



Shearman & Sterling LLP has created this consolidated legislation to show the changes HM Treasury proposes to make to retained EU legislation to correct EU law deficiencies and ensure that it remains effective after Brexit.

## 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

(Text with EEA relevance)

#### TITLE I

#### SUBJECT MATTER, SCOPE AND DEFINITIONS

##### *Article 1*

##### **Subject matter and scope**

1. This Regulation lays down ~~uniform~~ requirements for the settlement of financial instruments in the ~~Union~~United Kingdom and rules on the organisation and conduct of central securities depositories (CSDs) to promote safe, efficient and smooth settlement.
2. This Regulation applies to the settlement of all financial instruments and activities of CSDs unless otherwise specified in this Regulation.
- ~~3. This Regulation is without prejudice to provisions of Union law concerning specific financial instruments, in particular Directive 2003/87/EC.~~
- ~~3.~~ [deleted]
4. Articles 10 to 20, 22 to 24 and 27, Article 28(6), Article 30(4) and Articles 46 and 47, the provisions of Title IV and the requirements to report to competent authorities or ~~relevant authorities or~~ to comply with their orders under this Regulation, do not apply to the ~~members of the ESCB, other Member States' national bodies performing similar functions,~~Bank of England or to other public bodies charged with or intervening in the management of public debt in the

~~Union~~ United Kingdom in relation to any CSD which the aforementioned bodies directly manage under the responsibility of the same management body, which has access to the funds of those bodies and which is not a separate entity.

## *Article 2*

### **Definitions**

1. For the purposes of this Regulation, the following definitions apply:
  - (1) ‘central securities depository’ or ‘CSD’ means a legal person established in the United Kingdom that operates a securities settlement system referred to in point (3) of Section A of the Annex and provides at least one other core service listed in Section A of the Annex;
  - (2) ‘third-country CSD’ means any legal entity established in a third country that provides a similar service to the core service referred to in point (3) of Section A of the Annex and performs at least one other core service listed in Section A of the Annex;
  - (3) ‘immobilisation’ means the act of concentrating the location of physical securities in a CSD or third-country CSD in a way that enables subsequent transfers to be made by book entry;
  - (4) ‘dematerialised form’ means the fact that financial instruments exist only as book entry records;
  - (5) ‘receiving CSD’ means the CSD which receives the request of another CSD or third-country CSD to have access to its services through a CSD link;
  - (6) ‘requesting CSD’ means the CSD or third-country CSD which requests access to the services of ~~another~~ a CSD through a CSD link;
  - (7) ‘settlement’ means the completion of a securities transaction where it is concluded with the aim of discharging the obligations of the parties to that transaction through the transfer of cash or securities, or both;
  - (8) ‘financial instruments’ or ‘securities’ means financial instruments as ~~defined in point (15) of Article 4(1) of Directive 2014/65/EU~~ specified in Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
  - (9) ‘transfer order’ means a transfer order as defined in ~~the second indent of point (i) of Article 2 of Directive 98/26/EC~~ regulation 2(1) of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 at paragraph (b) of the definition thereof;
  - (10) ‘securities settlement system’ means a system ~~under the first, second and third indents of point (a) of Article 2 of Directive 98/26/EC~~ in relation to which a designation order made under regulation 4 of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 is in force that is not operated by a ~~central~~

~~counterparty~~recognised clearing house whose activity consists of the execution of transfer orders;

(10A) ‘SSS’ means a securities settlement system or a similar service operated by a CSD or third-country CSD;

(11) ‘settlement internaliser’ means any institution, ~~including one authorised in accordance with Directive 2013/36/EU or with Directive 2014/65/EU~~, which executes transfer orders on behalf of clients or on its own account other than through a securities settlement system;

(12) ‘intended settlement date’ means the date that is entered into the securities settlement system as the settlement date and on which the parties to a securities transaction agree that settlement is to take place;

(13) ‘settlement period’ means the time period between the trade date and the intended settlement date;

(14) ‘business day’ ~~means business day as defined in point (n) of Article 2 of Directive 98/26/EC~~shall cover both day and night-time settlements and shall encompass all events happening during the business cycle of a securities settlement system;

(15) ‘settlement fail’ means the non-occurrence of settlement, or partial settlement of a securities transaction on the intended settlement date, due to a lack of securities or cash and regardless of the underlying cause;

(16) ‘central counterparty’ or ‘CCP’ means a CCP as defined in point (1) of Article 2 of Regulation (EU) No 648/2012;

(16A) ‘UK CCP’ means a recognised central counterparty as defined in section 285 of FSMA;

(17) ‘competent authority’ means the authority designated by ~~each Member State in accordance with Article 11, unless otherwise specified in this Regulation~~regulation 2 of the Central Securities Depositories Regulations 2014;

(18) ~~‘relevant authority’ means any authority referred to in Article 12;~~[deleted]

(19) ‘participant’ means any participant, as defined in ~~point~~regulation 2(f1) of Article 2 of Directive 98/26/EC in a securities settlement systemthe Financial Markets and Insolvency (Settlement Finality) Regulations 1999;

(20) ‘participation’ means participation within the meaning of the first sentence of point (2) of Article 2 of Directive 2013/34/EU, or the ownership, direct or indirect, of 20 % or more of the voting rights or capital of an undertaking;

(21) ‘control’ means the relationship between two undertakings as described in ~~Article 22 of Directive 2013/34/EU~~section 1162 of the Companies Act 2006, together with Schedule 7 to that Act;

- (22) ‘subsidiary’ means a subsidiary undertaking within the meaning of ~~Article 2(10) and Article 22 of Directive 2013/34/EU~~ section 1162 of the Companies Act 2006, together with Schedule 7 to that Act;
- (23) ~~[deleted]~~
- (24) ~~[deleted]~~
- ~~(23) ‘home Member State’ means the Member State in which a CSD is established;~~
- ~~(24) ‘host Member State’ means the Member State, other than the home Member State, in which a CSD has a branch or provides CSD services;~~
- (25) ‘branch’ means a place of business in the United Kingdom other than ~~the~~ a head office which is a part of a CSD, or third-country CSD which has no legal personality and which provides CSD services for which the CSD has been authorised or the third-country CSD has been recognised;
- (26) ‘default’, in relation to a participant, means a situation where insolvency proceedings, ~~as defined in point (j) of Article 2 of Directive 98/26/EC,~~ within the meaning of regulation 2(1) of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 are opened against ~~that~~ that participant;
- (27) ‘delivery versus payment’ or ‘DVP’ means a securities settlement mechanism which links a transfer of securities with a transfer of cash in a way that the delivery of securities occurs if and only if the corresponding transfer of cash occurs and vice versa;
- (28) ‘securities account’ means an account on which securities may be credited or debited;
- (29) ‘CSD link’ means an arrangement between CSDs or third-country CSDs whereby ~~one~~ a CSD or third-country CSD becomes a participant in the ~~securities settlement system of another~~ SSS of a CSD or third-country CSD in order to facilitate the transfer of securities from the participants of the latter CSD or third-country CSD to the participants of the former CSD or third-country CSD or an arrangement whereby a CSD or third-country CSD accesses ~~another~~ a CSD or third-country CSD indirectly via an intermediary. CSD links include standard links, customised links, indirect links, and interoperable links;
- (30) ‘standard link’ means a CSD link whereby a CSD or third-country CSD becomes a participant in the ~~securities settlement system of another~~ SSS of a CSD or third-country CSD under the same terms and conditions as applicable to any other participant in the ~~securities settlement system~~ SSS operated by the latter;
- (31) ‘customised link’ means a CSD link whereby a CSD or third-country CSD that becomes a participant in the ~~securities settlement system of another~~ SSS of a CSD or third-country CSD is provided with additional specific services to the services normally provided by that CSD or third-country CSD to participants in the ~~securities settlement system~~ SSS;

- (32) ‘indirect link’ means an arrangement between a CSD or third-country CSD and a third party other than a CSD or third-country CSD, that is a participant in the ~~securities settlement system of another~~ SSS of a CSD or third-country CSD. Such a link is set up by a CSD or third-country CSD in order to facilitate the transfer of securities to its participants from the participants of another CSD or third-country CSD;
- (33) ‘interoperable link’ means a CSD link whereby CSDs or third-country CSDs agree to establish mutual technical solutions for settlement in the ~~securities settlement systems~~ SSS that they operate;
- (34) ‘international open communication procedures and standards’ means internationally accepted standards for communication procedures, such as standardised messaging formats and data representation, which are available on a fair, open and non-discriminatory basis to any interested party;
- (35) ‘transferable securities’ ~~means transferable securities as defined~~ has the meaning in point (44~~24~~) of Article 4~~2~~(1) of ~~Directive~~ Regulation EU (No) 600/2014/65/EU;
- (36) ~~‘shares’ means securities specified in point (44)(a) of Article 4(1) of Directive 2014/65/EU;~~ [deleted]
- (37) ‘money-market instruments’ ~~means money market instruments as defined~~ has the meaning in point (17~~25A~~) of Article 4~~2~~(1) of ~~Directive 2014/65/Regulation (EU) No 600/2014~~;
- (38) ‘units in collective investment undertakings’ ~~means units in collective investment undertakings as referred to in point (3) of Section C of Annex I to Directive 2014/65/EU;~~ has the meaning in paragraph 3 of Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
- (39) ‘emission allowance’ ~~means emission allowance as described in point (11) of Section C of Annex I to Directive 2014/65/EU~~ has the meaning in paragraph 11 of Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, excluding derivatives in emission allowances;
- (40) ‘regulated market’ ~~means regulated market as defined~~ has the meaning in point (21~~13~~) of Article 4~~2~~(1) of ~~Directive 2014/65/Regulation (EU) No 600/2014~~;
- (41) ‘multilateral trading facility’ or ‘MTF’ ~~means multilateral trading facility as defined~~ has the meaning in point (22~~14~~) of Article 4~~2~~(1) of ~~Directive 2014/65/Regulation (EU) No 600/2014~~;
- (42) ‘trading venue’ ~~means a trading venue as defined~~ has the meaning in point (24~~16~~) of Article 4~~2~~(1) of ~~Directive 2014/65/Regulation (EU) No 600/2014~~;
- (42A) ‘UK trading venue’ has the meaning in point (16A) of Article 2(1) of Regulation (EU) No 600/2014;

(43) ‘settlement agent’ means settlement agent as defined in ~~point~~regulation 2(d1) of ~~Article 2 of Directive 98/26/EC~~the Financial Markets and Insolvency (Settlement Finality) Regulations 1999;

(44) ~~‘SME growth market’ means an SME growth market as defined in point (12) of Article 4(1) of Directive 2014/65/EU;~~[deleted]

(45) ‘management body’ means the body or bodies of a CSD, appointed in accordance with ~~national~~the law applicable within the United Kingdom or any part of the United Kingdom, which is empowered to set the CSD’s strategy, objectives and overall direction, and which oversees and monitors management decision-making and includes persons who effectively direct the business of the CSD.

Where, according to ~~national~~the law applicable within the United Kingdom or any part of the United Kingdom, a management body comprises different bodies with specific functions, the requirements of this Regulation shall apply only to members of the management body to whom the ~~applicable national law~~law applicable within the United Kingdom or any part of the United Kingdom assigns the respective responsibility;

(46) ‘senior management’ means those natural persons who exercise executive functions within a CSD and who are responsible and accountable to the management body for the day-to-day management of that CSD.

(47) ‘financial collateral arrangement’ means a financial collateral arrangement as defined in regulation 3(1) of the Financial Collateral Arrangements (No.2) Regulations 2003;

(48) ‘FCA’ means the Financial Conduct Authority;

(49) ‘PRA’ means the Prudential Regulation Authority;

(50) ‘recognised clearing house’ means a recognised clearing house as defined in section 285(1)(b) of FSMA;

(51) ‘FSMA’ means the Financial Services and Markets Act 2000;

(52) ‘Directive 2013/36/EU UK law’ has the meaning in Article 4(A)(1) of Regulation (EU) No 575/2013;

(53) references to a ‘third country’ (including in expressions including the words “third country”) are to be read as references to a country other than the United Kingdom;

(54) references to ‘the UK law on markets in financial instruments’ are to the law applicable within the United Kingdom or any part of the United Kingdom which was relied on immediately before exit day to implement Directive 2014/65/EU and its implementing measures—

(a) as they have effect on exit day, in the case of rules made by the FCA or by the PRA under FSMA, and

(b) as amended from time to time, in all other cases;

(55) [references to “data protection legislation” have the meaning in the Data Protection Act 2018.](#)

2. The ~~Commission shall be empowered to adopt delegated acts in accordance with Article 67 concerning~~[Treasury may by regulations specify](#) measures to further specify the non-banking-type ancillary services set out in points (1) to of Section B of the Annex and the banking-type ancillary services set out in Section C of the Annex.

## TITLE II

### SECURITIES SETTLEMENT

#### CHAPTER I

#### Book-entry form

#### *Article 3*

#### Book-entry form

1. Without prejudice to paragraph 2, any issuer established in the Union that issues or has issued transferable securities which are admitted to trading or traded on trading venues, shall arrange for such securities to be represented in book-entry form as immobilisation or subsequent to a direct issuance in dematerialised form.<sup>1</sup>
2. Where a transaction in transferable securities takes place on a [UK](#) trading venue the relevant securities shall be recorded in book-entry form in a CSD [or third-country CSD](#) on or before the intended settlement date, unless they have already been so recorded.

Where transferable securities are transferred following a financial collateral arrangement ~~as defined in point (a) of Article 2(1) of Directive 2002/47/EC~~, those securities shall be recorded in book-entry form in a CSD [or third-country CSD](#) on or before the intended settlement date, unless they have already been so recorded.

<sup>1</sup> [Shearman & Sterling Note: According to paragraph 7.9 of the Draft Central Securities Depositories \(Amendment\) \(EU Exit\) Regulations 2018: explanatory information \(22 October 2018\), "Article 3\(1\) relating to book-entry form will not apply before exit day, so will not become UK law after exit day and will not appear in the onshored CSDR".](#)

[While this statement does not appear in the explanatory memorandum to the Central Securities Depositories \(Amendment\) \(EU Exit\) Regulations 2018, Article 76\(2\) of the original Regulation \(EU\) No 909/2014 does state that "Article 3\(1\) shall apply from 1 January 2023 to transferable securities issued after that date and from 1 January 2025 to all transferable securities", which supports the statement in the draft explanatory information.](#)

## Article 4

### Enforcement

1. [deleted]
2. ~~1. The authorities of the Member State where the issuer that issues securities is established~~ competent authority shall ensure that the first sub-paragraph of Article 3(42) of this Regulation is applied where transferable securities are admitted to trading or traded on UK trading venues.
3. The competent authority shall ensure that the second sub-paragraph of Article 3(2) of this Regulation is applied where transferable securities admitted to trading or traded on UK trading venues are transferred following a financial collateral arrangement.
- ~~2. The authorities competent for the supervision of the trading venues, including the competent authorities designated in accordance with Article 21(1) of Directive 2003/71/EC of the European Parliament and of the Council, shall ensure that the first subparagraph of Article 3(2) of this Regulation is applied where the securities referred to in Article 3(1) of this Regulation are traded on trading venues.~~
- ~~3. Member States' authorities responsible for the application of Directive 2002/47/EC shall ensure that the second subparagraph of Article 3(2) of this Regulation is applied where the securities referred to in Article 3(1) of this Regulation are transferred following a financial collateral arrangement as defined in point (a) of Article 2(1) of Directive 2002/47/EC.~~

## CHAPTER II

### Settlement periods

## Article 5

### Intended settlement date

1. Any participant in a securities settlement system that settles in that system on its own account or on behalf of a third party transactions in transferable securities, money-market instruments, units in collective investment undertakings and emission allowances shall settle such transactions on the intended settlement date.
2. As regards transactions in transferable securities referred to in paragraph 1 which are executed on a UK trading venue, the intended settlement date shall be no later than on the second business day after the trading takes place. That requirement shall not apply to transactions which are negotiated privately but executed on a UK trading venue, to transactions which are executed bilaterally but reported to a UK trading venue or to the first transaction where the transferable securities concerned are subject to initial recording in book-entry form pursuant to Article 3(2).
3. The competent ~~authorities~~ authority shall ensure that paragraph 1 is applied.

The ~~authorities~~ competent authority for the supervision of trading venues shall ensure that paragraph 2 is applied.

## CHAPTER III

### Settlement discipline

#### *Article 6*

#### **Measures to prevent settlement fails<sup>2</sup>**

1. Trading venues shall establish procedures that enable the confirmation of relevant details of transactions in financial instruments referred to in Article 5(1) on the date when the transaction has been executed.
2. Notwithstanding the requirement laid down in paragraph 1, investment firms authorised pursuant to Article 5 of Directive 2014/65/EU shall, where applicable, take measures to limit the number of settlement fails.

Such measures shall at least consist of arrangements between the investment firm and its professional clients as referred to in Annex II to Directive 2014/65/EU to ensure the prompt communication of an allocation of securities to the transaction, confirmation of that allocation and confirmation of the acceptance or rejection of terms in good time before the intended settlement date.

ESMA shall, in close cooperation with the members of the ESCB, issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 on the standardised procedures and messaging protocols to be used for complying with the second subparagraph of this paragraph.

3. For each securities settlement system it operates, a CSD shall establish procedures that facilitate the settlement of transactions in financial instruments referred to in Article 5(1) on the intended settlement date with a minimum exposure of its participants to counterparty and liquidity risks and a low rate of settlement fails. It shall promote early settlement on the intended settlement date through appropriate mechanisms.
4. For each securities settlement system it operates, a CSD shall put in place measures to encourage and incentivise the timely settlement of transactions by its participants. CSDs shall require participants to settle their transactions on the intended settlement date.

5. [deleted]

<sup>2</sup> [Shearman & Sterling Note: According to paragraph 7.9 of the explanatory memorandum to the Central Securities Depositories \(Amendment\) \(EU Exit\) Regulations 2018, "Articles 6 and 7 will not be in force before exit day. As a result, they cannot be considered retained EU law and are beyond the scope of the 2018 Act. They will not become UK law after exit and will not appear in the onshored CSDR".](#)

~~5. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the measures to be taken by investment firms in accordance with the first subparagraph of paragraph 2, the details of the procedures facilitating settlement referred to in paragraph 3 and the details of the measures to encourage and incentivise the timely settlement of transactions referred to in paragraph 4.~~

~~ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

## *Article 7*

### **Measures to address settlement fails<sup>3</sup>**

1. For each securities settlement system it operates, a CSD shall establish a system that monitors settlement fails of transactions in financial instruments referred to in Article 5(1). It shall provide regular reports to the competent authority and relevant authorities, as to the number and details of settlement fails and any other relevant information, including the measures envisaged by CSDs and their participants to improve settlement efficiency. Those reports shall be made public by CSDs in an aggregated and anonymised form on an annual basis. The competent authorities shall share with ESMA any relevant information on settlement fails.
2. For each securities settlement system it operates, a CSD shall establish procedures that facilitate settlement of transactions in financial instruments referred to in Article 5(1) that are not settled on the intended settlement date. These procedures shall provide for a penalty mechanism which will serve as an effective deterrent for participants that cause settlement fails.

Before establishing the procedures referred to in the first subparagraph, a CSD shall consult the relevant trading venues and CCPs in respect of which it provides settlement services.

The penalty mechanism referred to in the first subparagraph shall include cash penalties for participants that cause settlement fails ('failing participants'). Cash penalties shall be calculated on a daily basis for each business day that a transaction fails to be settled after its intended settlement date until the end of a buy-in process referred to in paragraph 3, but no longer than the actual settlement day. The cash penalties shall not be configured as a revenue source for the CSD.

<sup>3</sup> [Shearman & Sterling Note: According to paragraph 7.9 of the explanatory memorandum to the Central Securities Depositories \(Amendment\) \(EU Exit\) Regulations 2018, "Articles 6 and 7 will not be in force before exit day. As a result, they cannot be considered retained EU law and are beyond the scope of the 2018 Act. They will not become UK law after exit and will not appear in the onshored CSDR".](#)

3. Without prejudice to the penalty mechanism referred to in paragraph 2 and the right to bilaterally cancel the transaction, where a failing participant does not deliver the financial instruments referred to in Article 5(1) to the receiving participant within 4 business days after the intended settlement date ('extension period') a buy-in process shall be initiated whereby those instruments shall be available for settlement and delivered to the receiving participant within an appropriate time-frame.

Where the transaction relates to a financial instrument traded on an SME growth market the extension period shall be 15 days unless the SME growth market decides to apply a shorter period.

4. The following exemptions from the requirement referred to in paragraph 3 shall apply:
  - (a) based on asset type and liquidity of the financial instruments concerned, the extension period may be increased from four business days up to a maximum of seven business days where a shorter extension period would affect the smooth and orderly functioning of the financial markets concerned;
  - (b) for operations composed of several transactions including securities repurchase or lending agreements, the buy-in process referred to in paragraph 3 shall not apply where the timeframe of those operations is sufficiently short and renders the buy-in process ineffective.
5. Without prejudice to paragraph 7, the exemptions referred to in paragraph 4 shall not apply in relation to transactions for shares where those transactions are cleared by a CCP.
6. Without prejudice to the penalty mechanism referred to in paragraph 2, where the price of the shares agreed at the time of the trade is higher than the price paid for the execution of the buy-in, the corresponding difference shall be paid to the receiving participant by the failing participant no later than on the second business day after the financial instruments have been delivered following the buy-in.
7. If the buy-in fails or is not possible, the receiving participant can choose to be paid cash compensation or to defer the execution of the buy-in to an appropriate later date ('deferral period'). If the relevant financial instruments are not delivered to the receiving participant at the end of the deferral period, cash compensation shall be paid.

Cash compensation shall be paid to the receiving participant no later than on the second business day after the end of either the buy-in process referred to in paragraph 3 or the deferral period, where the deferral period was chosen.

8. The failing participant shall reimburse the entity that executes the buy-in for all amounts paid in accordance with paragraphs 3, 4 and 5, including any execution fees resulting from the buy-in. Such fees shall be clearly disclosed to the participants.
9. CSDs, CCPs and trading venues shall establish procedures that enable them to suspend in consultation with their respective competent authorities, any participant that fails consistently and systematically to deliver the financial instruments referred

to in Article 5(1) on the intended settlement date and to disclose to the public its identity only after giving that participant the opportunity to submit its observations and provided that the competent authorities of the CSDs, CCPs and trading venues, and of that participant have been duly informed. In addition to consulting before any suspension, CSDs, CCPs and trading venues shall notify, without delay, the respective competent authorities of the suspension of a participant. The competent authority shall immediately inform the relevant authorities of the suspension of a participant.

Public disclosure of suspensions shall not contain personal data within the meaning of point (a) of Article 2 of Directive 95/46/EC.

10. Paragraphs 2 to 9 shall apply to all transactions of the financial instruments referred to in Article 5(1) which are admitted to trading or traded on a trading venue or cleared by a CCP as follows:
  - (a) for transactions cleared by a CCP, the CCP shall be the entity that executes the buy-in according to paragraphs 3 to 8;
  - (b) for transactions not cleared by a CCP but executed on a trading venue, the trading venue shall include in its internal rules an obligation for its members and its participants to apply the measures referred to in paragraphs 3 to 8;
  - (c) for all transactions other than those referred to in points (a) and (b) of this subparagraph, CSDs shall include in their internal rules an obligation for their participants to be subject to the measures referred to in paragraphs 3 to 8.

A CSD shall provide the necessary settlement information to CCPs and trading venues to enable them to fulfil their obligations under this paragraph.

Without prejudice to points (a), (b) and (c) of the first subparagraph, CSDs may monitor the execution of buy-ins referred to in those points with respect to multiple settlement instructions, on the same financial instruments and with the same date of expiry of the execution period, with the aim of minimising the number of buy-ins to be executed and thus the impact on the prices of the relevant financial instruments.

11. Paragraphs 2 to 9 shall not apply to failing participants which are CCPs.
12. Paragraphs 2 to 9 shall not apply if insolvency proceedings are opened against the failing participant.
13. This Article shall not apply where the principal venue for the trading of shares is located in a third country. The location of the principal venue for the trading of shares shall be determined in accordance with Article 16 of Regulation (EU) No 236/2012.

14. [\[deleted\]](#)

15. [\[deleted\]](#)

~~14. The Commission shall be empowered to adopt delegated acts in accordance with Article 67 to specify parameters for the calculation of a deterrent and proportionate level of the cash penalties referred to in the third subparagraph of paragraph 2 based on asset type and liquidity of the financial instrument and type of transaction that shall ensure a high degree of settlement discipline and the smooth and orderly functioning of the financial markets concerned.~~

~~15. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify:~~

~~(a) the details of the system monitoring settlement fails and the reports on settlement fails referred to in paragraph 1;~~

~~(b) the processes for collection and redistribution of cash penalties and any other possible proceeds from such penalties in accordance with paragraph 2;~~

~~(c) the details of operation of the appropriate buy-in process referred to in paragraphs 3 to 8, including appropriate time frames to deliver the financial instrument following the buy-in process referred to in paragraph 3. Such time frames shall be calibrated taking into account the asset type and liquidity of the financial instruments;~~

~~(d) the circumstances under which the extension period could be prolonged according to asset type and liquidity of the financial instruments, in accordance with the conditions referred to in point (a) of paragraph 4 taking into account the criteria for assessing liquidity under point (17) of Article 2(1) of Regulation (EU) No 600/2014;~~

~~(e) type of operations and their specific time frames referred to in point (b) of paragraph 4 that renders buy-in ineffective;~~

~~(f) a methodology for the calculation of the cash compensation referred to in paragraph 7;~~

~~(g) the conditions under which a participant is deemed consistently and systematically to fail to deliver the financial instruments as referred to in paragraph 9; and~~

~~(h) the necessary settlement information referred to in the second subparagraph of paragraph 10.~~

~~ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

## Article 8

~~[deleted]~~

### **Enforcement**

- ~~1. The competent authority of the CSD that operates the securities settlement system, the relevant authority responsible for the oversight of the securities settlement system concerned as well as the competent authorities for the supervision of trading venues, investment firms and CCPs shall be competent for ensuring that Articles 6 and 7 are applied by the institutions subject to their supervision and for monitoring the penalties imposed. Where necessary, the respective competent authorities shall cooperate closely. Member States shall inform ESMA about the designated competent authorities that are part of the supervision structure at the national level.~~
- ~~2. In order to ensure consistent, efficient and effective supervisory practices within the Union in relation to Articles 6 and 7 of this Regulation, ESMA may, in close cooperation with the members of the ESCB, issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010.~~
- ~~3. An infringement of the rules under this Title shall not affect the validity of a private contract on financial instruments or the possibility for the parties to enforce the provisions of a private contract on financial instruments.~~

## CHAPTER IV

### **Internalised settlement**

## Article 9

### **Settlement internalisers**

1. Settlement internalisers shall report to the competent ~~authorities of their place of establishment~~authority on a quarterly basis the aggregated volume and value of all securities transactions that they settle outside securities settlement systems.

~~Competent authorities shall without delay transmit the information received under the first subparagraph to ESMA and shall inform ESMA of any potential risk resulting from that settlement activity.~~

2. ~~ESMA may, in close cooperation with the members of the ESCB, develop draft~~The Bank of England may make regulatory technical standards further specifying the content of such reporting.

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

3. ~~ESMA shall develop draft~~The Bank of England may make implementing technical standards to establish standard forms, templates and procedures for the reporting and transmission of information referred to in paragraph 1.

~~ESMA shall submit those draft implementing technical standards to the Commission by 18 June 2015.~~

~~Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.~~

### TITLE III

## CENTRAL SECURITIES DEPOSITORIES

### CHAPTER I

#### Authorisation and supervision of CSDs

##### Section 1

Authorities responsible for authorisation and supervision of CSDs

#### *Article 10*

##### Competent authority

~~Without prejudice to the oversight by the members of the ESCB referred to in Article 12(1), a CSD shall be authorised and supervised by the competent authority of its home Member State.~~

#### *Article 11*

~~[deleted]~~

##### ~~Designation of the competent authority~~

~~1. Each Member State shall designate the competent authority responsible for carrying out the duties under this Regulation for the authorisation and supervision of CSDs established in its territory and shall inform ESMA thereof.~~

~~Where a Member State designates more than one competent authority, it shall determine their respective roles and shall designate a single authority to be responsible for cooperation with other~~

~~Member States' competent authorities, the relevant authorities, ESMA, and EBA, where specifically referred to in this Regulation.~~

~~2. ESMA shall publish on its website a list of the competent authorities designated in accordance with paragraph 1.~~

~~3. The competent authorities shall have the supervisory and investigatory powers necessary for the exercise of their functions.~~

## Article 12

### ~~Relevant authorities~~[\[deleted\]](#)

- ~~1. The following authorities shall be involved in the authorisation and supervision of CSDs where specifically referred to in this Regulation:~~
  - ~~(a) the authority responsible for the oversight of the securities settlement system operated by the CSD in the Member State whose law applies to that securities settlement system;~~
  - ~~(b) the central banks in the Union issuing the most relevant currencies in which settlement takes place;~~
  - ~~(c) where relevant, the central bank in the Union in whose books the cash leg of a securities settlement system operated by the CSD is settled.~~
- ~~2. ESMA shall publish on its website the list of the relevant authorities referred to in paragraph 1.~~
- ~~3. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards specifying the conditions under which the Union currencies referred to in point (b) of paragraph 1 are considered to be the most relevant, and efficient practical arrangements for the consultation of the relevant authorities referred to in points (b) and (c) of that paragraph.~~

~~ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

## Article 13

### Exchange of information

- ~~1. Competent authorities, relevant authorities and ESMA shall, on request and without undue delay, provide one another with the information required for the purposes of carrying out their duties under this Regulation.~~
- ~~1. [\[deleted\]](#)~~
2. Competent authorities, ~~relevant authorities, ESMA~~ and other bodies or natural and legal persons receiving confidential information in the exercise of their duties under this Regulation shall use it only in the course of their duties.

## Article 14

### ~~Cooperation between authorities~~[\[deleted\]](#)

- ~~1. Competent authorities, relevant authorities and ESMA shall cooperate closely, including by exchanging all relevant information for the application of this Regulation. Where appropriate and relevant, such cooperation shall include other public authorities and bodies, in particular those established or appointed under Directive 2003/87/EC.~~

~~In order to ensure consistent, efficient and effective supervisory practices within the Union, including cooperation between competent authorities and relevant authorities in the different assessments necessary for the application of this Regulation, ESMA may, in close cooperation with the members of the ESCB, issue guidelines addressed to competent authorities in accordance with Article 16 of Regulation (EU) No 1095/2010.~~

- ~~2. The competent authorities shall, in the exercise of their general duties, duly consider the potential impact of their decisions on the stability of the financial system in all other Member States concerned, in particular in the emergency situations referred to in Article 15, based on the available information.~~

## Article 15

### ~~Emergency situations~~[\[deleted\]](#)

~~Without prejudice to the notification procedure provided for in Article 6(3) of Directive 98/26/EC, competent authorities and relevant authorities shall immediately inform ESMA, the European Systemic Risk Board established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council and each other of any emergency situation relating to a CSD, including of any developments in financial markets, which may have an adverse effect on market liquidity, the stability of a currency in which settlement takes place, the integrity of monetary policy or on the stability of the financial system in any of the Member States where the CSD or one of its participants are established.~~

## Section 2

### Conditions and procedures for authorisation of CSDs

## Article 16

### Authorisation of a CSD

1. Any legal person that falls within the definition of CSD shall obtain an authorisation from the competent authority ~~of the Member State where it is established~~ before commencing its activities.

2. The authorisation shall specify the core services listed in Section A of the Annex and non-banking-type ancillary services permitted under Section B of the Annex, which the CSD is authorised to provide.
3. A CSD shall comply at all times with the conditions necessary for authorisation.
4. A CSD as well as its independent auditors, shall, without undue delay, inform the competent authority of any substantive changes affecting the compliance with the conditions for authorisation.

### *Article 17*

#### **Procedure for granting authorisation**

1. The applicant CSD shall submit an application for authorisation to ~~it~~the competent authority.
2. The application for authorisation shall be accompanied by all information necessary to enable the competent authority to satisfy itself that the applicant CSD has established, at the time of the authorisation, all the necessary arrangements to meet its obligations as laid down in this Regulation. The application for authorisation shall include a programme of operations setting out the types of business envisaged and the structural organisation of the CSD.
3. Within 30 working days from the receipt of the application, the competent authority shall assess whether the application is complete. If the application is not complete, the competent authority shall set a time limit by which the applicant CSD has to provide additional information. The competent authority shall inform the applicant CSD when the application is considered to be complete.
4. [deleted]
5. [deleted]
6. [deleted]
7. [deleted]
- ~~4. From the moment when the application is considered to be complete, the competent authority shall transmit all information included in the application to the relevant authorities and consult those authorities concerning the features of the securities settlement system operated by the applicant CSD. Each relevant authority may inform the competent authority of its views within 3 months of the receipt of the information by the relevant authority.~~
- ~~5. Where the applicant CSD intends to provide services referred to in point (2) of Article 4(1) of Directive 2014/65/EU in addition to the provision of non-banking-type ancillary services explicitly listed in Section B of the Annex, the competent authority shall transmit all information included in the application to the authority referred to in Article 67 of Directive 2014/65/EU and consult that authority on the ability of the~~

~~applicant CSD to comply with the requirements of Directive 2014/65/EU and of Regulation (EU) No 600/2014.~~

~~6. The competent authority shall, before granting authorisation to the applicant CSD, consult the competent authorities of the other Member State involved in the following cases:~~

~~(a) the CSD is a subsidiary of a CSD authorised in another Member State;~~

~~(b) the CSD is a subsidiary of the parent undertaking of a CSD authorised in another Member State;~~

~~(c) the CSD is controlled by the same natural or legal persons who control a different CSD authorised in another Member State.~~

~~7. The consultation referred to in paragraph 6 shall cover the following:~~

~~(a) the suitability of the shareholders and persons referred to in Article 27(6) and the reputation and experience of the persons who effectively direct the business of the CSD referred to in Article 27(1) and (4), where those shareholders and persons are common to the CSD and to a CSD authorised in another Member State;~~

~~(b) whether the relations referred to in points (a), (b) and (c) of paragraph 6 between the CSD authorised in another Member State and the applicant CSD do not affect the ability of the latter to comply with the requirements of this Regulation.~~

8. Within six months from the submission of a complete application, the competent authority shall inform the applicant CSD in writing with a fully reasoned decision whether the authorisation has been granted or refused.

9. ~~ESMA shall, in close cooperation with the members of the ESCB, develop draft~~[The Bank of England may make](#) regulatory technical standards to specify the information that the applicant CSD is to provide to the competent authority in the application for authorisation.

~~ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

10. ~~ESMA shall, in close cooperation with the members of the ESCB, develop draft~~[The Bank of England may make](#) implementing technical standards to establish standard forms, templates and procedures for the application for authorisation.

~~ESMA shall submit those draft implementing technical standards to the Commission by 18 June 2015.~~

~~Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.~~

## **Article 18**

### **Effects of the authorisation**

1. The activities of the authorised CSD shall be limited to the provision of services covered by its authorisation or by notification in accordance with Article 19(8).
2. Securities ~~settlement~~ settlements systems governed by the law applicable within the United Kingdom or any part of the United Kingdom may be operated only by authorised CSDs, ~~including central banks acting as CSDs.~~ the Bank of England (or other public bodies charged with or intervening in the management of public debt in the United Kingdom) acting as a CSD and third-country CSDs that are recognised in accordance with Article 25.
3. An authorised CSD may have a participation only in a legal person whose activities are limited to the provision of services listed in Sections A and B of the Annex, unless such a participation is approved by its competent authority on the basis that it does not significantly increase the risk profile of the CSD.
4. ~~ESMA shall, in close cooperation with the members of the ESCB, develop draft~~ The Bank of England may make regulatory technical standards to specify the criteria to be taken into account by the competent ~~authorities~~ authority to approve the participation of CSDs in legal persons other than those providing the services listed in Sections A and B of the Annex. Such criteria may include whether the services provided by that legal person are complementary to the services provided by a CSD, and the extent of the CSD's exposure to liabilities arising from such participation.

~~ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

## **Article 19**

### **Extension and outsourcing of activities and services**

1. An authorised CSD shall submit an application for authorisation to the competent authority ~~of its home Member State~~ where it wishes to outsource a core service to a third party under Article 30 or extend its activities to one or more of the following:
  - (a) additional core services listed in Section A of the Annex, not covered by the initial authorisation;

- (b) ancillary services permitted under, but not explicitly listed in Section B of the Annex, not covered by the initial authorisation;
  - (c) the operation of another securities settlement system;
  - (d) the settlement of all or part of the cash leg of its securities settlement system in the books of another settlement agent;
  - (e) setting up an interoperable link, including those with third-country CSDs.
2. The granting of authorisation under paragraph 1 shall follow the procedure laid down in Article 17.

The competent authority shall inform the applicant CSD whether the authorisation has been granted or refused within three months of the submission of a complete application.

3. CSDs ~~established in the Union~~ that intend to establish an interoperable link shall submit an application for authorisation as required under point (e) of paragraph 1, to ~~their respective competent authorities. Those authorities shall consult each other regarding the approval of the CSD link. In the event of divergent decisions and if agreed by both competent authorities the matter may be referred to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.~~ the competent authority.
4. The ~~authorities~~authority referred to in paragraph 3 shall refuse to authorise a link only where such a CSD link would threaten the smooth and orderly functioning of the financial markets or cause systemic risk.
5. Interoperable links of CSDs that outsource some of their services related to those interoperable links to a public entity in accordance with Article 30(5) and CSD links that are not referred to in point (e) of paragraph 1 shall not be subject to authorisation under that point but shall be notified to the ~~CSDs' competent and relevant authorities~~authority prior to their implementation by providing all relevant information that allows ~~such authorities~~the competent authority to assess compliance with the requirements provided in Article 48.
6. A CSD ~~established and authorised in the Union~~ may maintain or establish a link with a third-country CSD in accordance with the conditions and procedures provided in this Article. Where links are established with a third-country CSD the information provided by the ~~requesting~~ CSD shall allow the competent authority to evaluate whether such links fulfil the requirements provided in Article 48 or the requirements that are equivalent to those provided in Article 48.
7. The competent authority ~~of the requesting CSD~~ shall require ~~that a~~ CSD to discontinue a CSD link that has been notified when such link does not fulfil the requirements provided for in Article 48 and thereby would threaten the smooth and orderly functioning of the financial markets or cause systemic risk. ~~Where a competent authority requires the CSD to discontinue a CSD link, it shall follow the procedure laid down in Article 20(2) and (3).~~

8. The additional ancillary services explicitly listed in Section B of the Annex shall not be subject to authorisation, but shall be notified to the competent authority prior to their provision.

## *Article 20*

### **Withdrawal of authorisation**

1. Without prejudice to any remedial actions or measures under Title V, the competent authority ~~of the home Member State~~ shall withdraw the authorisation in any of the following circumstances, where the CSD:
  - (a) has not made use of the authorisation during 12 months, expressly renounces the authorisation or has provided no services or performed no activity during the preceding six months;
  - (b) has obtained the authorisation by making false statements or by any other unlawful means;
  - (c) no longer complies with the conditions under which authorisation was granted and has not taken the remedial actions requested by the competent authority within a set time-frame;
  - (d) has seriously or systematically infringed the requirements laid down in this Regulation or, where applicable, in ~~Directive 2014/65/EU~~ [the UK law on markets in financial instruments](#) or Regulation (EU) No 600/2014.
2. ~~[deleted]~~
3. ~~[deleted]~~
- ~~2. From the moment when it becomes aware of one of the circumstances referred to in paragraph 1, the competent authority shall immediately consult the relevant authorities and, where applicable, the authority referred to in Article 67 of Directive 2014/65/EU on the necessity to withdraw the authorisation.~~
- ~~3. ESMA and any relevant authority and, where applicable, the authority referred to in Article 67 of Directive 2014/65/EU may, at any time, request that the competent authority of the home Member State examines whether the CSD still complies with the conditions under which the authorisation was granted.~~
4. The competent authority may limit the withdrawal of authorisation to a particular service, activity, or financial instrument.
5. A CSD shall establish, implement and maintain adequate procedures ensuring the timely and orderly settlement and transfer of the assets of clients and participants to another CSD [or third-country CSD](#) in the event of a withdrawal of authorisation referred to in paragraph 1.

## Article 21

### CSD register

1. ~~[deleted]~~

2. ~~[deleted]~~

~~1. Decisions taken by competent authorities under Articles 16, 19 and 20 shall be immediately communicated to ESMA.~~

~~2. Central banks shall without undue delay inform ESMA of any securities settlement system that they operate.~~

3. The name of each CSD or third-country CSD operating in compliance with this Regulation and to which authorisation or recognition has been granted pursuant to Article 16, 19 or 25 shall be entered in a register specifying the services and, where applicable, classes of financial instruments for which the CSD or third-country CSD has been authorised. The register shall include ~~branches operated by the CSD in other Member States, CSD links and the information required under Article 31 where Member States have made use of the possibility provided for in that Article.~~ ESMA CSD links. The competent authority shall make the register available on its dedicated website and keep it up to date.

## Section 3

### Supervision of CSDs

## Article 22

### Review and evaluation

1. The competent authority shall, at least on an annual basis, review the arrangements, strategies, processes and mechanisms implemented by a CSD with respect to compliance with this Regulation and evaluate the risks to which the CSD is, or might be, exposed or which it creates for the smooth functioning of securities markets.

2. The competent authority shall require the CSD to submit to the competent authority an adequate recovery plan to ensure continuity of its critical operations.

3. The competent authority shall ensure that an adequate resolution plan is established and maintained for each CSD so as to ensure continuity of at least its core functions, having regard to the size, systemic importance, nature, scale and complexity of the activities of the CSD concerned and any relevant resolution plan established in accordance with ~~Directive~~ the Bank Recovery and Resolution (No.2) Order 2014/59/EU.

4. The competent authority shall establish the frequency and depth of the review and evaluation referred to in paragraph 1 having regard to the size, systemic importance,

nature, scale and complexity of the activities of the CSD concerned. The review and evaluation shall be updated at least on an annual basis.

5. The competent authority shall subject the CSD to on-site inspections.

~~6. [deleted]~~

~~7. [deleted]~~

~~8. [deleted]~~

~~6. When performing the review and evaluation referred to in paragraph 1, the competent authority shall, at an early stage, consult the relevant authorities, in particular concerning the functioning of the securities settlement systems operated by the CSD and, where applicable, the authority referred to in Article 67 of Directive 2014/65/EU.~~

~~7. The competent authority shall regularly, and at least once a year, inform the relevant authorities and, where applicable, the authority referred to in Article 67 of Directive 2014/65/EU of the results, including any remedial actions or penalties, of the review and evaluation referred to in paragraph 1.~~

~~8. When performing the review and evaluation referred to in paragraph 1, the competent authorities responsible for supervising CSDs which maintain the types of relations referred to in points (a), (b) and (c) of Article 17(6) shall supply one another with all relevant information that is likely to facilitate their tasks.~~

9. The competent authority shall require a CSD that does not meet the requirements of this Regulation to take at an early stage the necessary actions or steps to address the situation.

10. ~~ESMA shall, in close cooperation with the members of the ESCB, develop draft~~The Bank of England may make regulatory technical standards to specify the following:

(a) the information that the CSD is to provide to the competent authority for the purposes of the review and evaluation referred to in paragraph 1;

~~(b) [deleted]~~

~~(c) [deleted]~~

~~(b) the information that the competent authority is to supply to the relevant authorities, as set out in paragraph 7;~~

~~(c) the information that the competent authorities referred to in paragraph 8 are to supply one another.~~

~~ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with in Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

11. ~~ESMA shall, in close cooperation with the members of the ESCB, develop draft~~ The Bank of England may make implementing technical standards to determine standard forms, templates and procedures for the provision of information referred to in the first subparagraph of paragraph 10.

~~ESMA shall submit those draft implementing technical standards to the Commission by 18 June 2015.~~

~~Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.~~

## Section 4

### Provision of services in another member state

#### Article 23

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#### ~~Freedom to provide services in another Member State~~

- ~~1. An authorised CSD may provide services referred to in the Annex within the territory of the Union, including through setting up a branch, provided that those services are covered by the authorisation.~~
- ~~2. An authorised CSD that intends to provide the core services referred to in points 1 and 2 of Section A of the Annex in relation to financial instruments constituted under the law of another Member State referred to in Article 49(1) or to set up a branch in another Member State shall be subject to the procedure referred to in paragraphs 3 to 7.~~
- ~~3. Any CSD wishing to provide the services referred to in paragraph 2 within the territory of another Member State for the first time, or to change the range of those services provided shall communicate the following information to the competent authority of the home Member State:
  - ~~(a) the Member State in which the CSD intends to operate;~~
  - ~~(b) a programme of operations stating in particular the services which the CSD intends to provide;~~
  - ~~(c) the currency or currencies that the CSD intends to process;~~
  - ~~(d) where there is a branch, the organisational structure of the branch and the names of those responsible for the management of the branch;~~~~

~~(e) where relevant, an assessment of the measures the CSD intends to take to allow its users to comply with the national law referred to in Article 49(1).~~

~~4. Within three months from the receipt of the information referred to in paragraph 3, the competent authority of the home Member State shall communicate that information to the competent authority of the host Member State unless, by taking into account the provision of services envisaged, it has reasons to doubt the adequacy of the administrative structure or the financial situation of the CSD wishing to provide its services in the host Member State.~~

~~The competent authority of the host Member State shall without delay inform the relevant authorities of that Member State of any communication received under the first subparagraph.~~

~~5. Where the competent authority of the home Member State decides in accordance with paragraph 4 not to communicate all the information referred to in paragraph 3 to the competent authority of the host Member State it shall give reasons for its refusal to the CSD concerned within three months of receiving all the information and inform the competent authority of the host Member State of its decision in relation to point (a) of paragraph 6. Where information is shared in response to such a request the competent authority of the host Member State shall not issue the communication referred to in point (a) of paragraph 6.~~

~~6. The CSD may start providing the services referred to in paragraph 2 in the host Member State under the following conditions:~~

~~(a) on receipt of a communication from the competent authority in the host Member State acknowledging receipt by the latter of the communication referred to in paragraph 4 and, where relevant, approving the assessment referred to in point (e) of paragraph 3;~~

~~(b) in the absence of any receipt of a communication, after three months from the date of transmission of the communication referred to in paragraph 4.~~

~~7. In the event of a change in any of the information communicated in accordance with paragraph 3, a CSD shall give written notice of that change to the competent authority of the home Member State at least one month before implementing the change. The competent authority of the host Member State shall also be informed of that change without delay by the competent authority of the home Member State.~~

## *Article 24*

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### ~~Cooperation between authorities of the home Member State and of the host Member State and peer review~~

~~1. Where a CSD authorised in one Member State has set up a branch in another Member State, the competent authority of the home Member State and the competent authority of the host Member State shall cooperate closely in the performance of~~

~~their duties provided for in this Regulation, in particular when carrying out on-site inspections in that branch. The competent authority of the home Member State and of the host Member State may, in the exercise of their responsibilities, carry out on-site inspections in that branch after informing the competent authority of the host Member State or of the home Member State respectively.~~

- ~~2. The competent authority of the home Member State or of the host Member State may require CSDs which provide services in accordance with Article 23 to report to them periodically on their activities in that host Member State, including for the purpose of collecting statistics. The competent authority of the host Member State shall, on request from the competent authority of the home Member State, provide those periodic reports to the competent authority of the home Member State.~~
- ~~3. The competent authority of the home Member State of the CSD shall, on the request of the competent authority of the host Member State and without delay, communicate the identity of the issuers and participants in the securities settlement systems operated by the CSD which provides services in that host Member State and any other relevant information concerning the activities of that CSD in the host Member State.~~
- ~~4. Where, taking into account the situation of the securities markets in the host Member State, the activities of a CSD have become of substantial importance for the functioning of the securities markets and the protection of the investors in that host Member State, the competent authority of the home Member State and of the host Member State and the relevant authorities of the home Member State and of the host Member State shall establish cooperation arrangements for the supervision of the activities of that CSD in the host Member State.~~

~~Where a CSD has become of substantial importance for the functioning of the securities markets and the protection of the investors in more than one host Member State, the home Member State may decide that such cooperation arrangements are to include colleges of supervisors.~~

- ~~5. Where the competent authority of the host Member State has clear and demonstrable grounds for believing that a CSD providing services within its territory in accordance with Article 23 is in breach of the obligations arising from the provisions of this Regulation, it shall refer those findings to the competent authority of the home Member State and to ESMA.~~

~~Where, despite measures taken by the competent authority of the home Member State or because such measures prove inadequate, the CSD persists in acting in infringement of the obligations arising from the provisions of this Regulation, after informing the competent authority of the home Member State, the competent authority of the host Member State shall take all the appropriate measures needed in order to ensure compliance with the provisions of this Regulation within the territory of the host Member State. ESMA shall be informed of such measures without delay.~~

~~The competent authority of the host Member State and of the home Member State may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.~~

- ~~6. Without prejudice to Article 30 of Regulation (EU) No 1095/2010, ESMA shall, after consulting the members of the ESCB, organise and conduct, at least every three years, a peer review of the supervision of CSDs which make use of the freedom to provide services in another Member State in accordance with Article 23 or to participate in an interoperable link.~~

~~In the context of the peer review referred to in the first subparagraph ESMA shall, where appropriate, also request opinions or advice from the Securities and Markets Stakeholder Group referred to in Article 37 of Regulation (EU) No 1095/2010.~~

- ~~7. The Commission shall be empowered to adopt delegated acts in accordance with Article 67 concerning measures for establishing the criteria under which the operations of a CSD in a host Member State could be considered to be of substantial importance for the functioning of the securities markets and the protection of the investors in that host Member State.~~

- ~~8. ESMA shall, in close cooperation with the members of the ESCB, develop draft implementing technical standards to establish standard forms, templates and procedures for the cooperation referred to in paragraphs 1, 3 and 5.~~

~~ESMA shall submit those draft implementing technical standards to the Commission by 18 June 2015.~~

~~Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.~~

## Section 5

### Relations with third countries

#### *Article 25*

##### **Third countries**

1. Third-country CSDs may provide services referred to in the Annex within the ~~territory of the Union~~United Kingdom, including through setting up a branch.
2. Notwithstanding paragraph 1, a third-country CSD that intends to provide the core services referred to in points (1) and (2) of Section A of the Annex in relation to financial instruments constituted under the law ~~of a Member State referred to in the second subparagraph of Article 49(1)~~applicable within the United Kingdom or any part of the United Kingdom or to set up a branch in ~~a Member State shall be the United Kingdom is~~ subject to the procedure referred to in paragraphs 4 to 11 of this Article.

3. A CSD ~~established and authorised in the Union~~ may maintain or establish a link with a third-country CSD in accordance with Article 48.
4. After consulting the authorities referred to in paragraph 5, ~~ESMA~~the competent authority may recognise a third-country CSD that has applied for recognition to provide the services referred to in paragraph 2, where the following conditions are met:
  - (a) the ~~Commission has adopted a decision~~Treasury has made regulations in accordance with paragraph 9;
  - (b) the third-country CSD is subject to effective authorisation, supervision and oversight or, if the securities settlement system is operated by a central bank, oversight, ensuring full compliance with the prudential requirements applicable in that third country;
  - (c) cooperation arrangements between ~~ESMA~~the competent authority and the responsible authorities in that third country ('responsible third-country authorities') have been established pursuant to paragraph 10;
  - (d) where relevant, the third-country CSD takes the necessary measures to allow its users to comply with the relevant ~~national law of the Member State in which the third country CSD intends to provide CSD services, including the law referred to in the second subparagraph of Article 49(1),~~applicable within the United Kingdom or any part of the United Kingdom and the adequacy of those measures has been confirmed by the competent ~~authorities of the Member State in which the third country CSD intends to provide CSD services~~authority.
5. When assessing whether the conditions referred to in paragraph 4 are met, ~~ESMA~~the competent authority shall consult:
  - ~~(a) the competent authorities of the Member States in which the third country CSD intends to provide CSD services, in particular, on how the third country CSD intends to comply with the requirement referred to in point (d) of paragraph 4;~~
  - (a) [deleted]
  - (b) ~~the relevant authorities;~~[deleted]
  - (c) the responsible third-country authorities entrusted with the authorisation, supervision and oversight of third-country CSDs.
6. The third-country CSD referred to in paragraph 2 shall submit its application for recognition to ~~ESMA~~the competent authority.  
 The applicant third-country CSD shall provide ~~ESMA~~the competent authority with all information deemed to be necessary for its recognition. Within 30 working days from the receipt of the application, ~~ESMA~~the competent authority shall assess whether the application is complete. If the application is not complete, ~~ESMA~~the

competent authority shall set a time limit by which the applicant third-country CSD has to provide additional information.

~~The competent authorities of the Member States in which the third country CSD intends to provide CSD services shall assess the compliance of the third country CSD with the law referred to in point (d) of paragraph 4 and inform ESMA with a fully reasoned decision whether the compliance is met or not within three months from the receipt of all the necessary information from ESMA.~~

The recognition decision shall be based on the criteria laid down in paragraph 4.

Within six months from the submission of a complete application, ~~ESMA~~the competent authority shall inform the applicant third-country CSD in writing with a fully reasoned decision whether the recognition has been granted or refused.

Recognition under this Article must be granted only for services listed in the Annex and the decision granting recognition must specify the services which the third-country CSD is recognised to provide or perform.

The applicant third-country CSD must, without undue delay, notify the competent authority of any material changes affecting the condition for recognition in point (b) of paragraph 4.

6A. A third-country CSD recognised under paragraph 4 must, without undue delay, notify the competent authority of any material changes affecting the condition for recognition in point (b) of paragraph 4.

7. ~~The competent authorities of the Member States in which~~Where the third-country CSD, duly recognised under paragraph 4, provides CSD services; in ~~close cooperation with ESMA,~~the United Kingdom, the competent authority may request the responsible ~~third-country~~third country authorities to:

(a) report periodically on the third-country CSD's activities in ~~those host Member States~~the United Kingdom, including for the purpose of collecting statistics;

(b) communicate, within an appropriate time-frame, the identity of the issuers and participants in the securities settlement systems operated by the third-country CSD which provides services in ~~that host Member State~~the United Kingdom and any other relevant information concerning the activities of that third-country CSD in the ~~host Member State~~United Kingdom.

8. ~~ESMA~~The competent authority shall, after consulting the authorities referred to in paragraph 5, review the recognition of the third-country CSD in the event of extensions by ~~that~~the third-country CSD in the ~~Union~~United Kingdom of its services under the procedure laid down in paragraphs 4, 5 and 6.

~~ESMA~~The competent authority shall withdraw the recognition of ~~that~~the third-country CSD where the conditions laid down in paragraph 4 are no longer met, or in the circumstances referred to in Article 20.

The competent authority may—

- (a) limit the withdrawal to a particular service; and
- (b) direct that the withdrawal is to have effect subject to such transitional arrangements as the competent authority considers necessary or expedient.

9. The ~~Commission may adopt implementing acts to determine that the~~Treasury may by regulations specify a third country which, in the opinion of the Treasury, has legal and supervisory arrangements ~~of a third country~~which ensure that third-country CSDs authorised in that third country comply with legally binding requirements which are in effect equivalent to the requirements laid down in this Regulation, that those third-country CSDs are subject to effective supervision, oversight and enforcement in that third country on an ongoing basis and that the legal framework of that third country provides for an effective equivalent system for the recognition of third-country CSDs authorised under ~~third-country~~third country legal regimes. ~~Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 68(2).~~

In making the determination referred to in the first subparagraph, the ~~Commission~~Treasury may also consider whether the legal and supervisory arrangements of a third country reflect the internationally agreed CPSS-IOSCO standards, in so far as the latter do not conflict with the requirements laid down in this Regulation.

10. ~~In accordance with Article 33(1) of Regulation (EU) No 1095/2010, ESMA~~The competent authority shall establish cooperation arrangements with the responsible third-country authorities whose legal and supervisory frameworks have been recognised as equivalent to this Regulation in accordance with paragraph 9. Such arrangements shall specify at least:
- (a) the mechanism for the exchange of information between ~~ESMA,~~ the competent ~~authorities of the host Member State~~authority and the third-country responsible authorities, including access to all information regarding the third-country CSDs authorised in third countries that is requested by ~~ESMA~~the competent authority and in particular access to information in the cases referred to in paragraph 7;
  - (b) the mechanism for prompt notification of ~~ESMA~~the competent authority where a third-country responsible authority deems a third-country CSD that it is supervising to infringe the conditions of its authorisation or of other applicable law;
  - (c) the procedures concerning the coordination of supervisory activities including, where appropriate, on-site inspections.

Where a cooperation agreement provides for transfers of personal data by a ~~Member State~~public authority of the United Kingdom, such transfers shall comply with the provisions of ~~Directive 95/46/EC and where a cooperation agreement provides for~~

~~transfers of personal data by ESMA, such transfers shall comply with the provisions of Regulation (EU) No 45/2001~~ [data protection legislation](#).

11. Where a third-country CSD has been recognised, in accordance with paragraphs 4 to 8, it may provide services referred to in the Annex within the ~~territory of the Union~~ [United Kingdom](#), including by setting up a branch.
12. ~~ESMA shall, in close cooperation with the members of the ESCB, develop draft~~ [The Bank of England may make](#) regulatory technical standards to specify the information that the applicant [third-country](#) CSD is to provide to ~~ESMA~~ [the competent authority](#) in its application for recognition under paragraph 6.

~~ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

## CHAPTER II

### Requirements for CSDs

#### Section 1

#### Organisational requirements

#### *Article 26*

#### General provisions

1. A CSD shall have robust governance arrangements, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks to which it is or might be exposed, and adequate remuneration policies and internal control mechanisms, including sound administrative and accounting procedures.
2. A CSD shall adopt policies and procedures which are sufficiently effective so as to ensure compliance with this Regulation, including compliance of its managers and employees with all the provisions of this Regulation.
3. A CSD shall maintain and operate effective written organisational and administrative arrangements to identify and manage any potential conflicts of interest between itself, including its managers, employees, members of the management body or any person directly or indirectly linked to them, and its participants or their clients. It shall maintain and implement adequate resolution procedures where possible conflicts of interest occur.
4. A CSD shall make its governance arrangements and the rules governing its activity available to the public.

5. A CSD shall have appropriate procedures for its employees to report internally potential infringements of this Regulation through a specific channel.
6. A CSD shall be subject to regular and independent audits. The results of these audits shall be communicated to the management body and made available to the competent authority and, where appropriate taking into account potential conflicts of interest between the members of the user committee and the CSD, to the user committee.
7. Where a CSD is part of a group of undertakings including other CSDs, third-country CSDs or credit institutions referred to in Title IV, it shall adopt detailed policies and procedures specifying how the requirements laid down in this Article apply to the group and to the different entities in the group.
8. ~~ESMA shall, in close cooperation with the members of the ESCB, develop draft~~The Bank of England may make regulatory technical standards specifying at the CSD level and at the group level as referred to in paragraph 7:
  - (a) the monitoring tools for the risks of the CSDs referred to in paragraph 1;
  - (b) the responsibilities of the key personnel in respect of the risks of the CSDs referred to in paragraph 1;
  - (c) the potential conflicts of interest referred to in paragraph 3;
  - (d) the audit methods referred to in paragraph 6; and
  - (e) the circumstances in which it would be appropriate, taking into account potential conflicts of interest between the members of the user committee and the CSD, to share audit findings with the user committee in accordance with paragraph 6.

~~ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

## *Article 27*

### **Senior management, management body and shareholders**

1. The senior management of a CSD shall be of sufficiently good repute and experience so as to ensure the sound and prudent management of the CSD.
2. A CSD shall have a management body of which at least one third, but no less than two, of its members are independent.
3. The remuneration of the independent and other non-executive members of the management body shall not be linked to the business performance of the CSD.

4. The management body shall be composed of suitable members of sufficiently good repute with an appropriate mix of skills, experience and knowledge of the entity and of the market. The non- executive members of the management body shall decide on a target for the representation of the under-represented gender in the management body and prepare a policy on how to increase the number of the under-represented gender in order to meet that target. The target, policy and its implementation shall be made public.
  5. A CSD shall clearly determine the role and responsibilities of the management body in accordance with the relevant ~~national~~-law applicable within the United Kingdom or of any part of the United Kingdom. A CSD shall make the minutes of the meetings of the management body available to the competent authority and the auditor upon request.
  6. The CSD's shareholders and persons who are in a position to exercise, directly or indirectly, control over the management of the CSD shall be suitable to ensure the sound and prudent management of the CSD.
  7. A CSD shall:
    - (a) provide the competent authority with, and make public, information regarding the ownership of the CSD, and in particular, the identity and scale of interests of any parties in a position to exercise control over the operation of the CSD;
    - (b) inform and seek approval from ~~its~~the competent authority of any decision to transfer ownership rights which give rise to a change in the identity of the persons exercising control over the operation of the CSD. After receiving approval from ~~its~~the competent authority, the CSD shall make public the transfer of ownership rights.
- Any natural or legal person shall inform without undue delay the CSD and ~~its~~the competent authority of a decision to acquire or dispose of its ownership rights that give rise to a change in the identity of the persons exercising control over the operation of the CSD.
8. Within 60 working days from the receipt of the information referred to in paragraph 7, the competent authority shall take a decision on the proposed changes in the control of the CSD. The competent authority shall refuse to approve proposed changes in the control of the CSD where there are objective and demonstrable grounds for believing that they would pose a threat to the sound and prudent management of the CSD or to the ability of the CSD to comply with this Regulation.

## *Article 28*

### **User committee**

1. A CSD shall establish user committees for each securities settlement system it operates, which shall be composed of representatives of issuers and of participants in

such securities settlement systems. The advice of the user committee shall be independent from any direct influence by the management of the CSD.

2. A CSD shall define in a non-discriminatory way the mandate for each established user committee, the governance arrangements necessary to ensure its independence and its operational procedures, as well as the admission criteria and the election mechanism for user committee members. The governance arrangements shall be publicly available and shall ensure that the user committee reports directly to the management body and holds regular meetings.
3. User committees shall advise the management body on key arrangements that impact on their members, including the criteria for accepting issuers or participants in their respective securities settlement systems and on service level.
4. User committees may submit a non-binding opinion to the management body containing detailed reasons regarding the pricing structures of the CSD.
5. Without prejudice to the right of the competent ~~authorities~~authority to be duly informed, the members of the user committees shall be bound by confidentiality. Where the chairman of a user committee determines that a member has an actual or a potential conflict of interest in relation to a particular matter, that member shall not be allowed to vote on that matter.
6. A CSD shall promptly inform the competent authority and the user committee of any decision in which the management body decides not to follow the advice of the user committee. The user committee may inform the competent authority of any areas in which it considers that the advice of the user committee has not been followed.

### *Article 29*

#### **Record keeping**

1. A CSD shall maintain, for a period of at least 10 years, all its records on the services and activities, including on the ancillary services referred to in Sections B and C of the Annex, so as to enable the competent authority to monitor the compliance with the requirements under this Regulation.
2. A CSD shall make the records referred to in paragraph 1 available upon request to the competent authority and ~~the relevant authorities and~~ any other public authority which under ~~Union~~the law ~~or national law of its home Member State~~applicable within the United Kingdom or of any part of the United Kingdom has a power to require access to such records for the purpose of fulfilling their mandate.
3. ~~ESMA shall, in close cooperation with the members of the ESCB, develop draft~~The Bank of England may make regulatory technical standards to specify the details of the records referred to in paragraph 1 to be retained for the purpose of monitoring the compliance of CSDs with the provisions of this Regulation.

~~ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

4. ~~ESMA shall, in close cooperation with the members of the ESCB, develop draft~~[The Bank of England may make](#) implementing technical standards to establish the format of the records referred to in paragraph 1 to be retained for the purpose of monitoring the compliance of CSDs with the provisions of this Regulation.

~~ESMA shall submit those draft implementing technical standards to the Commission by 18 June 2015.~~

~~Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.~~

### *Article 30*

#### **Outsourcing**

1. Where a CSD outsources services or activities to a third party, it shall remain fully responsible for discharging all of its obligations under this Regulation and shall comply at all times with the following conditions:
- (a) outsourcing does not result in the delegation of its responsibility;
  - (b) the relationship and obligations of the CSD towards its participants or issuers are not altered;
  - (c) the conditions for the authorisation of the CSD do not effectively change;
  - (d) outsourcing does not prevent the exercise of supervisory and oversight functions, including on-site access to acquire any relevant information needed to fulfil those functions;
  - (e) outsourcing does not result in depriving the CSD of the systems and controls necessary to manage the risks it faces;
  - (f) the CSD retains the expertise and resources necessary for evaluating the quality of the services provided, the organisational and capital adequacy of the service provider, for supervising the outsourced services effectively and for managing the risks associated with the outsourcing on an ongoing basis;
  - (g) the CSD has direct access to the relevant information of the outsourced services;
  - (h) the service provider cooperates with the competent authority ~~and the relevant authorities~~ in connection with the outsourced activities;

- (i) the CSD ensures that the service provider meets the standards set down by the relevant data protection law which would apply if the service providers were established in the ~~Union~~United Kingdom. The CSD is responsible for ensuring that those standards are set out in a contract between the parties and that those standards are maintained.
2. The CSD shall define in a written agreement its rights and obligations and those of the service provider. The outsourcing agreement shall allow the CSD to terminate the agreement.
3. A CSD and a service provider shall make available upon request to the competent authority ~~and the relevant authorities~~ all information necessary to enable them to assess the compliance of the outsourced activities with the requirements of this Regulation.
4. The outsourcing of a core service shall be subject to authorisation under Article 19 by the competent authority.
5. Paragraphs 1 to 4 shall not apply where a CSD outsources some of its services or activities to a public entity and where that outsourcing is governed by a dedicated legal, regulatory and operational framework which has been jointly agreed and formalised by the public entity and the relevant CSD and agreed by the competent ~~authorities~~authority on the basis of the requirements established in this Regulation.

### ***Article 31***

**[deleted]**

#### ~~Services provided by parties other than CSDs~~

- ~~1. Notwithstanding Article 30 and where required by national law, a person other than CSD may be responsible for recording book entries into securities accounts maintained by CSDs.~~
  - ~~2. Member States that allow parties other than CSDs to provide certain core services referred to in Section A of the Annex in accordance with paragraph 1 shall specify in their national law the requirements that will apply in such a case. Those requirements shall include the provisions of this Regulation which shall apply both to the CSD and, where relevant, to the other party concerned.~~
  - ~~3. Member States that allow parties other than CSDs to provide certain core services referred to in Section A of the Annex in accordance with paragraph 1 shall communicate to ESMA all the relevant information concerning the provision of such services, including their relevant national law.~~
- ~~ESMA shall include such information in the CSD register referred to in Article 21.~~

### **Section 2**

#### **Conduct of business rules**

## Article 32

### General provisions

1. A CSD shall have clearly defined goals and objectives that are achievable, such as in the areas of minimum service levels, risk-management expectations and business priorities.
2. A CSD shall have transparent rules for the handling of complaints.

## Article 33

### Requirements for participation

1. For each securities settlement system it operates a CSD shall have publicly disclosed criteria for participation which allow fair and open access for all legal persons that intend to become participants. Such criteria shall be transparent, objective, and non-discriminatory so as to ensure fair and open access to the CSD with due regard to risks to financial stability and the orderliness of markets. Criteria that restrict access shall be permitted only to the extent that their objective is to justifiably control a specified risk for the CSD.
2. A CSD shall treat requests for access promptly by providing a response to such requests within one month at the latest and shall make the procedures for treating access requests publicly available.
3. A CSD shall deny access to a participant meeting the criteria referred to in paragraph 1 only where duly justified in writing and based on a comprehensive risk assessment.

In the event of a refusal, the requesting participant has the right to complain to the competent authority of the CSD that has refused access.

~~That~~The competent authority shall duly examine the complaint by assessing the reasons for refusal and shall provide the requesting participant with a reasoned reply.

~~That competent authority shall consult the competent authority of the place of establishment of the requesting participant on its assessment of the complaint. Where the authority of the requesting participant disagrees with the assessment provided, any one of the two competent authorities may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.~~

~~Where the refusal by the CSD to grant access to the requesting participant is deemed to be unjustified, the competent authority of the CSD that has refused access shall issue an order requiring that CSD to grant access to the requesting participant.~~

4. A CSD shall have objective and transparent procedures for the suspension and orderly exit of participants that no longer meet the criteria for participation referred to in paragraph 1.

~~ESMA shall, in close cooperation with the members of the ESCB, develop draft~~The Bank of England may make regulatory technical standards to specify the risks to be taken into account by CSDs when carrying out a comprehensive risk assessment, and by the competent ~~authorities~~authority when assessing the reasons for refusal in accordance with paragraph 3 and the elements of the procedure referred to in paragraph 3.

~~ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

~~ESMA shall, in close cooperation with the members of the ESCB, develop draft~~The Bank of England may make implementing technical standards to establish standard forms and templates for the procedure referred to in paragraph 3.

~~ESMA shall submit those draft implementing technical standards to the Commission by 18 June 2015.~~

~~Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.~~

### *Article 34*

#### **Transparency**

1. For each securities settlement system it operates, as well as for each of the other core services it performs, a CSD shall publicly disclose the prices and fees associated with the core services listed in Section A of the Annex that they provide. It shall disclose the prices and fees of each service and function provided separately, including discounts and rebates and the conditions to benefit from those reductions. It shall allow its clients separate access to the specific services provided.

2. A CSD shall publish its price list so as to facilitate the comparison of offers and to allow clients to anticipate the price they shall have to pay for the use of services.

3. A CSD shall be bound by its published pricing policy for its core services.

4. A CSD shall provide its clients with information that allows reconciling invoices with the published price lists.

5. A CSD shall disclose to all clients information that allows them to assess the risks associated with the services provided.

6. A CSD shall account separately for costs and revenues of the core services provided and shall disclose that information to the competent authority.
7. A CSD shall account for the cost and revenue of the ancillary services provided as a whole and shall disclose that information to the competent authority.
8. In order to ensure effective application of ~~Union~~[United Kingdom](#) competition rules and enable the identification, inter alia, of cross-subsidisation of ancillary services by core services, a CSD shall maintain analytical accounting for its activities. Such analytical accounts shall at least separate the costs and revenues associated with each of its core services from those associated with ancillary services.

### ***Article 35***

#### **Communication procedures with participants and other market infrastructures**

CSDs shall use in their communication procedures with participants of the securities settlement systems they operate, and with the market infrastructures they interface with international open communication procedures and standards for messaging and reference data in order to facilitate efficient recording, payment and settlement.

### **Section 3**

#### **Requirements for CSD services**

### ***Article 36***

#### **General provisions**

For each securities settlement system it operates a CSD shall have appropriate rules and procedures, including robust accounting practices and controls, to help ensure the integrity of securities issues, and reduce and manage the risks associated with the safekeeping and settlement of transactions in securities.

### ***Article 37***

#### **Integrity of the issue**

1. A CSD shall take appropriate reconciliation measures to verify that the number of securities making up a securities issue or part of a securities issue submitted to the CSD is equal to the sum of securities recorded on the securities accounts of the participants of the securities settlement system operated by the CSD and, where relevant, on owner accounts maintained by the CSD. Such reconciliation measures shall be conducted at least daily.
2. Where appropriate and if other entities are involved in the reconciliation process for a certain securities issue, such as the issuer, registrars, issuance agents, transfer agents, common depositories, other CSDs, [third-country CSDs](#) or other entities, the CSD and any such entities shall organise adequate cooperation and information exchange measures with each other so that the integrity of the issue is maintained.

3. Securities overdrafts, debit balances or securities creation shall not be allowed in a securities settlement system operated by a CSD.
4. ~~ESMA shall, in close cooperation with the members of the ESCB, develop draft~~[The Bank of England may make](#) regulatory technical standards to specify the reconciliation measures a CSD is to take under paragraphs 1, 2 and 3.

~~ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

### **Article 38**

#### **Protection of securities of participants and those of their clients**

1. For each securities settlement system it operates, a CSD shall keep records and accounts that shall enable it, at any time and without delay, to segregate in the accounts with the CSD, the securities of a participant from those of any other participant and, if applicable, from the CSD's own assets.
2. A CSD shall keep records and accounts that enable any participant to segregate the securities of the participant from those of the participant's clients.
3. A CSD shall keep records and accounts that enable any participant to hold in one securities account the securities that belong to different clients of that participant ('omnibus client segregation')
4. A CSD shall keep records and accounts that enable a participant to segregate the securities of any of the participant's clients, if and as required by the participant ('individual client segregation').
5. A participant shall offer its clients at least the choice between omnibus client segregation and individual client segregation and inform them of the costs and risks associated with each option.

~~However, a CSD and its participants shall provide individual clients segregation for citizens and residents of, and legal persons established in, a Member State where required under the national law of the Member State under which the securities are constituted as it stands at 17 September 2014. That obligation shall apply as long as the national law is not amended or repealed and its objectives are still valid.~~

6. CSDs and their participants shall publicly disclose the levels of protection and the costs associated with the different levels of segregation that they provide and shall offer those services on reasonable commercial terms. Details of the different levels of segregation shall include a description of the main legal implications of the respective levels of segregation offered, including information on the insolvency law applicable in the relevant jurisdictions.

7. A CSD shall not use for any purpose securities that do not belong to it. A CSD may however use securities of a participant where it has obtained that participant's prior express consent. The CSD shall require its participants to obtain any necessary prior consent from their clients.

### **Article 39**

#### **Settlement finality**

1. A CSD shall ensure that the securities settlement system it operates offers adequate protection to participants. ~~Member States~~The competent authority shall designate and notify the securities settlement systems operated by CSDs according to the procedures referred to in ~~point (a) of Article 2 of Directive 98/26/EC~~regulation 4 of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999.
2. A CSD shall ensure that each securities settlement system that it operates defines the moments of entry and of irrevocability of transfer orders in that securities settlement system in accordance with ~~Articles 3 and 5 of Directive 98/26/EC~~regulation 20 of, and paragraph 5 of the Schedule to, the Financial Markets and Insolvency (Settlement Finality) Regulations 1999.
3. A CSD shall disclose the rules governing the finality of transfers of securities and cash in a securities settlement system.
4. Paragraphs 2 and 3 shall apply without prejudice to the provisions applicable to CSD links, and without prejudice to paragraph 8 of Article 48.
5. A CSD shall take all reasonable steps to ensure that, in accordance with the rules referred to in paragraph 3, finality of transfers of securities and cash referred to in paragraph 3 is achieved either in real time or intra-day and in any case no later than by the end of the business day of the actual settlement date.
6. Where the CSD offers the services referred to in Article 40(2), it shall ensure that the cash proceeds of securities settlements shall be available for recipients to use no later than by the end of the business day of the intended settlement date.
7. All securities transactions against cash between direct participants in a securities settlement system operated by a CSD and settled in that securities settlement system shall be settled on a DVP basis.

### **Article 40**

#### **Cash settlement**

1. For transactions denominated in the currency of the country where the settlement takes place, a CSD shall settle the cash payments of its securities settlement system through accounts opened with a central bank of issue of the relevant currency where practical and available.
2. Where it is not practical and available to settle in central bank accounts as provided in paragraph 1, a CSD may offer to settle the cash payments for all or part of its

securities settlement systems through accounts opened with a credit institution or through its own accounts. If a CSD offers to settle in accounts opened with a credit institution or through its own accounts, it shall do so in accordance with the provisions of Title IV.

3. A CSD shall ensure that any information provided to market participants about the risks and costs associated with settlement in the accounts of credit institutions or through its own accounts is clear, fair and not misleading. A CSD shall make available sufficient information to clients or potential clients to allow them to identify and evaluate the risks and costs associated with settlement in the accounts of credit institutions or through its own accounts and shall provide such information on request.

#### *Article 41*

##### **Participant default rules and procedures**

1. For each securities settlement system it operates, a CSD shall have effective and clearly defined rules and procedures to manage the default of one or more of its participants ensuring that the CSD can take timely action to contain losses and liquidity pressures and continue to meet its obligations.
2. A CSD shall make its default rules and relevant procedures available to the public.
3. A CSD shall undertake with its participants and other relevant stakeholders periodic testing and review of its default procedures to ensure that they are practical and effective.

~~4. In order to ensure consistent application of this Article, ESMA may, in close cooperation with the members of the ESCB, issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010.~~

4. [\[deleted\]](#)

#### **Section 4**

##### **Prudential requirements**

#### *Article 42*

##### **General requirements**

A CSD shall adopt a sound risk-management framework for comprehensively managing legal, business, operational and other direct or indirect risks, including measures to mitigate fraud and negligence.

### ***Article 43***

#### **Legal risks**

1. For the purpose of its authorisation and supervision, as well as for the information of its clients, a CSD shall have rules, procedures, and contracts that are clear and understandable for all the securities settlement systems that it operates and all other services that it provides.
2. A CSD shall design its rules, procedures and contracts so that they are enforceable in all relevant jurisdictions, including in the case of the default of a participant.
3. A CSD conducting business in different jurisdictions shall take all reasonable steps to identify and mitigate the risks arising from potential conflicts of law across jurisdictions.

### ***Article 44***

#### **General business risk**

A CSD shall have robust management and control systems as well as IT tools in order to identify, monitor and manage general business risks, including losses from poor execution of business strategy, cash flows and operating expenses.

### ***Article 45***

#### **Operational risks**

1. A CSD shall identify sources of operational risk, both internal and external, and minimise their impact through the deployment of appropriate IT tools, controls and procedures, including for all the securities settlement systems it operates.
2. A CSD shall maintain appropriate IT tools that ensure a high degree of security and operational reliability, and have adequate capacity. IT tools shall adequately deal with the complexity, variety and type of services and activities performed so as to ensure high standards of security, and the integrity and confidentiality of the information maintained.
3. For services that it provides as well as for each securities settlement system that it operates, a CSD shall establish, implement and maintain an adequate business continuity policy and disaster recovery plan to ensure the preservation of its services, the timely recovery of operations and the fulfilment of the CSD's obligations in the case of events that pose a significant risk of disrupting operations.
4. The plan referred to in paragraph 3 shall provide for the recovery of all transactions and participants' positions at the time of disruption to allow the participants of a CSD to continue to operate with certainty and to complete settlement on the scheduled date, including by ensuring that critical IT systems can promptly resume operations from the time of disruption. It shall include the setting-up of a second

processing site with sufficient resources, capabilities and functionalities and appropriate staffing arrangements.

5. The CSD shall plan and carry out a programme of tests of the arrangements referred to in paragraphs 1 to 4.

6. A CSD shall identify, monitor and manage the risks that key participants in the securities settlement systems it operates, as well as service and utility providers, and other CSDs or other market infrastructures might pose to its operations. It shall, upon request, provide the competent and relevant authorities ~~authority~~ with information on any such risk identified.

It shall also inform the competent authority ~~and relevant authorities~~ without delay of any operational incidents resulting from such risks.

7. ~~ESMA shall, in close cooperation with the members of the ESCB, develop draft~~ The Bank of England may make regulatory technical standards to specify the operational risks referred to in paragraphs 1 and 6 and the methods to test, to address or to minimise those risks, including the business continuity policies and disaster recovery plans referred to in paragraphs 3 and 4 and the methods of assessment thereof.

~~ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

## *Article 46*

### **Investment policy**

1. A CSD ~~shall~~ must hold its financial assets at ~~central banks, authorised credit institutions or authorised CSDs~~ any one or more of the following kinds of institution:

(a) central banks;

(b) credit institutions with permission to accept deposits under Part 4A of FSMA;

(c) CSDs and third-country CSDs recognised by the competent authority;

(d) third-country financial institutions that are subject to and comply with asset protection and prudential rules considered by the competent authority to be at least as stringent as those laid down in Directive 2013/36/EU UK law and Regulation (EU) No 575/2013, and which the CSD assesses as having—

(i) robust accounting practices;

(ii) safekeeping procedures;



## Article 47

### Capital requirements

1. Capital, together with retained earnings and reserves of a CSD, shall be proportional to the risks stemming from the activities of the CSD. It shall be at all times sufficient to:
  - (a) ensure that the CSD is adequately protected against operational, legal, custody, investment and business risks so that the CSD can continue to provide services as a going concern;
  - (b) ensure an orderly winding-down or restructuring of the CSD's activities over an appropriate time span of at least six months under a range of stress scenarios.
2. A CSD shall maintain a plan for the following:
  - (a) the raising of additional capital should its equity capital approach or fall below the requirements laid down in paragraph 1;
  - (b) ensuring the orderly winding-down or restructuring of its operations and services where the CSD is unable to raise new capital.

The plan shall be approved by the management body or an appropriate committee of the management body and updated regularly. Each update of the plan shall be provided to the competent authority. The competent authority may require the CSD to take additional measures or to make any alternative provision where the competent authority considers that the CSD's plan is insufficient.

3. ~~EBA shall, in close cooperation with ESMA and the members of the ESCB, develop draft~~The Bank of England may make regulatory technical standards specifying requirements regarding the capital, retained earnings and reserves of a CSD referred to in paragraph 1.

~~EBA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.~~

## Section 5

### Requirements for CSD links

## Article 48

### CSD links

1. Before establishing a CSD link and on an ongoing basis once the CSD link is established, all CSDs concerned shall identify, assess, monitor and manage all

potential sources of risk for themselves and for their participants arising from the CSD link and take appropriate measures to mitigate them.

2. CSDs that intend to establish links shall submit an application for authorisation to the competent authority ~~of the requesting CSD~~ as required under point (e) of Article 19(1) or notify the competent ~~and relevant authorities of the requesting CSD~~ authority as required under Article 19(5).

3. A link shall provide adequate protection to the linked CSDs and their participants, in particular as regards possible credits taken by CSDs and the concentration and liquidity risks as a result of the link arrangement.

A link shall be supported by an appropriate contractual arrangement that sets out the respective rights and obligations of the linked CSDs and, where necessary, of the CSDs' participants. A contractual arrangement with cross-jurisdictional implications shall provide for an unambiguous choice of law that govern each aspect of the link's operations.

4. In the event of a provisional transfer of securities between linked CSDs, retransfer of securities prior to the first transfer becoming final shall be prohibited.

5. A CSD that uses an indirect link or an intermediary to operate a CSD link with another CSD or third-country CSD shall measure, monitor, and manage the additional risks arising from the use of that indirect link or intermediary and take appropriate measures to mitigate them.

6. Linked CSDs shall have robust reconciliation procedures to ensure that their respective records are accurate.

7. Links between CSDs and links between CSDs and third-country CSDs shall permit DVP settlement of transactions between participants in linked CSDs, where practical and feasible. Detailed reasons for any CSD link not allowing for DVP settlement shall be notified to the ~~relevant and~~ competent ~~authorities~~ authority.

8. Interoperable securities settlement systems and CSDs, which use a common settlement infrastructure shall establish identical moments of:

- (a) entry of transfer orders into the system;
- (b) irrevocability of transfer orders.

The securities settlement systems and CSDs referred to in the first subparagraph shall use equivalent rules concerning the moment of finality of transfers of securities and cash.

9. By 18 September 2019 all interoperable links between CSDs and links between CSDs and third-country CSDs operating in ~~Member States~~ the United Kingdom shall be, where applicable, DVP-settlement supporting links.

10. ~~ESMA shall, in close cooperation with the members of the ESCB, develop draft~~ The Bank of England may make regulatory technical standards to specify the conditions

provided for in paragraph 3 under which each type of link arrangement provides for adequate protection of the linked CSDs and of their participants, in particular where a CSD intends to participate in the securities settlement system operated by another CSD, the monitoring and managing of additional risks referred to in paragraph 5 arising from the use of intermediaries, the reconciliation methods referred to in paragraph 6, the cases where DVP settlement through CSD links is practical and feasible as provided for in paragraph 7 and the methods of assessment thereof.

~~ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.~~

~~Powers is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

### CHAPTER III

#### Access to CSDs

##### Section 1

##### Access of issuers to CSDs or third-country CSDs

#### *Article 49*

##### **Freedom to issue in a CSD ~~authorised in the Union~~ or third-country CSD**

1. ~~An~~ A UK issuer shall have the right to arrange for its securities admitted to trading on regulated markets or MTFs or traded on trading venues to be recorded in any CSD ~~established in any Member State, subject to compliance by that CSD with conditions referred to in Article 23~~ or third-country CSD recognised by the competent authority.

1A. A third-country issuer shall have the right to arrange for its securities admitted to trading on regulated markets or MTFs or traded on trading venues to be recorded in any CSD.

1B. Without prejudice to the UK issuer or third-country issuer's ~~right~~ rights referred to in ~~the first subparagraph~~ paragraphs 1 and 1A, the corporate or similar law of the ~~Member State~~ country or territory under which the securities are constituted shall continue to apply.

~~Member States shall ensure that a list of key relevant provisions of their law, as referred to in the second subparagraph, is compiled. Competent authorities shall communicate that list to ESMA by 18 December 2014. ESMA shall publish the list by 18 January 2015.~~

1C. The CSD or third-country CSD recognised by the competent authority may charge a reasonable commercial fee for the provision of its services to issuers on a cost-plus basis, unless otherwise agreed by both parties.

2. Where an issuer submits a request for recording its securities in a CSD, ~~the latter~~ or third-country CSD referred to in paragraphs 1 or 1A, the CSD or third-country CSD shall treat such request promptly and in a non-discriminatory manner and provide a response to the requesting issuer within three months.

3. A CSD or third-country CSD referred to in paragraphs 1 or 1A may refuse to provide services to an issuer. Such a refusal shall be based only on a comprehensive risk assessment or if that CSD or third-country CSD referred to in paragraphs 1 or 1A does not provide the services referred to in point (1) of Section A of the Annex in relation to securities constituted under the corporate or similar law of the relevant ~~Member State~~ country or territory.

4. Without prejudice to ~~Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC~~ the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, where a CSD or third-country CSD referred to in paragraphs 1 or 1A refuses to provide services to an issuer, it shall provide the requesting issuer with full written reasons for its refusal.

In the case of a refusal, the requesting issuer shall have the right to complain to the competent authority ~~of the CSD that refuses to provide its services~~.

The competent authority ~~of that CSD~~ shall duly examine the complaint by assessing the reasons for refusal provided by the CSD and shall provide the issuer with a reasoned reply.

~~The competent authority of the CSD shall consult the competent authority of the place of establishment of the requesting issuer on its assessment of the complaint. Where the competent authority of the place of establishment of the requesting issuer disagrees with that assessment, any one of the two competent authorities may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.~~

Where the refusal by the CSD to provide its services to an issuer is deemed to be unjustified, the responsible competent authority shall issue an order requiring the CSD to provide its services to the requesting issuer.

5. ~~ESMA shall, in close cooperation with the members of the ESCB, develop draft~~ The Bank of England may make regulatory technical standards to specify the risks to be taken into account by CSDs when carrying out a comprehensive risk assessment, and competent ~~authorities~~ authority assessing the reasons for refusal in accordance with paragraphs 3 and 4, and the elements of the procedure referred to in paragraph 4.

~~ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

- ~~ESMA shall, in close cooperation with the members of the ESCB, develop draft~~The Bank of England may make implementing technical standards to establish standard forms and templates for the procedure referred to in paragraph 4.

~~ESMA shall submit those draft implementing technical standards to the Commission by 18 June 2015.~~

~~Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.~~

## Section 2

### Access between CSDs and between CSDs and third-country CSDs

#### *Article 50*

##### Standard link access

A CSD or third-country CSD shall have the right to become a participant of ~~another~~a CSD and set up a standard link with that CSD in accordance with Article 33 and subject to the prior notification of the CSD link provided under Article 19(5).

#### *Article 51*

##### Customised link access

- Where a CSD or third-country CSD requests ~~another~~a CSD to establish a customised link for having access to the latter, the receiving CSD shall reject such a request only on the basis of risk considerations. It shall not deny a request on the grounds of loss of market share.
- The receiving CSD may charge a reasonable commercial fee on a cost-plus basis to the requesting CSD for making customised link access available, unless otherwise agreed by both parties.

#### *Article 52*

##### Procedure for CSD links

- When a CSD or third-country CSD submits a request for access to ~~another~~a CSD pursuant to Articles 50 and 51, the latter shall treat such request promptly and shall provide a response to the requesting CSD within three months.
- A CSD shall deny access to a requesting CSD only where such access would threaten the smooth and orderly functioning of the financial markets or cause

systemic risk. Such a refusal shall be based only on a comprehensive risk assessment.

Where a CSD refuses access, it shall provide the requesting CSD with full reasons for its refusal.

In the case of a refusal, the requesting CSD has the right to complain to the competent authority of the CSD that has refused access.

The competent authority of the receiving CSD shall duly examine the complaint by assessing the reasons for refusal and shall provide the requesting CSD with a reasoned reply.

~~The competent authority of the receiving CSD shall consult the competent authority of the requesting CSD and the relevant authority of the requesting CSD referred to in point (a) of Article 12(1) on its assessment of the complaint. Where any of the authorities of the requesting CSD disagrees with the assessment provided, any one of the authorities may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.~~

Where the refusal by the CSD to grant access to the requesting CSD is deemed to be unjustified, the competent authority of the receiving CSD shall issue an order requiring that CSD to grant access to the requesting CSD.

3. ~~The Bank~~ ESMA shall, in close cooperation with the members of the ESCB, develop draft of England may make regulatory technical standards to specify the risks to be taken into account by CSDs when carrying out a comprehensive risk assessment, and by competent ~~authorities~~ authority when assessing the reasons for refusal in accordance with paragraph 2, and the elements of the procedure referred to in paragraph 2.

~~ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

4. ~~ESMA shall, in close cooperation with the members of the ESCB, develop draft~~ The Bank of England may make implementing technical standards to establish standard forms and templates for the procedures referred to in paragraphs 1 and 2.

~~ESMA shall submit those draft implementing technical standards to the Commission by 18 June 2015.~~

~~Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.~~

### Section 3

## Access between a CSD and another market infrastructure or third-country CSD

### Article 53

#### Access between a CSD or third-country CSD and another market infrastructure

1. A UK CCP and a UK trading venue shall provide transaction feeds on a non-discriminatory and transparent basis to a CSD or third-country CSD upon request by the CSD or third-country CSD and may charge a reasonable commercial fee for such transaction feeds to the ~~requesting~~CSD or third-country CSD on a cost-plus basis, unless otherwise agreed by both parties.

A CSD shall provide access to its securities settlement systems on a non-discriminatory and transparent basis to a CCP or a trading venue and may charge a reasonable commercial fee for such access on a cost-plus basis, unless otherwise agreed by both parties.

2. When a party submits a request for access to another party in accordance with paragraph 1, such request shall be treated promptly and a response to the requesting party shall be provided within three months.
3. The receiving party shall deny access only where such access would affect the smooth and orderly functioning of the financial markets or cause systemic risk. It shall not deny a request on the grounds of loss of market share.

A party that refuses access shall provide the requesting party with full written reasons for such refusal based on a comprehensive risk assessment. In the case of a refusal, the requesting party has the right to complain to the competent authority ~~of the party that has refused access.~~

The competent authority ~~of the receiving party and the relevant authority referred to in point (a) of Article 12(1)~~ shall duly examine the complaint by assessing the reasons for refusal and shall provide the requesting party with a reasoned reply.

~~The competent authority of the receiving party shall consult the competent authority of the requesting party and the relevant authority referred to in point (a) of Article 12(1) on its assessment of the complaint. Where any of the authorities of the requesting party disagrees with the assessment provided, any of them may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.~~

Where the refusal by a party to grant access is deemed to be unjustified, the ~~responsible~~ competent authority shall issue an order requiring that party to grant access to its services within three months.

4. ~~ESMA shall, in close cooperation with the members of the ESCB, develop draft~~The relevant authority may make regulatory technical standards to specify the risks to be taken into account by CSDs when carrying out a comprehensive risk assessment, and by ~~competent authorities~~the relevant authority when assessing the reasons for

refusal in accordance with paragraph 3, and the elements of the procedure referred to in paragraph 3.

~~ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

5. ~~ESMA shall, in close cooperation with the members of the ESCB, develop draft~~The relevant authority may make implementing technical standards to establish standard forms and templates for the procedure referred to in paragraphs 2 and 3.

~~ESMA shall submit those draft implementing technical standards to the Commission by 18 June 2015.~~

~~Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.~~

6. For the purposes of paragraphs 4 and 5, “the relevant authority” means—

(a) the Bank of England in the case of requests made to CSDs and UK CCPs;

(b) the FCA in the case of requests made to UK trading venues.

#### TITLE IV

### PROVISION OF BANKING-TYPE ANCILLARY SERVICES FOR CSD PARTICIPANTS

#### *Article 54*

##### **Authorisation and designation to provide banking-type ancillary services**

1. A CSD shall not itself provide any banking-type ancillary services set out in Section C of the Annex unless it has obtained an additional authorisation to provide such services in accordance with this Article.
2. A CSD that intends to settle the cash leg of all or part of its securities settlement system in accordance with Article 40(2) or otherwise wishes to provide any banking-type ancillary services referred to in paragraph 1 shall be authorised either:
  - (a) to offer such services itself under the conditions specified in this Article; or
  - (b) to designate for that purpose one or more credit institutions ~~authorised in accordance with Article 8 of Directive 2013/36/EU~~with permission to accept deposits under Part 4A of FSMA.
3. Where a CSD seeks to provide any banking-type ancillary services from within the same legal entity as the legal entity operating the securities settlement system the

authorisation referred to in paragraph 2 shall be granted only where the following conditions are met:

- (a) the CSD is ~~authorised as a credit institution as provided for in Article 8 of Directive 2013/36/EU~~ permitted under Part 4A of FSMA to carry on any regulated activity which is carried on for the purposes of, or in connection with, such services;
- (b) the CSD meets the prudential requirements laid down in Article 59(1), (3) and (4) and the supervisory requirements laid down in Article 60;
- (c) the authorisation referred to in point (a) of this subparagraph is used only to provide the banking-type ancillary services referred to in Section C of the Annex and not to carry out any other activities;
- (d) the CSD is subject to an additional capital surcharge that reflects the risks, including credit and liquidity risks, resulting from the provision of intra-day credit, inter alia, to the participants in a securities settlement system or other users of CSD services;
- (e) the CSD reports at least monthly to the competent authority and annually as a part of its public disclosure as required under Part Eight of Regulation (EU) No 575/2013 on the extent and management of intra-day liquidity risk in accordance with point (j) of Article 59(4) of this Regulation;
- (f) the CSD has submitted to the competent authority an adequate recovery plan to ensure continuity of its critical operations, including in situations where liquidity or credit risk crystallises as a result of the provision of banking-type ancillary services.

In the case of conflicting provisions laid down in this Regulation, in Regulation (EU) No 575/2013 and in Directive 2013/36/EU UK law, the CSD referred to in point (a) of the first subparagraph shall comply with the stricter requirements on prudential supervision. The regulatory technical standards referred to in Articles 47 and 59 of this Regulation shall clarify the cases of conflicting provisions.

4. Where a CSD seeks to designate a credit institution to provide any banking-type ancillary services from within a separate legal entity which may be part of the same group of undertakings ultimately controlled by the same parent undertaking or not, the authorisation referred to in paragraph 2 shall be granted only where the following conditions are met:

- (a) the separate legal entity is ~~authorised as a credit institution as provided for in Article 8 of Directive 2013/36/EU~~ permitted to accept deposits under Part 4A of FSMA;
- (b) the separate legal entity meets the prudential requirements laid down in Article 59(1), (3) and (4) and supervisory requirements laid down in Article 60;

- (c) the separate legal entity does not itself carry out any of the core services referred to in Section A of the Annex;
  - (d) the authorisation referred to in point (a) is used only to provide the banking-type ancillary services referred to in Section C of the Annex and not to carry out any other activities;
  - (e) the separate legal entity is subject to an additional capital surcharge that reflects the risks, including credit and liquidity risks, resulting from the provision of intra-day credit, inter alia, to the participants in a securities settlement system or other users of CSD services;
  - (f) the separate legal entity reports at least monthly to the competent authority and annually as a part of its public disclosure as required under Part Eight of Regulation (EU) No 575/2013 on the extent and management of intra-day liquidity risk in accordance with point (j) of Article 59(4) of this Regulation; and
  - (g) the separate legal entity has submitted to the competent authority an adequate recovery plan to ensure continuity of its critical operations, including in situations where liquidity or credit risk crystallises as a result of the provision of banking-type ancillary services from within a separate legal entity.
5. Paragraph 4 shall not apply to credit institutions referred to in point (b) of paragraph 2 that offer to settle the cash payments for part of the CSD's securities settlement system, if the total value of such cash settlement through accounts opened with those credit institutions, calculated over a one-year period, is less than one per cent of the total value of all securities transactions against cash settled in the books of the CSD and does not exceed a maximum of EUR 2,5 billion per year.

The competent authority shall monitor at least once per year that the threshold defined in the first subparagraph is respected ~~and report its findings to ESMA~~. Where the competent authority determines that the threshold has been exceeded, it shall require the CSD concerned to seek authorisation in accordance with paragraph 4. The CSD concerned shall submit its application for authorisation within six months.

- 6. The competent authority may require a CSD to designate more than one credit institution, or to designate a credit institution in addition to providing services itself in accordance with point (a) of paragraph 2 of this Article where it considers that the exposure of one credit institution to the concentration of risks under Article 59(3) and (4) is not sufficiently mitigated. The designated credit institutions shall be considered to be settlement agents.
- 7. A CSD authorised to provide any banking-type ancillary services and a credit institution designated in accordance with point (b) of paragraph 2 shall comply at all times with the conditions necessary for authorisation under this Regulation and shall, without delay, notify the competent authorities of any substantive changes affecting the conditions for authorisation.

8. ~~EBA shall, in close cooperation with ESMA and the members of the ESCB, develop draft~~The PRA may make regulatory technical standards to determine the additional risk based capital surcharge referred to in point (d) of paragraph 3 and point (e) of paragraph 4.

~~EBA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.~~

### *Article 55*

#### **Procedure for granting and refusing authorisation to provide banking-type ancillary services**

1. The CSD shall submit its application for authorisation to designate a credit institution or to provide any banking-type ancillary service, as required under Article 54, to the competent authority ~~of its home Member State.~~
2. The application shall contain all the information that is necessary to enable the competent authority to satisfy itself that the CSD and where applicable the designated credit institution have established, at the time of the authorisation, all the necessary arrangements to meet their obligations as laid down in this Regulation. It shall contain a programme of operations setting out the banking-type ancillary services envisaged, the structural organisation of the relations between the CSD and the designated credit institutions where applicable and how that CSD or where applicable the designated credit institution intends to meet the prudential requirements laid down in Article 59(1), (3) and (4) and the other conditions laid down in Article 54.
3. The competent authority shall apply the procedure under Article 17(3) and (8).
4. ~~[deleted]~~
5. ~~[deleted]~~
6. ~~[deleted]~~
4. ~~From the moment when the application is considered to be complete, the competent authority shall transmit all information included in the application to the following authorities:~~
  - ~~(a) the relevant authorities;~~
  - ~~(b) the competent authority referred to in point (40) of Article 4(1) of Regulation (EU) No 575/2013;~~

~~(c) the competent authorities in the Member States where the CSD has established interoperable links with another CSD except where the CSD has established interoperable links referred to in Article 19(5);~~

~~(d) the competent authorities in the host Member State where the activities of the CSD are of substantial importance for the functioning of the securities markets and the protection of investors within the meaning of Article 24(4);~~

~~(e) the competent authorities responsible for the supervision of the participants of the CSD that are established in the three Member States with the largest settlement values in the CSD's securities settlement system on an aggregate basis over a one-year period;~~

~~(f) ESMA; and~~

~~(g) EBA;~~

~~5. The authorities referred to in points (a) to (e) of paragraph 4 shall issue a reasoned opinion on the authorisation within 30 days of receipt of the information referred to in paragraph 4. Where an authority does not provide an opinion within that deadline it shall be deemed to have a positive opinion.~~

~~Where at least one of the authorities referred to in points (a) to (e) of paragraph 4 issues a negative reasoned opinion, the competent authority wishing to grant the authorisation shall within 30 days provide the authorities referred to in points (a) to (e) of paragraph 4 with a reasoned decision addressing the negative opinion.~~

~~Where 30 days after that decision has been presented any of the authorities referred to in points (a) to (e) of paragraph 4 issues a negative opinion and the competent authority still wishes to grant the authorisation any of the authorities that issued a negative opinion may refer the matter to ESMA for assistance under point (c) of Article 31 of Regulation (EU) No 1095/2010.~~

~~Where 30 days after referral to ESMA the issue is not settled, the competent authority wishing to grant the authorisation shall take the final decision and provide a detailed explanation of its decision in writing to the authorities referred to in points (a) to (e) of paragraph 4.~~

~~Where the competent authority wishes to refuse authorisation, the matter shall not be referred to ESMA.~~

~~Negative opinions shall state in writing the full and detailed reasons why the requirements laid down in this Regulation or other parts of Union law are not met.~~

~~6. Where ESMA considers that the competent authority referred to in paragraph 1 has granted an authorisation which may not be in conformity with Union law it shall act in accordance with Article 17 of Regulation (EU) No 1095/2010.~~

7. ~~ESMA shall, in close cooperation with the members of the ESCB and EBA, develop~~ draft The Bank of England may make regulatory technical standards to specify the information that the CSD is to provide to the competent authority for the purpose

of obtaining the relevant authorisations to provide the banking-type services ancillary to settlement.

~~ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

- ~~8. ESMA shall, in close cooperation with the members of the ESCB and EBA, develop draft implementing technical standards to establish standard forms, templates and procedures for the consultation of the authorities referred to in paragraph 4 prior to granting authorisation.~~

~~ESMA shall submit those draft implementing technical standards to the Commission by 18 June 2015.~~

~~Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.~~

#### **Article 56**

##### **Extension of the banking-type ancillary services**

1. A CSD that intends to extend the banking-type ancillary services for which it designates a credit institution or that it provides itself in accordance with Article 54, shall submit a request for extension to the competent authority ~~of its home Member State~~.
2. The request for extension shall be subject to the procedure under Article 55.

#### **Article 57**

##### **Withdrawal of authorisation**

1. Without prejudice to any remedial actions or measures under Title V, the competent authority ~~of the CSD's home Member State~~ shall withdraw the authorisations referred to in Article 54 in any of the following circumstances:
  - (a) where the CSD has not made use of the authorisation within 12 months, expressly renounces the authorisation or where the designated credit institution has provided no services or performed no activity for the preceding six months;
  - (b) where the CSD has obtained the authorisation by making false statements or by any other unlawful means;
  - (c) where the CSD or the designated credit institution is no longer in compliance with the conditions under which authorisation was granted and has not taken

the remedial actions requested by the competent authority within a set time-frame;

- (d) where the CSD or the designated credit institution has seriously and systematically infringed the requirements laid down in this Regulation.

2. ~~[deleted]~~

3. ~~[deleted]~~

~~2. From the moment when it becomes aware of one of the circumstances referred to in paragraph 1, the competent authority shall immediately consult the authorities referred to in Article 55(4) on the necessity of withdrawing the authorisation.~~

~~3. ESMA, any relevant authority under point (a) of Article 12(1) and any authority referred to in Article 60(1) or, respectively, the authorities referred to in Article 55(4) may, at any time, request that the competent authority of the CSD's home Member State examine whether the CSD and where applicable the designated credit institution is still in compliance with the conditions under which the authorisation is granted.~~

4. The competent authority may limit the withdrawal to a particular service, activity, or financial instrument.

5. A CSD and the designated credit institution shall establish, implement and maintain an adequate procedure ensuring the timely and orderly settlement and transfer of the assets of clients and participants to another settlement agent in the event of a withdrawal of authorisation referred to in paragraph 1.

## *Article 58*

### **CSD register**

~~1. Decisions taken by competent authorities under Articles 54, 56 and 57 shall be notified to ESMA.~~

1. ~~[deleted]~~

2. ~~ESMA~~The competent authority shall introduce in the register, that it is required to make available on its dedicated website in accordance with Article 21(3), the following information:

- (a) the name of each CSD which was subject to a decision under Articles 54, 56 and 57;
- (b) the name of each designated credit institution;
- (c) the list of banking-type ancillary services that a designated credit institution or a CSD authorised under Article 54 is authorised to provide for the CSD's participants.

~~3. The competent authorities shall notify to ESMA those entities that provide banking-type ancillary services according to requirements of national law by 16 December 2014.~~

### *Article 59*

#### **Prudential requirements applicable to credit institutions or CSDs authorised to provide banking-type ancillary services**

1. A credit institution designated under point (b) of Article 54(2) or a CSD authorised under point (a) of Article 54(2) to provide banking-type ancillary services shall provide only the services set out in Section C of the Annex that are covered by the authorisation.
2. A credit institution designated under point (b) of Article 54(2) or a CSD authorised under point (a) of Article 54(2) to provide banking-type ancillary services shall comply with any present or future legislation applicable to credit institutions.
3. A credit institution designated under point (b) of Article 54(2) or a CSD authorised under point (a) of Article 54(2) to provide banking-type ancillary services shall comply with the following specific prudential requirements for the credit risks related to those services in respect of each securities settlement system:
  - (a) it shall establish a robust framework to manage the corresponding credit risks;
  - (b) it shall identify the sources of such credit risks, frequently and regularly, measure and monitor corresponding credit exposures and use appropriate risk-management tools to control those risks;
  - (c) it shall fully cover corresponding credit exposures to individual borrowing participants using collateral and other equivalent financial resources;
  - (d) if collateral is used to manage its corresponding credit risk, it shall accept highly liquid collateral with minimal credit and market risk; it may use other types of collateral in specific situations if an appropriate haircut is applied;
  - (e) it shall establish and apply appropriately conservative haircuts and concentration limits on collateral values constituted to cover the credit exposures referred to in point (c), taking into account the objective of ensuring that collateral can be liquidated promptly without significant adverse price effects;
  - (f) it shall set limits on its corresponding credit exposures;
  - (g) it shall analyse and plan for how to address any potential residual credit exposures, and adopt rules and procedures to implement such plans;
  - (h) it shall provide credit only to participants that have cash accounts with it;

- (i) it shall provide for effective reimbursement procedures of intra-day credit and discourage overnight credit through the application of sanctioning rates which act as an effective deterrent.
4. A credit institution designated under point (b) of Article 54(2) or a CSD authorised under point (a) of Article 54(2) to provide banking-type ancillary services shall comply with the following specific prudential requirements for the liquidity risks relating to those services in respect of each securities settlement system:
- (a) it shall have a robust framework and tools to measure, monitor, and manage its liquidity risks, including intra-day liquidity risks, for each currency of the security settlement system for which it acts as settlement agent;
  - (b) it shall measure and monitor on an ongoing and timely basis, and at least daily, its liquidity needs and the level of liquid assets it holds; in doing so, it shall determine the value of its available liquid assets taking into account appropriate haircuts on those assets;
  - (c) it shall have sufficient liquid resources in all relevant currencies for a timely provision of settlement services under a wide range of potential stress scenarios including, but not limited to the liquidity risk generated by the default of at least one participant, including its parent undertakings and subsidiaries, to which it has the largest exposures;
  - (d) it shall mitigate the corresponding liquidity risks with qualifying liquid resources in each currency such as cash at the central bank of issue and at other creditworthy financial institutions, committed lines of credit or similar arrangements and highly liquid collateral or investments that are readily available and convertible into cash with prearranged and highly reliable funding arrangements, even in extreme but plausible market conditions and it shall identify, measure and monitor its liquidity risk stemming from the various financial institutions used for the management of its liquidity risks;
  - (e) where prearranged funding arrangements are used, it shall select only creditworthy financial institutions as liquidity providers; it shall establish and apply appropriate concentration limits for each of the corresponding liquidity providers including its parent undertaking and subsidiaries;
  - (f) it shall determine and test the sufficiency of the corresponding resources by regular and rigorous stress testing;
  - (g) it shall analyse and plan for how to address any unforeseen and potentially uncovered liquidity shortfalls, and adopt rules and procedures to implement such plans;
  - (h) where practical and available, without prejudice to the eligibility rules of the ~~central bank~~[Bank of England](#), it shall have access to ~~central bank~~[Bank of England](#) accounts and other ~~central bank~~[Bank of England](#) services to enhance its management of liquidity risks and ~~Union~~-credit institutions shall deposit

the corresponding sterling cash balances on dedicated accounts with ~~Union central banks of issue~~the Bank of England;

- (i) it shall have prearranged and highly reliable arrangements to ensure that it can liquidate in a timely fashion the collateral provided to it by a defaulting client;
- (j) it shall report regularly to the authorities referred to in Article 60(1), and disclose to the public, as to how it measures, monitors and manages its liquidity risks, including intra-day liquidity risks.

5. ~~EBA shall, in close cooperation with ESMA and the members of the ESCB, develop draft~~The PRA may make regulatory technical standards to further specify details of the frameworks and tools for the monitoring, the measuring, the management, the reporting and the public disclosure of the credit and liquidity risks, including those which occur intra-day, referred to in paragraphs 3 and 4. Such draft regulatory technical standards shall, where appropriate, be aligned to the regulatory technical standards adopted in accordance with Article 46(3) of Regulation (EU) No 648/2012.

~~EBA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.~~

### *Article 60*

#### **Supervision of designated credit institutions and CSDs authorised to provide banking-type ancillary services**

1. Without prejudice to Articles 17 and 22 of this Regulation, the competent authorities referred to in point (40) of Article 4(1) of Regulation (EU) No 575/2013 are responsible for the authorisation as credit institutions and supervision as credit institutions under the conditions provided in Regulation (EU) No 575/2013 and in Directive 2013/36/EU of the designated credit institutions and CSDs authorised under this Regulation to provide banking-type ancillary services.

The competent authorities referred to in the first subparagraph shall also be responsible for the supervision of designated credit institutions and CSDs referred to in that subparagraph as regards their compliance with the prudential requirements referred to in Article 59 of this Regulation.

The competent authorities referred to in the first subparagraph shall regularly, and at least once a year, assess whether the designated credit institution or CSD authorised to provide banking-type ancillary services complies with Article 59 and shall inform the competent authority of the CSD ~~which shall then inform the authorities referred to in Article 55(4)~~, of the results, including any remedial actions or penalties, of its supervision under this paragraph.

2. The competent authority of the CSD shall, after consulting competent authorities referred to paragraph 1, review and evaluate at least on an annual basis the following:
  - (a) in the case referred to in point (b) of Article 54(2), whether all the necessary arrangements between the designated credit institutions and the CSD allow them to meet their obligations as laid down in this Regulation;
  - (b) in the case referred to in point (a) of Article 54(2), whether the arrangements relating to the authorisation to provide banking-type ancillary services allow the CSD to meet its obligations as laid down in this Regulation.

3. [deleted]

~~The competent authority of the CSD shall regularly, and at least once a year, inform the authorities referred to in Article 55(4) of the results, including any remedial actions or penalties, of its review and evaluation under this paragraph.~~

~~Where a CSD designates an authorised credit institution in accordance with Article 54, in view of the protection of the participants in the securities settlement systems it operates, a CSD shall ensure that it has access from the credit institution it designates to all necessary information for the purpose of this Regulation and it shall report any infringements thereof to the competent authority of the CSD and to competent authorities referred to in paragraph 1.~~

- ~~3. In order to ensure consistent, efficient and effective supervision within the Union of credit institutions and CSDs authorised to provide banking-type ancillary services, EBA may, in close cooperation with ESMA and the members of the ESCB, issue guidelines addressed to competent authorities in accordance with Article 16 of Regulation (EU) No 1093/2010.~~

TITLE V  
SANCTIONS

*Article 61*

[deleted]

~~Administrative sanctions and other measures~~

~~1. Without prejudice to the right of Member States to provide for and impose criminal sanctions, Member States shall lay down rules on and ensure that their competent authorities may impose the administrative sanctions and other measures applicable in the circumstances defined in Article 63 to the persons responsible for infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. Such sanctions and other measures shall be effective, proportionate and dissuasive.~~

~~Member States may decide not to lay down rules for administrative sanctions as referred to in the first subparagraph where the infringements referred to in that subparagraph are already subject to criminal sanctions in their national law by 18 September 2016. Where they so decide, Member States shall notify, in detail, to the Commission and to ESMA, the relevant parts of their criminal law.~~

~~By 18 September 2016, the Member States shall notify the rules referred to in the first subparagraph to the Commission and ESMA. Member States shall notify the Commission and ESMA without undue delay of any subsequent amendments thereto.~~

~~2. The competent authorities shall be able to apply administrative sanctions and other measures, to CSDs, designated credit institutions, and, subject to the conditions laid down in national law in areas not harmonised by this Regulation, the members of their management bodies and any other persons who effectively control their business as well as to any other legal or natural person who under national law is held responsible for an infringement.~~

~~3. In the exercise of their sanctioning powers in the circumstances defined in Article 63 competent authorities shall cooperate closely to ensure that the administrative sanctions and other measures produce the results pursued by this Regulation and coordinate their actions in order to avoid any duplication or overlap when applying administrative sanctions and other measures to cross border cases in accordance with Article 14.~~

~~4. Where Member States have chosen, in accordance with paragraph 1 to lay down criminal sanctions for the infringements of the provisions referred to in Article 63, they shall ensure that appropriate measures are in place so that competent authorities have all the necessary powers to liaise with judicial authorities within their jurisdiction to receive specific information related to criminal investigations or proceedings commenced for possible infringements of this Regulation and provide the same to~~

~~other competent authorities and ESMA to fulfil their obligation to cooperate with each other and ESMA for the purposes of this Regulation.~~

~~5. Competent authorities may also cooperate with competent authorities of other Member States with respect to facilitating the recovery of pecuniary sanctions.~~

~~6. Member States shall provide ESMA annually with aggregated information regarding all sanctions and other measures imposed in accordance with paragraph 1. ESMA shall publish that information in an annual report.~~

~~Where Member States have chosen, in accordance with paragraph 1, to lay down criminal sanctions for the infringements of the provisions referred to in Article 63 their competent shall provide ESMA annually with anonymised and aggregated data regarding all criminal investigations undertaken and criminal penalties imposed. ESMA shall publish data on criminal sanctions imposed in an annual report.~~

~~7. Where the competent authority has disclosed an administrative sanction or an administrative measure or a criminal sanction to the public, it shall, at the same time, report that fact to ESMA.~~

~~8. Competent authorities shall exercise their functions and powers in accordance with their national frameworks:~~

~~(a) directly;~~

~~(b) in collaboration with other authorities;~~

~~(c) under their responsibility by delegation to entities to which tasks have been delegated according to this Regulation; or~~

~~(d) by application to the competent judicial authorities.~~

## *Article 62*

### **Publication of decisions**

1. ~~Member States shall ensure that the~~The competent ~~authorities~~authority must publish on ~~their~~its official ~~websites~~website any decision imposing an administrative sanction or other measure for an infringement of this Regulation without undue delay after the person sanctioned is informed of that decision. The publication shall include at least information on the type and nature of the infringement and the identity of a natural or legal person on whom the sanction has been imposed.

Where the decision to impose a sanction or other measure is subject to an appeal before the relevant judicial or other relevant authorities, the competent ~~authorities~~authority must, without undue delay, ~~also~~ publish on ~~their~~its official ~~websites~~website information on the appeal status and outcome thereof. Moreover, any decision annulling a previous decision to impose a sanction or a measure shall also be published.

Where the publication of the identity of the legal persons or of the personal data of the natural persons is considered by the competent authority to be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data, or where publication jeopardises the stability of financial markets or an ongoing investigation, ~~Member States shall ensure that~~the competent ~~authorities~~authority must do one of the following:

- (a) delay the publication of the decision to impose the sanction or other measure until the moment when the reasons for non-publication cease to exist;
- (b) publish the decision to impose the sanction or other measure on an anonymous basis in a manner which is in conformity with national law, if such anonymous publication ensures effective protection of the personal data;
- (c) not publish the decision to impose a sanction or other measure at all in the event that the options set out in points (a) and (b) above are considered to be insufficient to ensure:
- (d) that the stability of financial markets would not be put in jeopardy;
- (e) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.

In the case of a decision to publish a sanction or other measure on an anonymous basis, the publication of the relevant data may be postponed for a reasonable period if it is envisaged that within that period the reasons for anonymous publication will cease to exist.

~~Competent authorities shall inform ESMA of all administrative sanctions imposed but not published in accordance with point (e) of the third subparagraph including any appeal in relation thereto and the outcome thereof. Member States shall ensure that competent authorities receive information and the final judgement in relation to any criminal sanction imposed and submit it to ESMA. ESMA shall maintain a central database of sanctions communicated to it solely for the purposes of exchanging information between competent authorities. That database shall be accessible only to competent authorities and it shall be updated on the basis of the information provided by the competent authorities.~~

2. ~~Competent authorities~~The competent authority shall ensure that any publication, in accordance with this Article, shall remain on ~~their~~its official website for a period of at least five years after its publication. Personal data contained in the publication shall be kept on the official website of the competent authority only for the period necessary under the applicable data protection rules.

### *Article 63*

#### ~~Sanctions for infringements~~[deleted]

1. ~~This Article shall apply to the following provisions of this Regulation:~~

- ~~(a) provision of services set out in Sections A, B and C of the Annex in infringement of Articles 16, 25 and 54;~~
- ~~(b) obtaining the authorisations required under Articles 16 and 54 by making false statements or by any other unlawful means as provided for in point (b) of Article 20(1) and point (b) of Article 57(1);~~
- ~~(c) failure of CSDs to hold the required capital, thus infringing Article 47(1);~~
- ~~(d) failure of CSDs to comply with the organisational requirements, thus infringing Articles 26 to 30;~~
- ~~(e) failure of CSDs to comply with the conduct of business rules, thus infringing Articles 32 to 35;~~
- ~~(f) failure of CSDs to comply with the requirements for CSD services, thus infringing Articles 37 to 41;~~
- ~~(g) failure of CSDs to comply with the prudential requirements, thus infringing Articles 43 to 47;~~
- ~~(h) failure of CSDs to comply with the requirements for CSD links, thus infringing Article 48;~~
- ~~(i) abusive refusals by CSDs to grant different types of access, thus infringing Articles 49 to 53;~~
- ~~(j) failure of designated credit institutions to comply with the specific prudential requirements related to credit risks, thus infringing Article 59(3);~~
- ~~(k) failure of designated credit institutions to comply with specific prudential requirements related to liquidity risks, thus infringing Article 59(4).~~

~~2. Without prejudice to the supervisory powers of competent authorities, at least in the event of an infringement referred to in this Article, the competent authorities shall, in conformity with national law, have the power to impose at least the following administrative sanctions and other measures:~~

- ~~(a) a public statement which indicates the person responsible for the infringement and the nature of the infringement in accordance with Article 62;~~
- ~~(b) an order requiring the person responsible for the infringement to cease the conduct and to desist from a repetition of that conduct;~~
- ~~(c) withdrawal of the authorisations granted under Article 16 or 54, in accordance with Article 20 or 57;~~
- ~~(d) a temporary or, for repeated serious infringements, a permanent ban against any member of the institution's management body or any other natural person, who is held responsible, from exercising management functions in the institution;~~

~~(e) maximum administrative pecuniary sanctions of at least twice the amounts of the profit gained as a result of an infringement where those amounts can be determined;~~

~~(f) in respect of a natural person, maximum administrative pecuniary sanctions of at least EUR 5 million or in the Member States whose currency is not the euro, the corresponding value in the national currency on the date of adoption of this Regulation;~~

~~(g) in the case of a legal person, maximum administrative pecuniary sanctions of at least EUR 20 million or up to 10 % of the total annual turnover of the legal person according to the last available accounts approved by the management body; where the legal person is a parent undertaking or a subsidiary of the parent undertaking which has to prepare consolidated financial accounts according to Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income according to the relevant Accounting Directives according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.~~

~~3. Competent authorities may have other sanctioning powers in addition to those referred in paragraph 2 and may provide for higher levels of administrative pecuniary sanctions than those established in that paragraph.~~

## *Article 64*

### **Effective application of sanctions**

~~Member States shall ensure that,~~ when determining the type and level of administrative sanctions or other measures, the competent ~~authorities~~authority must take into account all relevant circumstances, including, where appropriate:

- (a) the gravity and the duration of the infringement;
- (b) the degree of responsibility of the person responsible for the infringement;
- (c) the financial strength of the person responsible for the infringement, for example as indicated by the total turnover of the responsible legal person or the annual income of the responsible natural person;
- (d) the importance of the profits gained, losses avoided by the person responsible for the infringement or the losses for third parties derived from the infringement, insofar as they can be determined;
- (e) the level of cooperation of the person responsible for the infringement with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;
- (f) previous infringements by the person responsible for the infringement.

## Article 65

### Reporting of infringements

1. ~~Member States shall ensure that~~The competent ~~authorities~~authority must establish effective mechanisms to encourage reporting of potential or actual infringements of this Regulation to competent authorities.
2. The mechanisms referred to in paragraph 1 shall include at least:
  - (a) specific procedures for the receipt and investigation of reports on potential or actual infringements and their follow-up, including the establishment of secure communication channels for such reports;
  - (b) appropriate protection for employees of institutions who report potential or actual infringements committed within the institution against retaliation, discrimination or other types of unfair treatment at a minimum;
  - (c) protection of personal data concerning both the person who reports the potential or actual infringements and the natural person who is allegedly responsible for an infringement in compliance with the principles laid down in ~~Directive 95/46/EC~~data protection legislation;
  - (d) protection of the identity of both the person who reports the infringements and the natural person who is allegedly responsible for an infringement, at all stages of the procedures unless such disclosure is required by national law in the context of further investigation or subsequent administrative or judicial proceedings.
3. ~~Member States~~The competent authority shall require institutions to have in place appropriate procedures for their employees to report actual or potential infringements internally through a specific, independent and autonomous channel.

Such a channel may also be provided through arrangements provided for by social partners. The same protection as is referred to in points (b), (c) and (d) of paragraph 2 shall apply.

## Article 66

### Right of appeal

~~Member States~~The competent authority shall ensure that decisions and measures taken in pursuance of this Regulation are properly reasoned and subject to a right of appeal before a tribunal. The right of appeal before a tribunal shall apply where no decision is taken, within six months of its submission, in respect of an application for authorisation which contains all the information required under the provisions in force.

## TITLE VI

~~DELEGATION OF POWER, IMPLEMENTING POWERS~~REGULATIONS,  
~~TRANSITIONAL, AMENDING~~ AND FINAL PROVISIONS

*Article 67*

**Exercise of the delegation**

Regulations

1. ~~The~~Any power to ~~adopt delegated acts is~~make regulations conferred on the ~~Commission subject to the conditions laid down in this Article~~Treasury by this Regulation is exercisable by statutory instrument.
2. Such regulations may—
  - (a) contain incidental, supplemental, consequential and transitional provision; and
  - (b) make different provision for different purposes.
3. A statutory instrument containing regulations made under this Regulation is subject to annulment in pursuance of a resolution of either House of Parliament.
- ~~2. The power to adopt delegated acts referred to in Article 2(2), Article 7(14) and Article 24(7) shall be conferred on the Commission for an indeterminate period of time from 17 September 2014.~~
- ~~3. The delegation of power referred to in Article 2(2), Article 7(14) and Article 24(7) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.~~
- ~~4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.~~
- ~~5. A delegated act adopted pursuant to Article 2(2), Article 7(14) and Article 24(7) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.~~

*Article 68*

**Committee procedure**~~[deleted]~~

- ~~1. The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.~~

~~2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.~~

## *Article 69*

### **Transitional provisions**

~~1. The competent authorities shall communicate to ESMA those institutions that operate as CSDs by 16 December 2014.~~

~~2. CSDs shall apply for all authorisations that are necessary for the purposes of this Regulation and shall notify the relevant CSD links within six months from the date of entry into force of all the regulatory technical standards adopted under Articles 17, 26, 45, 47, 48, and, where relevant, Articles 55 and 59.~~

~~3. Within six months from the later of the date of entry into force of the regulatory technical standards adopted under Articles 12, 17, 25, 26, 45, 47, 48, and, where relevant, Articles 55 and 59 or the implementing decision referred to in of regulations being made under Article 25(9) specifying a third country, a third-country CSD shall established in the third-country must apply for recognition from ESMA where it intends to provide its services on the basis of Article 25.~~

~~4. Until the decision is made under this Regulation on the authorisation or recognition of CSDs and of their activities, including CSD links, the respective national rules on authorisation and recognition of CSDs shall continue to apply.~~

~~5. CSDs operated by the entities referred to in Article 1(4) shall comply with the requirements of this Regulation at the latest within one year from the date of entry into force of the regulatory technical standards referred to in paragraph 2.~~

2. The law of the United Kingdom or any part of the United Kingdom relating to the recognition of third-country CSDs, which applied prior to the coming into force of this Regulation, continues to apply to a qualifying third-country CSD (within the meaning of regulation 25 of the Central Securities Depositories (Amendment) (EU Exit) Regulations 2018), where it has—

(a) made an application under Article 25 and the competent authority has not determined the application; or

(b) not made an application under Article 25 and the six-month period referred to in paragraph 1 has not expired.

3. The law of the United Kingdom or any part of the United Kingdom relating to the authorisation of CSDs, which applied prior to the coming into force of this Regulation, continues to apply to a CSD where, before 30 September 2017—

(a) the CSD made an application for authorisation pursuant to Article 17 of this Regulation; and

(b) the competent authority has not determined the application.

## Article 70

~~[deleted]~~

### ~~Amendments to Directive 98/26/EC~~

~~Directive 98/26/EC is amended as follows:~~

~~1. the third indent of the first subparagraph of point (a) of Article 2 is replaced by the following:~~

~~‘—designated, without prejudice to other more stringent conditions of general application laid down by national law, as a system and notified to the European Securities and Markets Authority by the Member State whose law is applicable, after that Member State is satisfied as to the adequacy of the rules of the system.’;~~

~~2. in Article 11, the following paragraph is added:~~

~~‘3. By 18 March 2015, Member States shall adopt and publish and communicate to the Commission measures necessary to comply with the third indent of the first subparagraph of point (a) of Article 2.’;~~

## Article 71

~~[deleted]~~

### ~~Amendments to Directive 2014/65/EU~~

~~Directive 2014/65/EU is amended as follows:~~

~~1. in Article 2(1), point (o) is replaced by the following:~~

~~‘(o) CSDs except as provided for in Article 73 of Regulation (EU) No 909/2014 of the European Parliament and of the Council.’~~

~~2. in Article 4(1), the following point is added:~~

~~‘(64) ‘central securities depository’ or ‘CSD’ means a central securities depository as defined in point (1) of Article 2(1) of Regulation (EU) No 909/2014.’;~~

~~3. in Section B of Annex I, point (1) is replaced by the following:~~

~~‘(1) Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management and excluding providing and maintaining securities accounts at the top tier level (‘central maintenance service’) referred to in point (2) of Section A of the Annex to the Regulation (EU) No 909/2014.’;~~

## Article 72

~~[deleted]~~

### ~~Amendment to Regulation (EU) No 236/2012~~

~~Article 15 of Regulation (EU) No 236/2012 is deleted.~~

## Article 73

### Application of the UK law on markets in financial instruments

#### ~~Application of Directive 2014/65/EU~~ and Regulation (EU) No 600/2014

CSDs authorised in accordance with Article 16 of this Regulation shall not require authorisation under ~~Directive 2014/65/EU~~ the UK law on markets in financial instruments in order to provide the services explicitly listed in Sections A and B of the Annex to this Regulation.

Where a CSD authorised in accordance with Article 16 of this Regulation provides one or more investment services or carries out one or more investment activities in addition to providing the services explicitly listed in Sections A and B of the Annex to this Regulation, Directive 2014/65/EU with the exception of Articles 5 to 8, Article 9(1) to (2) and (4) to (6) and Articles 10 to 13 as implemented by the UK law on markets in financial instruments, and Regulation (EU) No 600/2014 shall apply.

## Article 74

### ~~Reports~~[deleted]

- ~~1. ESMA shall, in cooperation with EBA and the competent authorities and the relevant authorities, submit annual reports to the Commission providing assessments of trends, potential risks and vulnerabilities, and, where necessary, recommendations of preventative or remedial action in the markets for services covered by this Regulation. Those reports shall include at least an assessment of the following:~~
  - ~~(a) settlement efficiency for domestic and cross-border operations for each Member State based on the number and volume of settlement fails, amount of penalties referred to in Article 7(2), number and volumes of buy-in transactions referred to in Article 7(3) and (4) and any other relevant criteria;~~
  - ~~(b) the appropriateness of penalties for settlement fails, in particular the need for additional flexibility in relation to penalties for settlement fails in relation to illiquid financial instruments referred to in Article 7(4);~~
  - ~~(c) measuring settlement which does not take place in the securities settlement systems operated by CSDs based on the number and volume of transactions based on the information received under Article 9 and any other relevant criteria;~~
  - ~~(d) the cross border provision of services covered by this Regulation based on the number and types of CSD links, number of foreign participants in the~~

~~securities settlement systems operated by CSDs, number and volume of transactions involving such participants, number of foreign issuers recording their securities in a CSD in accordance with Article 49 and any other relevant criteria;~~

~~(e) the handling of access requests in Articles 49, 52 and 53 to identify the reasons for rejection of access requests by CSDs, CCPs and trading venues any trends in such rejections and ways in which the risks identified could be mitigated in future so as to allow for access to be granted, and any other substantive barriers to competition in post trade financial services;~~

~~(f) the handling of applications submitted in accordance with the procedures referred to in Article 23(3) to (7) and Article 25(4) to (10);~~

~~(g) where applicable, the findings of the peer review process for cross-border supervision in Article 24(6) and whether the frequency of such reviews could be reduced in the future, including an indication of whether such findings indicate the need for more formal colleges of supervisors;~~

~~(h) the application of civil liability rules of Member States relating to the losses attributable to CSDs;~~

~~(i) the procedures and conditions under which CSDs have been authorised to designate credit institutions or themselves to provide banking-type ancillary services in accordance with Articles 54 and 55, including an assessment of the effects that such provision may have on financial stability and competition for settlement and banking-type ancillary services in the Union;~~

~~(j) the application of the rules referred to in Article 38 on protection of securities of participants and those of their clients, in particular those in Article 38(5);~~

~~(k) the application of the sanctions and in particular the need to further harmonise the administrative sanctions for the infringement of the requirements laid down in this Regulation.~~

~~2. The reports referred to in paragraph 1 covering a calendar year shall be communicated to the Commission by 30 April of the following calendar year.~~

## *Article 75*

### **Review~~[deleted]~~**

~~By 18 September 2019, the Commission shall review and prepare a general report on this Regulation. That report shall, in particular, assess the matters referred to in points (a) to (k) of Article 74(1), whether there are other substantive barriers to competition in relation to the services subject to this Regulation which are insufficiently addressed and the potential need for further measures to limit the impact on taxpayers of the failure of CSDs. The Commission shall submit the report to the European Parliament and to the Council, together with any appropriate proposals.~~

## Article 76

### Entry into force and application

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

~~2. Article 3(1) shall apply from 1 January 2023 to transferable securities issued after that date and from 1 January 2025 to all transferable securities.~~

~~2. [\[deleted\]](#)~~

3. Article 5(2) shall apply from 1 January 2015.

By way of derogation from the first subparagraph of this paragraph, in the case of a trading venue that has access to a CSD referred to in Article 30(5), Article 5(2) shall apply at least six months before such a CSD outsources its activities to the relevant public entity, and in any event from 1 January 2016.

~~4. [\[deleted\]](#)~~

~~5. [\[deleted\]](#)~~

~~4. The settlement discipline measures referred to in Article 6(1) to (4) shall apply from the date of entry into force of the delegated act adopted by the Commission pursuant to Article 6(5).~~

~~5. The settlement discipline measures referred to in Article 7(1) to (13) and the amendment laid down in Article 72 shall apply from the date of entry into force of the delegated act adopted by the Commission pursuant to Article 7(15).~~

~~An MTF that complies with the criteria laid down in Article 33(3) of Directive 2014/65/EU shall be subject to the second subparagraph of Article 7(3) of this Regulation:~~

~~(a) until the final determination of its application for registration under Article 33 of Directive 2014/65/EU; or~~

~~(b) where an MTF has not applied for registration under Article 33 of Directive 2014/65/EU, until 13 June 2018.~~

6. The reporting measures referred to in Article 9(1) shall apply from the date of entry into force of the implementing act adopted ~~by the Commission~~ pursuant to Article 9(3).

~~7. [\[deleted\]](#)~~

~~7. References in this Regulation to Directive 2014/65/EU and Regulation (EU) No 600/2014 shall, before 3 January 2018, be read as references to Directive 2004/39/EC in accordance with the correlation table set out in Annex IV to~~

~~Directive 2014/65/EU in so far as that correlation table contains provisions referring to Directive 2004/39/EC.~~

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

## ANNEX

### LIST OF SERVICES

#### SECTION A

##### Core services of central securities depositories

1. Initial recording of securities in a book-entry system ('notary service');
2. Providing and maintaining securities accounts at the top tier level ('central maintenance service');
3. Operating a securities settlement system ('settlement service').

#### SECTION B

##### Non-banking-type ancillary services of CSDs that do not entail credit or liquidity risks

Services provided by CSDs that contribute to enhancing the safety, efficiency and transparency of the securities markets, which may include but are not restricted to:

1. Services related to the settlement service, such as:
  - (a) Organising a securities lending mechanism, as agent among participants of a securities settlement system;
  - (b) Providing collateral management services, as agent for participants in a securities settlement system;
  - (c) Settlement matching, instruction routing, trade confirmation, trade verification.
2. Services related to the notary and central maintenance services, such as:
  - (a) Services related to shareholders' registers;
  - (b) Supporting the processing of corporate actions, including tax, general meetings and information services;
  - (c) New issue services, including allocation and management of ISIN codes and similar codes;
  - (d) Instruction routing and processing, fee collection and processing and related reporting.

3. Establishing CSD links, providing, maintaining or operating securities accounts in relation to the settlement service, collateral management, other ancillary services.
4. Any other services, such as:
  - (a) Providing general collateral management services as agent;
  - (b) Providing regulatory reporting;
  - (c) Providing information, data and statistics to market/census bureaus or other governmental or inter-governmental entities;
  - (d) Providing IT services.

## SECTION C

### Banking-type ancillary services

Banking-type services directly related to core or ancillary services listed in Sections A and B, such as:

- (a) Providing cash accounts to, and accepting deposits from, participants in a securities settlement system and holders of securities accounts, within the meaning of point 1 of Annex I to Directive 2013/36/EU;
- (b) Providing cash credit for reimbursement no later than the following business day, cash lending to pre-finance corporate actions and lending securities to holders of securities accounts, within the meaning of point 2 of Annex I to Directive 2013/36/EU;
- (c) Payment services involving processing of cash and foreign exchange transactions, within the meaning of ~~point 4 of Annex I to Directive 2013/36/EU~~ [regulation 2 of the Payment Services Regulations 2017](#);
- (d) Guarantees and commitments related to securities lending and borrowing, within the meaning of point 6 of Annex I to Directive 2013/36/EU;
- (e) Treasury activities involving foreign exchange and transferable securities related to managing participants' long balances, within the meaning of points 7(b) and (e) of Annex I to Directive 2013/36/EU.

<b>Summary report:</b>	
<b>Litéra® Change-Pro TDC 7.5.0.185 Document comparison done on 25/02/2019 14:30:32</b>	
<b>Style name:</b> Shearman & Sterling	
<b>Intelligent Table Comparison:</b> Active	
<b>Original DMS:</b> dm://LNDOCS01/1128299/1	
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<del>Delete</del>	717
<del>Move From</del>	1
<a href="#">Move To</a>	1
<a href="#">Table Insert</a>	0
<del>Table Delete</del>	0
<a href="#">Table moves to</a>	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>1197</b>