty calendar days from the date when the transaction was actually settled or a buy-in in accordance with Section 450 in respect of the transaction concerned was completed.

The intention of the Rule is to allow non-defaulting purchasers of securities to claim against a defaulting seller for any losses incurred as a result of the fail caused by the purchaser's long cash balance being subject to negative interest rates. It is expected that the non-defaulting purchaser should only claim in the event that they are economically disadvantaged as a result of the fail and are in a position to evidence the loss, if required by the claimed defaulting seller.

Reasons for reviewing Rule 407

Members have suggested that Rule 407 is becoming less relevant as firms have adapted to negative interest rates and become more efficient at managing their cash. Some argue that no firm left long cash should be disadvantaged as a result of negative interest rates, pointing out that being left long securities as a result of a fail (as addressed by Rule 405) is a very different proposition from a cash management perspective than being left long of cash.

Members have also communicated that some members do not recognize claims under Rule 407. This can be particularly problematic for firms acting in a principal intermediation capacity, who may, due to no fault of their own, find themselves being claimed on one side of their transaction (the non-defaulting purchaser), but unable to claim on the other side (the defaulting seller).

The consultation questions

The consultation asks affected members to respond to the following questions:

Q1. Do you think that Rule 407 is still appropriate?

Q2: If you think that Rule 407 is still appropriate

- (i) are you happy with its current wording?**
- (ii) if not, what changes do you suggest and what is your reasoning for such changes?**

Q3. Do you have any other suggestions or considerations with respect to Rule 407 or interest claims in general?

All responses should be emailed, in confidence, to [Andy Hill](mailto:andy.hill@icmagroup.org), Secretary of the SMPC:
andy.hill@icmagroup.org

Please submit your response no later than close of business on March 23 2018. Responses should be titled '**Rule 407**'.

Note that the consultation is open to all member firms, and there is no restriction on the number of individual responses from each member firm.

The results of the consultation will be shared with the SMPC and interested members in early April, and any recommendations to revise the Rule *may* be taken ahead of the next scheduled SMPC meeting on May 29 2018.