# Compensation Claims
# Guidelines and Best Practices

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# Document History

| Version # | Change Date | Description of Change | Page | Author |
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| 1.0 | 06/01/2008 | Initial Version | | ISITC C&C Working |
| 2.0 | 11/10/2009 | Updated to include U.S. Treasury Securities Fails Charge Trading Practice | Multiple | Jason Cronin |
| 3.0 | 11/12/2012 | Updated to include Agency Debt and Agency Mortgage-Backed Securities Fails Charge Trading Practice | Multiple | Jason Cronin |
| 4.4 | 12/19/2017 | Updated to include Changes to U.S. Treasury Securities Fails Charge Trading Practice | Multiple | Gary Heald |
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## Table of Contents

## 1.0 Introduction to ISITC

ISITC (International Securities Association for Institutional Trade Communication - “the Association”) is a global working committee of securities operations professionals representing custodian banks, investment managers, broker/dealers, and vendors. The Association fosters alliances, advocates standards that permit straight-through processing of financial transactions, and contributes to the development and implementation of sound and efficient market practices worldwide.

The Association actively pursues the education of its members and promotes good relations amongst them and with other industry organizations and agencies. It provides a forum for the joint examination and discussion of questions relating to the global capital markets, and it issues guidelines and recommendations relative to their operations.

The Association has three chapters: North America and Asia-Pacific (under the name ISITC – International Securities Association for Institutional Trade Communication, and ISITC Europe. The contact address for each region appears on the Association’s website at www.isitc.org which includes additional useful information about the Association, its members, and its activities.

## 2.0 Background

The Association and other progressive industry organizations have worked to improve the efficiency and orderly operation within international capital markets. The way in which financial transactions are processed, controlled, and settled has dramatically changed. This is largely due to the generalization of book-entry settlements through depositories, and the adoption of standards, best practices, and advanced integration and communication technologies.

The evolving environment is conducive to a substantial reduction of the risk of errors, delays, and of the resulting losses and disputes among market operators.

However, as these efforts continue, the environment remains imperfect. Fail-proof settlement cannot be guaranteed.

Transactions still fail and will continue to fail for a variety of reasons, resulting in interest and other financial losses, for which those who suffered prejudices should be compensated justly.

Today, the resolution of claims may – or, by the laws and rules of certain markets, must -- be settled under prevailing domestic market rules and regulations. However, in many markets, and in particular the cross-border market, few formal rules exist. Market rules that do exist typically only cover inter-bank cash activity. They fail to fully address the circumstances of today’s complex global market, to which the members of the Association are increasingly exposed. As a result, compensation may be settled by bilateral agreement between counterparts and agents, often after protracted negotiations and correspondence that combine to further aggravate costs and frustrations.

The Association’s Executive Committee has commissioned the formation of a Working Group to review the existing conditions and formulate Guidelines and Best Practices for the Association’s Members, and potentially for all participants in the securities industry, should they so desire and if their legal and regulatory environments so permit.

Several industry organizations have previously published rules governing claims and compensation and deserve credit for their efforts. However, these rules are generally aimed at resolving claims arising from failed transactions between parties (usually two) acting as principals (such as inter-bank fund transfers and inter-broker secondary market trading). In contrast to this, the Association spans a broader spectrum of parties and third parties that, depending on their roles, may all be diversely involved in claims.

# 3.0 Definitions

COMPENSATION CLAIMS are demands for restitution typically related to the delayed settlement of financial transactions raised by the injured party, or by their agent on their behalf.

TMPG FAILS CHARGE CLAIMS are demands made by a buyer against a seller who fails to fulfill their contractual delivery obligations when the two trading parties have entered into a delivery-versus-payment transaction of U.S. Treasury, Agency Debt, and Agency Mortgage Back Securities. More information on this charge is available at http://www.newyorkfed.org/tmpg/.

INTEREST COMPENSATION is the resultant earning from situations where cash balance deposits are maintained.

OVERDRAFTS are an unsecured, short term loan, provided at a moment's notice without prior approval.

OVERDRAFT CHARGES are fees assessed by a bank to its client for providing a service – overdraft protection/credit facilities.

BACK VALUE is an inter-bank process, recognized in most markets, for settling claims related to delayed cash payments/receipts.

# 4.0 Purpose, Scope, and Limitations

## 4.1 Purpose –

This document presents a number of Best Practices that promote standardization of the claim process throughout the financial industry. These Best Practices are applicable to claim issues that result from failed or late settlement of transactions in financial instruments, related, but not limited to equities, bonds, money market and foreign exchange. The Working Group's aim is to promote a set of policies by which all counterparts can abide, on a voluntary basis.

## 4.2 Scope –

This document does not address every possible situation involving claims and compensation. It recognizes the varied roles and responsibilities its constituencies play in the lifecycle of a transaction and understands that each party has its own working parameters for transaction processing. Specific issues that arise outside the boundaries of these recommendations should be dealt with on a discretionary basis. The guidelines are not intended to assist with the circumvention of trade flow responsibilities.

CSDR (Central Securities Depository Regulation) is not in scope for this document, please refer to the AFME website for best practices on Bi-Lateral Claims between trading parties, https://www.afme.eu

The Association provides these Best Practices without prejudice to existing mandatory and domestic market rules, regulations, and laws.

The Association, its officers, any organizations hired by the Association to provide administrative and other support services to the Association, and the officers and staff of these organizations, shall not have any liability for any loss or damage suffered by any party as a result of these Best Practices.

## 4.3 Limitations –

The Association does not make available to any parties, including its Members, any provisions for conciliation or arbitration. This document does not cover overdraft charge rates, other than to recommend the claim be issued at the rate charged or mandated by the market, and is not intended to dictate overdraft policies.

This document reflects a point in time of a thought process within the Association; it is likely to further evolve as warranted by the changing circumstances of the industry. This is a guideline that is not intended to supersede an existing local market's rules or regulations. This document does not necessarily reflect the views of any one individual, or of any individual firm that is a Member of the Association.

# 5.0 Fairness and Constructive Dialogue

Parties to the transaction (Custodians, Investment Managers and Broker/Dealers) shall comply with just and equitable principles of business shall use good judgment, market practices and shall use every effort to minimize the risk of losses. Proactive steps toward accomplishing that objective are discussed in the document.

When a loss leading to a claim for compensation is identified, the parties involved should settle the claim on the basis that no party should be unduly enriched or injured by the actions of another party. The Association admits that claims for compensation are a complex domain and that even if these Best Practices and Guidelines attempt to cover as many situations as possible, they cannot be exhaustive.

For this reason, regardless of the availability or applicability of these Best Practices, the Association encourages a constructive dialogue among the different parties and a good understanding of each party's role in the life of a transaction. The Association also encourages support for the ongoing industry initiatives, whose objective is to achieve efficiency, ensuring that losses and related claims will become rare exceptions.

# 6.0 The Best Practices

## 6.1 Minimum Claim Threshold -

**6.1A – Compensation Claims** USD 500 (or the equivalent in other currencies at the prevailing exchange rates).

**6.1B – Overdraft Claims** based on SLA between parties

**6.1C – CSDR Claim** established by AFME EURO 500 (or the equivalent in other currencies at the prevailing exchange rates)

## 6.2 Aggregation of Claims –

Claims that individually fall below the minimum threshold, but, in aggregate, exceed the minimum threshold should be handled on a bilateral basis. For example, the US TMPG recommends a USD 500 threshold on an aggregated cumulative basis between two legal entities within a given calendar month for all security types covered under their purview. See appendix D for further information.

## 6.3 Netting of Claims –

Interest claims should not be netted or aggregated unless bilateral agreements between the parties provide otherwise.

## 6.4 Claims Workflow –

The recommendations below recognize that in many cases three parties are involved in the investigation of a claim: the Custodian, the Investment Manager and the Broker/Dealer. It is recommended in these cases that, unless other arrangements prevail (where, for example, a Custodian is the administrator of claims on behalf of the Investment Manager), the claim should be sent directly to the Investment Manager for further investigation and determination of responsibilities.

In the event that a loss resulted from a third party's error, the Investment Manager will forward the claim to that third party for investigation and settlement. Where only two parties are involved in a claim, all efforts should be made to adhere to the timing of initial claim issuance described in Appendix A.

Claims should be issued, investigated, and settled as promptly as possible. The timeframes in Appendix A detail the recommended cut-off times for each step in the claim cycle. Unless otherwise noted, all times are expressed in calendar days. To aid the Investment Manager with timely issuance/resolution of TMPG Fails Charge claims, the custodian bank should provide a report of U.S. Treasury and Mortgage-Backed Securities fails that settled in the prior month. The report should be delivered by the end of the first business day for the prior month's fails. The suggested content of the report is listed in Appendix B.

### 6.4.1 Initial Claim Issuance -

Compensation Claims

Compensation claims should be issued in writing within 60 days from actual settlement of the underlying transaction, regardless of liability. However, the investment manager (or its designated claim agent) has 10 days to conduct its own investigation prior to onward transmission to a third party (see Section 6.4.4). Thus, the third party must receive the claim within 70 days of the actual settlement date.

TMPG Fails Charge Claims

Claims for U.S. Treasury, Agency Debt, and Agency Mortgage Back Securities fail charges should be issued by the tenth business day of the month following the month in which the delivery failure is resolved. All parties should strive to achieve resolution of TMPG fails charge claims by the last business day of the month in which they were submitted.

Overdraft Charges

The custodian bank will charge their client's account on the first business day of the month following the condition causing the overdraft. An investment manager would see the amount of the charge during the reconciliation of the cash. The investment manager should have been made aware of the overdraft at the time it occurred so the subsequent charge should be anticipated.

### 6.4.2 Claim Communication Method -

All claims should be issued in writing, and issuers of claims should ensure that all relevant information is provided for easy identification of the underlying transaction. The recommended message format is described in Appendix C.

E-mail is an acceptable method of communication, but other methods (preferably electronic) may be used by bilateral agreement. If the receipt of a message is disputed, the sender of that message is responsible for providing evidence of delivery.

### 6.4.3 Initial Claim Acknowledgement -

Claims should be acknowledged in writing within 7 days of receipt.
E-mail is an acceptable method of communication, but other methods (preferably electronic) may be used by bilateral agreement.
*The acknowledgment of receipt of a claim does not constitute an admission of liability.*

### 6.4.4 Onward Claim Transmission to Third Party -

If the investigation by the Investment Manager (or by its designated claim agent) indicates that the error is attributable to a third party, the claim must be forwarded to that third party within 70 days from actual settlement date of the underlying transaction.

Therefore, depending upon the timeliness of the claim issuance, the Investment Manager (or its designated claim agent) has a minimum of 10 days to conduct its own investigation prior to onward transmission to a third party.

### 6.4.5 Onward-transmitted Claim Acknowledgement by Third Party -

Receipt of onward-transmitted claims should be acknowledged in writing to the Investment Manager (or its designated claim agent) within 7 days of receipt.
E-mail is an acceptable method for acknowledging receipt, but other methods (preferably electronic) may be used by bilateral agreement.
*The acknowledgment of receipt of a claim does not constitute an admission of liability.*

#### 6.4.6 Claim Investigation/Rejection -

If the recipient of a claim has grounds for rejection, the issuer of the claim should be notified as promptly as possible, with a clear statement of the reasons for rejection.

If the rejection is disputed, the original issuer of the claim should respond to the recipient within 10 days, with additional information. Each subsequent dispute between parties should lead to further review and should be responded to within 10 days.

#### 6.4.7 Claim Investigation/Settlement -

All parties should strive to achieve compensation claim settlement within a recommended period of 90 days from the actual settlement date of the underlying transaction. In accordance with the TMPG Recommendations, all parties to a claim related to the TMPG Fails Charge should endeavor to resolve the claim within the same month it was issued. The settlement notification should be sent to the issuer of the claim prior to effecting the settlement. The issuer should confirm the closure of the claim, once settlement is received.

#### 6.4.8 Claim Escalation -

If a claim is not resolved within 90 days from the actual settlement date of the underlying transaction, the issuer should escalate the issue within its organization. However, escalation may be initiated at an earlier time at the discretion of the individuals.

### 6.5 Rates and Charges -

Compensation Claims

Claims should be calculated by reference to the full principal cash amount of the failed transaction. The interest rates should be those actually imposed by the Agent Banks or Sub-custodians. Upon request, the issuer of a claim must provide documentation supporting the rates charged. The claiming party should not add any administration charges to the claim. However, additional charges may be levied in accordance with the local market practices, if, for example, the recipient of the claim elects to effect compensation in the form of back-valuation.

TMPG Fails Charge

The TMPG has prescribed a specific formula for calculation of the fails charge. Please see Appendix D for the formula.

Overdraft Charge

The rate that is applied to an overdraft is a result of the bilateral agreement between the custodian bank and their client.

### 6.6 Claim Content -

The issuer of a claim should ensure that all relevant information is provided for easy identification of the underlying transaction. The suggested content to be used when issuing interest claims, for all instruments, is showing in Appendix C

### 6.7 Back Valuation -

The facility to back value is market and transaction specific. Where applicable, back valuation should be accepted as an alternative to settling a claim in cash.

# 7.0 Disclaimer

This document has been developed by the International Securities Association for Institutional Trade Communication (ISITC) as a statement of professional practices recommended by ISITC. Institutions providing the information recommended in this document will benefit from the efficiencies inherent in a more automated transaction process. Although all institutions are encouraged to act consistently with this document, none are required to do so, and a failure to do so is not, in and of itself, evidence of negligent or inappropriate conduct.

**ADDITIONAL COPIES and CONTACT DETAILS**

For additional information on the Best Practices and the ISITC Compensation Guidelines, please refer to the ISITC website www.isitc.org.

# 8.0 Appendix

## 8.1 Appendix A: Best Practice Timeframes (Summary of 6.4.1-8)

### 8.1.1 Compensation Claims

| Action | Days | Cumulative Days |
|---|---|---|
| 4.1 Initial claim issuance | 60 | 60 |
| 4.3 Initial claim acknowledgement (*) | 7 | |
| 4.4 Onward claim transmission to Third Party | 10 | 70 |
| 4.5 Onward claim acknowledgement by third party (*) | 7 | |
| 4.7 Claim investigation/settlement | 20 | 90 |
| 4.8 Claim escalation | 30 | 120 |

### 8.1.2 Over Draft Charges and Disputes

| Action | Days | Cumulative Days |
|---|---|---|
| Over Draft Fee Charged by Bank to Account | 1st Business Day | 1 |
| Claim investigation/Discussion with Counter-Party | 60 | 60 |
| Notify Bank in Dispute | 30 | 90 |
| IM and Bank work on Resolution | 30 | 120 |
| 4.8 Claim escalation | 30 | 150 |

### 8.1.3 TMPG Fails Charge Claims

| Action | Business Days |
|---|---|
| 4 Custodian delivers TMPG Fails charge report to IM | 1 |
| 4.1 Initial claim issuance | 10 |
| 4.3 Initial claim acknowledgement (*) | 7 |
| 4.7 Claim investigation/settlement | Upon receipt until last business day of month in which it was issued |
| 4.8 Claim escalation | If still outstanding after the last business day of the month in which it was issued |

## 8.2 Appendix B: Suggested Content for Monthly Custodian TMPG Claims Report

**Report -** This content recommendation is intended to provide guidance on the minimum details needed to identify the trade and research the fail. The format and layout of the report may vary among service providers. The industry should attempt to implement a standardized report in terms of both content and format.

**CLIENT REFERENCE NUMBER (If available).**

**BOOKING NAME / CLIENT NAME / CODE**

**CUSTODIAN ACCOUNT NUMBER**

**TRADE DATE**

**CONTRACTUAL SETTLEMENT DATE**

**ACTUAL SETTLEMENT DATE**

**COUNTERPARTY**

**BUY/SELL**

**PRICE**

**CURRENCY**

**QUANTITY/NOMINAL AMOUNT**

**NET/PRINCIPAL AMOUNT**

**SECURITY NAME/DESCRIPTION**

**ASSET IDENTIFIER (E.G. CUSIP, SEDOL, ISIN, ETC.)**

**NUMBER OF DAYS CLAIMABLE**

**CLAIM RATE**

**CLAIM AMOUNT**

**BRIEF DESCRIPTION OF FAIL/REASON CODE**

**8.3 Appendix C: Suggested Message Content for Issuance of Claims -** This format recommendation is intended to be generic across transaction types and instruments and should be adapted accordingly.

| |
|---|
| **CLAIMANT REF. NO.** |
| **BOOKING NAME / CLIENT NAME / CODE** |
| **TRADE DATE** |
| **CONTRACTUAL SETTLEMENT DATE** |
| **ACTUAL SETTLEMENT DATE** |
| **COUNTERPARTY/CUSTODIAN** |
| **BUY/SELL** |
| **PRICE** |
| **SETTLEMENT MARKET** |
| **CURRENCY** |
| **NOMINAL AMOUNT** |
| **NET / PRINCIPAL AMOUNT** |
| **SECURITY DESCRIPTION** |
| **ASSET IDENTIFIER (E.G. SEDOL, ISIN, ETC.)** |
| **NUMBER OF DAYS CLAIMABLE** |
| **CLAIM RATE** |
| **CLAIM AMOUNT** |
| **BRIEF DESCRIPTION OF FAIL** |
| **CONTACT DETAILS** |
| **FULL PAYMENT DETAILS** |

## 8.4 Appendix D: Calculation of TMPG Fail Charge

Upon a Delivery Failure in any transaction subject to this Trading Practice, the Fails Charge accrued on each calendar day in the period from and including the date of such Delivery Failure to but excluding the date the Delivery Failure is resolved (by delivery of the Treasuries or otherwise) and is calculated according to the following formula:

$$C = \frac{1}{360} * .01 * \max(B - R, 0) * P$$

.

where: C = the Fails Charge amount;

B = 2, When calculating the Fails Charge for an Agency MBS Transaction, and 3, When calculating the Fails Charge for an Agency Debt Transaction.

R = for each day, the “TMPG reference rate” in percent per annum is the target level for the federal funds rate that is effective on such day, as announced by the Federal Open Markets Committee (the “FOMC”) or, if the FOMC specifies a target range in lieu of a target level, the lower limit of the target range announced by the FOMC. If the FOMC shall terminate its policy of specifying or announcing a target level or range for the federal funds rate, then the “TMPG reference rate” shall be a successor rate and source recommended by the TMPG; and

P = the amount of funds due from the Non-Failing Party (in respect of a transaction settling on a delivery-versus-payment basis) or an amount equal to the market value on the date such Delivery Failure began of the securities due from the Non-Failing Party against delivery of TMPG Covered Security by the Failing Party (in respect of a transaction settling on a delivery-versus-transfer basis) (each such amount, the “Trade Proceeds”)[1]

[1] http://www.newyorkfed.org/tmpg/.