

EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (CENTRAL SECURITIES DEPOSITORIES OFFERING ANCILLARY BANKING SERVICES) (EU EXIT) INSTRUMENT 2019

Powers exercised

- A. The Prudential Regulation Authority (“the PRA”), being the appropriate regulator within the meaning of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (“the Regulations”), having carried out consultations required by regulation 5 of the Regulations and with the approval of the Treasury, makes this instrument in exercise of the power conferred by regulation 3 of the Regulations.

Pre-conditions to making

- B. The PRA is the appropriate regulator for the Central Securities Depositories EU Regulations (or parts thereof) specified in Part 2 of the Schedule to the Regulations.
- C. The PRA has consulted the Bank of England and the Financial Conduct Authority in accordance with regulation 5 of the Regulations.
- D. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

Interpretation

- E. In this instrument –
- (a) “the Act” means the European Union (Withdrawal) Act 2018;
 - (b) “the Central Securities Depositories EU Regulations” means Articles 8-42 of Regulation (EU) 2017/390 specified in Part 2 of the Schedule to the Regulations under the heading “Central Securities Depositories Regulation” as they form part of domestic law by virtue of section 3 of the Act;
 - (c) “exit day” has the meaning given in the Act;
 - (d) “the PRA” means the Prudential Regulation Authority;

Modifications

- F. The PRA makes the modifications to the Central Securities Depositories EU Regulations contained in the Annex to this instrument.

Commencement

- G. This instrument comes into force on exit day.

Citation

- H. This instrument may be cited as the Technical Standards (Central Securities Depositories offering Ancillary Banking Services) (EU Exit) Instrument 2019.

By order of the Prudential Regulation Committee

[DATE]

Annex

FINANCIAL RESOURCES FOR CREDIT AND LIQUIDITY RISKS

1 MODIFICATIONS TO ARTICLES 9 TO 42 OF REGULATION 2017/390

- 1.1 In this Annex new text is underlined and deleted text is struck through.
- 1.2 Articles 9 to 42 of EU Regulation 2017/390, as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018, are modified as follows:

Article 9

General rules on collateral and other equivalent financial resources

...

2. Collateral shall be provided by the counterparties under a security financial collateral arrangement ~~as defined in point (e) of Article 2(1) of Directive 2002/47/EC of the European Parliament and of the Council~~ or under a title transfer financial collateral arrangement as those terms are defined in regulation 3(1) of the Financial Collateral Arrangements (No 2) Regulations 2003 but omitting, in each case, the last subparagraph of each definition point (b) of Article 2(1) of that Directive.

...

Article 10

Collateral for the purposes of point (d) of Article 59(3), and point (d) of Article 59(4) of Regulation (EU) No 909/2014

...

2. In order for collateral, to be considered of a lower quality than that referred to in paragraph 1 for the purposes of point (d) of Article 59(3), and point (d) of Article 59(4) of Regulation (EU) No 909/2014, it shall consist of transferable securities and money market instruments that meet all of the following conditions:

...

- (h) they are not issued by any of the following:

...

- (iii) an entity whose business involves providing services critical to the functioning of the CSD-banking service provider, unless that entity is the Bank of England ~~a Union central bank~~ or a central bank that issues a currency in which the CSD-banking service provider has exposures;

...

Article 11

Other collateral

1. Other types of collateral to be used by a CSD-banking service provider shall consist of financial instruments that meet all of the following conditions:
 - (a) they are freely transferable without any legal constraint or third party claims that impair their liquidation;
 - (b) they are eligible at a central bank of the Union, where the CSD-banking service provider has access to regular, non-occasional credit ('routine credit') at that central bank;

...

Article 14

Collateral concentration limits

...

3. A CSD-banking service provider shall ensure that no more than 10% of its intraday credit exposure is guaranteed by any of the following:
 - (a) a single credit institution authorised to accept deposits under Part 4A of the Financial Services & Markets Act 2000;
 - (b) a third country financial institution that is subject to and complies with prudential rules that in respect of which either:-
 - (i) the Commission has, before exit day, adopted an implementing act in accordance with Article 114(7) of Regulation (EU) No 575/2013 (as that Regulation had effect at the date that act was adopted) that the third country is considered as applying supervisory and regulatory arrangements at least equivalent to those applied in the Union, and that decision has not, on or after exit day, been revoked by the Treasury; or
 - (ii) the Treasury has, on or after exit day, by regulations determined, in accordance with the second subparagraph of Article 114(7) of Regulation (EU) No 575/2013, that the third country is considered as applying supervisory and regulatory arrangements are at least as stringent as those provided for in the law of the United Kingdom (or any part of it) which, immediately before exit day, implemented Directive 2013/36/EU and Regulation (EU) No 575/2013; ~~in accordance with~~

...

Article 15

Other equivalent financial resources

1. Other equivalent financial resources shall consist only of the financial resources or the credit protection referred to in paragraphs 2 to 4 and those referred to in Article 16.
2. Other equivalent financial resources may include commercial bank guarantees provided by a creditworthy financial institution that fulfils the requirements set out in Article 38(1) or a syndicate of such financial institutions that meet all of the following conditions:
...
 - (e) they are not issued by an entity that is part of the same group as the borrowing participant covered by the guarantee, or by an entity whose business involves providing services critical to the functioning of the CSD-banking service provider, unless that entity is the Bank of England ~~an European Economic Area central bank~~ or a central bank issuing a currency in which the CSD-banking service provider has exposures;...- 3. Other equivalent financial resources may include bank guarantees issued by a central bank that meet all of the following conditions:
 - (a) they are issued by the Bank of England ~~a Union central bank~~ or a central bank issuing a currency in which the CSD-banking service provider has exposures;...

Article 23

General requirements for the management of intraday credit risk

2. The following exposures are exempt from the application of Articles 9 to 15 and 24:
 - (a) exposures to the Bank of England ~~members of the European System of Central Banks~~ and other ~~Member States'~~ bodies performing similar functions in the United Kingdom and other ~~Union~~ United Kingdom public bodies charged with or intervening in the management of the public debt ;
 - (b) exposures to one of the multilateral development banks listed in Article 117(2) of Regulation (EU) No 575/2013;
 - (c) exposures to one of the international organisations listed in Article 118 of Regulation (EU) No 575/2013;

- (d) exposures to public sector entities within the meaning of Article 4(8) of Regulation (EU) No 575/2013 where they are owned by central governments and have explicit arrangements provided by central governments guaranteeing their credit exposures;
- (e) exposures to third country central banks that are denominated in the domestic currency of that central bank provided either that:-
 - (i) before exit day, the Commission has adopted an implementing act in accordance with Article 114(7) of Regulation (EU) No 575/2013 (as that Regulation had effect at the date that act was adopted) confirming that this third country is considered as applying supervisory and regulatory arrangements at least equivalent to those applied in the Union and that decision has not, on or after exit day, been revoked by the Treasury; or
 - (ii) after exit day, the Treasury has by regulations determined, in accordance with the second subparagraph of Article 114(7) of Regulation (EU) No 575/2013, that this third country is considered as applying supervisory and regulatory arrangements at least equivalent to those applied in the United Kingdom.

...

Article 36

Stress testing the sufficiency of liquid financial resources

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8. The CSD-banking service provider shall determine the relevant currencies referred to in point (c) of Article 59(4) of Regulation (EU) No 909/2014 by applying the following steps in sequence:
 - (a) rank the currencies from highest to lowest based on the average of the three largest daily negative net cumulative positions, converted into euro, within a period of 12 months;
 - (b) consider as relevant:
 - (i) ~~the most relevant Union currencies that meet the conditions specified in the Delegated Regulation (EU) 2017/392;~~
 - (ii) all ~~remaining~~ currencies until the corresponding aggregated amount of the average largest net negative cumulative positions measured according to (a) is equal to or exceeds 95 % for all currencies.

...

Article 38

Arrangements in order to convert collateral or investment into cash using prearranged and highly reliable funding arrangements

1. For the purposes of point (e) of Article 59(4) of Regulation (EU) No 909/2014 creditworthy financial institutions shall include one of the following:
 - (a) a credit institution authorised to accept deposits under Part 4A of the Financial Services & Markets Act 2000~~in accordance with Article 8 of Directive 2013/36/EU~~ that the CSD-banking service provider can demonstrate to have low credit risk based on an internal assessment, employing a defined and objective methodology that does not exclusively rely on external opinions;
 - (b) a third country financial institution that meets all of the following requirements:
 - (i) it is subject to and complies with prudential rules considered to be at least as stringent as those set out in the law of the United Kingdom (or any part of it) which, immediately before exit day, implemented Directive 2013/36/EU as it has effect on exit day and Regulation (EU) No 575/2013;
 - (ii) it has robust accounting practices, safekeeping procedures, and internal controls;
 - (iii) it has low credit risk based on an internal assessment carried out by the CSD-banking service provider, employing a defined and objective methodology that does not exclusively rely on external opinions;
 - (iv) it takes into consideration the risks arising from the establishment of that third country financial institution in a particular country.

Article 42

Entry into force

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

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