

EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (CENTRAL SECURITIES DEPOSITORIES) (AMENDMENT ETC.) (EU EXIT) (No.2) INSTRUMENT 2020

Powers exercised

- A. The Bank of England (“the Bank”), being the appropriate regulator within the meaning of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (“the Regulations”), with the approval of the Treasury, makes this instrument in exercise of the power conferred by regulation 3 of the Regulations.

History

- B. The Bank made the Technical Standards (Central Securities Depositories) (Amendment etc.) (EU Exit) Instrument 2019 on 28 March 2019. This made modifications to the CSD EU Regulations.

Pre-conditions to making

- C. The Bank is the appropriate regulator for the CSD EU Regulations.
- D. The Bank proposes to exercise the power in regulation 3 of the Regulations to modify the CSD EU Regulations.
- E. The Bank has consulted the Prudential Regulation Authority (“the PRA”) and the Financial Conduct Authority (“the FCA”) in accordance with regulation 5 of the Regulations.
- F. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

Interpretation

- G. In this instrument –
- (a) “the 2018 Act” means the European Union (Withdrawal) Act 2018;
 - (b) the 2020 Act” means the European Union (Withdrawal Agreement) Act 2020;
 - (c) “the CSD EU Regulations” means the EU Regulations specified in Part 3 of the Schedule to the Regulations under the heading “Central Securities Depositories Regulation”, as they form part of domestic law by virtue of section 3 of the Act; and
 - (d) “IP completion day” has the meaning given in section 39 of the 2020 Act.
- H. Any reference in this instrument to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

Modifications

- I. The Bank makes the modifications contained in the Annex listed in column (2) below to the corresponding annex to the Technical Standards (Central Securities Depositories) (Amendment etc.) (EU Exit) Instrument 2019 (or part thereof) listed in column (1) below.

(1)	(2)
Annex D to the Technical Standards (Central Securities Depositories) (Amendment etc.) (EU Exit) Instrument 2019	A
Annex F to the Technical Standards (Central Securities Depositories) (Amendment etc.) (EU Exit) Instrument 2019	B

Notes

J. In the Annexes to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Commencement

K. This instrument comes into force immediately before IP completion day.

Citation

L. This instrument may be cited as the Technical Standards (Central Securities Depositories) (Amendment etc.) (EU Exit) (No.2) Instrument 2020.

By order of the Bank of England

[] 2020

Draft for consultation

Note: for consultation purposes, modifications to the Technical Standards (Central Securities Depositories) (Amendment etc.) (EU Exit) Instrument 2019 in this Annex are highlighted for the convenience of readers. This highlighting will not appear in any final instrument and will not form part of the legislative text.]

Annex A

Authorisation, Supervision and Operational Requirements

1 MODIFICATIONS TO SPECIFIED PARAGRAPHS OF ANNEX D TO THE TECHNICAL STANDARDS (CENTRAL SECURITIES DEPOSITORIES) (AMENDMENT ETC.) (EU EXIT) INSTRUMENT 2019

- 1.1 Relevant provisions of paragraph 4.2 of Annex D to the Technical Standards (Central Securities Depositories) (Amendment etc.) (EU Exit) Instrument 2019 (which modifies Commission Delegated Regulation (EU) 2017/392 of 11 November 2016 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on authorisation, supervisory and operational requirements for central securities depositories, as it forms part of domestic law by virtue of section 3 of the Act) are substituted as follows:

...

Article 41

Periodic information relevant for the reviews

For each review period, the CSD shall provide the competent authority with the following information:

- (a) a complete set of the latest audited financial statements of the CSD, including those consolidated at group level;
- (b) a summarised version of the most recent interim financial statements of the CSD;
- (c) any decisions of the management body following the advice of the user committee, as well as any decisions where the management body has decided not to follow the advice of the user committee;
- (d) information on any pending civil, administrative or any other judicial or extrajudicial proceedings involving the CSD, in particular in relation to matters concerning tax and insolvency, or matters that may cause financial or reputational costs for the CSD;
- (e) information on any pending civil, administrative or any other judicial or extrajudicial, proceedings involving a member of the management body or a member of the senior management that may have a negative impact on the CSD;
- (f) any final decisions resulting from the proceedings referred to in points (d) and (e);
- (g) a copy of the results of business continuity stress tests or similar exercises performed during the review period;
- (h) a report on the operational incidents that occurred during the review period and affected the smooth provision of any core services, the measures taken to address them and the results thereof;
- (i) a report on the performance of the securities settlement system, including an assessment of

the system's availability during the review period, measured on a daily basis as the percentage of time the system is operational and functioning according to the agreed parameters;

~~(j) a summary of the types of manual intervention performed by the CSD;~~

[Note: Article 41 point (j) of Regulation 2017/392 does not form part of domestic law on and after IP completion day by virtue of section 3 of the 2018 Act].

(k) information concerning the identification of the CSD's critical operations, any substantive changes to its recovery plan, the results of stress scenarios, the recovery triggers and the recovery tools of the CSD;

(l) information on any formal complaints received by the CSD during the review period including information on the following elements:

- (i) the nature of the complaint;
- (ii) how the complaint was handled, including the outcome of the complaint;
- (iii) the date when the treatment of the complaint ended;

(m) information concerning the cases where the CSD denied access to its services to any existing or potential participant, any issuer, another CSD or third-country CSD or another market infrastructure in accordance with Articles 33(3), 49(3), 52(2) and 53(3) of Regulation (EU) No 909/2014;

(n) a report on changes affecting any CSD links established by the CSD, including changes to the mechanisms and procedures used for the settlement in those CSD links;

(o) information concerning all cases of identified conflicts of interests that materialised during the review period, including the description of how they were managed;

(p) information concerning internal controls and audits performed by the CSD during the review period;

(q) information concerning any identified infringement of Regulation (EU) No 909/2014, including those identified through the reporting channel referred to in Article 26(5) of Regulation (EU) No 909/2014;

~~(r) detailed information concerning any disciplinary actions taken by the CSD, including any cases of suspension of participants in accordance with Article 7(9) of Regulation (EU) No 909/2014 with a specification of the period of suspension and the reason for suspension;~~

[Note: Article 41 point (r) of Regulation 2017/392 does not form part of domestic law on and after IP completion day by virtue of section 3 of the 2018 Act].

(s) the general business strategy of the CSD covering a period of at least three years after the last review and evaluation and a detailed business plan for the services provided by the CSD covering at least a period of one year after the last review and evaluation.

Article 42

Statistical data to be delivered for each review and evaluation

1. For each review period, the CSD shall provide the competent authority with the following statistical data:

...

(d) the nominal and market value of the securities referred to in point (c) specified as follows:

(i) by each of the following types of financial instruments:

- transferable securities referred to in point (a) of Article 4(1)(44) of Directive 2014/65/EU;
- sovereign debt referred to in Article 4(1)(61) of Directive 2014/65/EU;
- transferable securities referred to in point (b) of Article 4(1)(44) of Directive 2014/65/EU, other than sovereign debt referred to in Article 4(1)(61) of Directive 2014/65/EU;
- transferable securities referred to in point (c) of Article 4(1)(44) of Directive 2014/65/EU;
- exchange traded funds as defined in point (46) of Article 4(1) of Directive 2014/65/UE (ETF);
- units in collective investment undertakings, other than ETFs;
- money market instruments, other than sovereign debt referred to in Article 4(1)(61) of Directive 2014/65/EU;
- emission allowances;
- other financial instruments;

(ii) by country of incorporation of the participant;

(iii) by country of incorporation of the issuer;

[Note: Article 42 (1) point (d) of Regulation 2017/392 does not form part of domestic law on and after IP completion day by virtue of section 3 of the 2018 Act].

(e) the nominal and market value of the securities initially recorded in each securities settlement system operated by the CSD;

(f) the nominal and market value of the securities referred to in point (e) specified as follows:

(i) by types of financial instruments referred to in point (d)(i);

(ii) by country of incorporation of the participant;

(iii) by country of incorporation of the issuer;

[Note: Article 42 (1) point (f) of Regulation 2017/392 does not form part of domestic law on and after IP completion day by virtue of section 3 of the 2018 Act].

(g) the total number and the values of the settlement instructions against payment and the total number and the values of the free of payment (FOP) settlement instructions settled in each securities settlement system operated by the CSD;

(h) the total number and the values of the settlement instructions categorised as follows:

- (i) by types of financial instruments referred to in point (d)(i);
 - (ii) by country of the incorporation of the participant;
 - (iii) by country of incorporation of the issuer;
 - (iv) by settlement currency;
 - (v) by type of settlement instructions, as follows:
 - a free of payment (FOP) settlement instructions that consist of deliver free of payment (DFP) and receive free of payment (RFP) settlement instructions;
 - delivery versus payment (DVP) and receive versus payment (RVP) settlement instructions;
 - delivery with payment (DWP) and receive with payment (RWP) settlement instructions;
 - payment free of delivery (PFOD) settlement instructions;
 - (vi) for settlement instructions against payment, by whether the cash leg is settled in accordance with Article 40(1) of Regulation (EU) No 909/2014 or in accordance with Article 40(2) of Regulation (EU) No 909/2014;
 - (i) the number and value of buy-in transactions referred to in Article 7(3) of Regulation (EU) No 909/2014;
 - (j) the number and amount of penalties referred to in Article 7(2) of Regulation (EU) No 909/2014 per participant;
- [Note: Article 42 (1) points (h), (i) and (j) of Regulation 2017/392 do not form part of domestic law on and after IP completion day by virtue of section 3 of the 2018 Act].

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CHAPTER XIII ACCESS TO A CSD

(Articles 33(5), 49(5), 52(3) and 53(4) of Regulation (EU) No 909/2014)

Article 88

Receiving and requesting parties

A1. For the purposes of this Chapter:

- (a) references to a CSD in relation to a request from an issuer in accordance with Articles 49(1) or 49(2) of Regulation (EU) No 909/2014 shall include a third-country CSD recognised under Article 25 of that Regulation; and

(b) references to the competent authority of such a CSD shall be read as references to the competent authority responsible for recognition under Article 25 of Regulation (EU) No 909/2014; and

(c) references to a securities settlement system operated by such a CSD shall be read as references to an SSS as defined in point (10A) of Article 2(1) of Regulation (EU) No 909/2014.

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SECTION 1

Criteria justifying refusal of access

(Articles 33(3), 49(3), 52(2) and 53(3) of Regulation (EU) No 909/2014)

Article 89

Risks to be taken into account by CSDs and competent authorities

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6. When assessing legal risks following a request for access by a trading venue, a CSD and its competent authority shall take into account the following criteria:

(a) the criteria set out in point (b) of paragraph 2;

(b) where a trading venue is established in a third country, the requesting trading venue is not subject to a regulatory and supervisory framework comparable to the regulatory and supervisory framework applicable to a UK trading venue in the Union;

...

SECTION 2

Procedure for refusal of access

(Articles 33(3), 49(4), 52(2) and 53(3) of Regulation (EU) No 909/2014)

Article 90

Procedure

1. In the event of a refusal of access, the requesting party shall have the right to complain within one month from the receipt of the refusal to the competent authority of the receiving CSD, UK CCP or UK trading venue that has refused access to it in accordance with Articles 33(3), 49(4), 52(2) or 53(3) of Regulation (EU) No 909/2014.

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CHAPTER XV FINAL PROVISIONS

Article 95

Transitional provisions

1. ~~Information referred to in Article 17(2) of this Regulation, shall be provided to the competent authority at the latest six months before the date referred to in Article 96(2).~~
2. ~~Information referred to in Article 24(2) of this Regulation shall be provided to the competent authority at the latest six months before the date referred to in Article 96(2).~~
3. Information referred to in points (j) and (r) of Article 41 and in points (d), (f), (h), (i), and (j) of Article 42(1) of this Regulation shall be provided from the date referred to in Article 96(2).

[Note: Article 95 of Regulation 2017/392 does not form part of domestic law on and after IP completion day by virtue of section 3 of the 2018 Act].

Draft for consultation

Annex B

Templates and Procedures for Authorisation, Supervision and Operational Requirements

2 MODIFICATIONS TO SPECIFIED PARAGRAPHS OF ANNEX F TO THE TECHNICAL STANDARDS (CENTRAL SECURITIES DEPOSITORIES) (AMENDMENT ETC.) (EU EXIT) INSTRUMENT 2019

- 2.1 Relevant provisions of paragraph 6.2 of Annex F to the Technical Standards (Central Securities Depositories) (Amendment etc.) (EU Exit) Instrument 2019 (which modifies Commission Implementing Regulation (EU) 2017/394 of 11 November 2016 laying down implementing technical standards with regard to standard forms, templates and procedures for authorisation, review and evaluation of central securities depositories, for the cooperation between authorities of the home Member State and the host Member State, for the consultation of authorities involved in the authorisation to provide banking-type ancillary services, for access involving central securities depositories, and with regard to the format of the records to be maintained by central securities depositories in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council, as it forms part of domestic law by virtue of section 3 of the Act) are substituted as follows:

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CHAPTER V ACCESS

(Articles 33(6), 49(6), 52(4) and 53(5) of Regulation (EU) No 909/2014)

Article 12

Standard forms and templates for the access procedure

A1. For the purposes of this Chapter:

- (a) references to a CSD in relation to a request from an issuer in accordance with Articles 49(1) or 49(2) of Regulation (EU) No 909/2014 shall include a third-country CSD recognised under Article 25 of that Regulation; and
- (b) references to the competent authority of such a CSD shall be read as references to the competent authority responsible for recognition under Article 25 of Regulation (EU) No 909/2014; and
- (c) references to a securities settlement system operated by such a CSD shall be read as references to an SSS as defined in point (10A) of Article 2(1) of Regulation (EU) No 909/2014.

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