

Appendix 7: Draft Technical Standards (Central Securities Depositories) (Amendment etc.) (EU Exit) (No.2) Instrument (update to BTS 2017/392 and 2017/394)

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

Powers exercised

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

History

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

Pre-conditions to making

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

Interpretation

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

Modifications

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

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

Commencement

J. This instrument comes into force on exit day.

Highlighted text

K. In each Annex to this instrument, modifications to the Technical Standards (Central Securities Depositories) (Amendment etc.) (EU Exit) Instrument 2019 are highlighted for the convenience of readers. The highlighting does not form part of the legislative text.

Citation

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

By order of the Bank of England

[Date]

Annex A

Authorisation, Supervision and Operational Requirements

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

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

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CHAPTER XIII ACCESS TO A CSD

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

Article 88

Receiving and requesting parties

A1. For the purposes of this Chapter:

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

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SECTION 1

Criteria justifying refusal of access

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

Article 89

Risks to be taken into account by CSDs and competent authorities

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

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

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

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SECTION 2

Procedure for refusal of access

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

Article 90

Procedure

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

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Annex B

Templates and Procedures for Authorisation, Supervision and Operational Requirements

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

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

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CHAPTER V ACCESS

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

Article 12

Standard forms and templates for the access procedure

A1. For the purposes of this Chapter:

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

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