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Additional Information

Level 1 Regulation
Central Securities Depositories Regulation (CSDR) Regulation (EU) No 909/2014- PTR-CSDR

Topic
CSD questions - Organisational requirements (governance arrangements, record keeping, outsourcing, user committee)

Subject Matter
Organisational requirements: general

Question
(a) Can a CSD have a combined audit and risk committee?
(b) Should each of the risk, audit and remuneration committees be composed of entirely different members?

(c) Which information is a CSD required to submit about changes in its management (board members and CEO)?
(d) Article 27(2) of CSDR requires that “at least one third, but no less than two, of [the] members [of the management body] are independent”. What does “independent” mean in respect of members of the management body?
(e) Are there any staff or category of staff that a CSD may not share with another entity of the same group of companies?
(f) Is a direct contractual relationship between a CSD and a member of a user committee of a securities settlement system operated by that CSD mandatory?
(g) Could a CSD share its risk monitoring committees (Article 48 of the RTS on CSD Requirements) with other entities of the same group?
(h) Could risk monitoring committees of CSDs belonging to the same group have identical memberships?
(i) Which services or activities of a CSD are in the scope of Article 30 of CSDR (Outsourcing)?

ESMA Answer

26-09-2018

Original language

[ESMA70-156-4448 CSD - CSD Q&A 2]

(a) No, the intention in Article 48 of the RTS on CSD Requirements is to have three separate committees for risk, audit, and remuneration.

(b) No, there is no such requirement in CSDR. However, to ensure a separation between the committees, the chairs of each committee as well as the majority of their members should be different. In addition, conflicts of interest should be managed in respect of persons participating in more than one committee.

(c) If there is a change in its management the CSD should provide information in the following cases:

- Upon the occurrence of a substantive change: a CSD should report any “substantive changes affecting the compliance with the conditions for authorisation” to the NCA possibly in advance and in any case without undue delay upon occurrence of the change (Article 16(4) of CSDR) and within the review process (Article 40(1)(b) of the RTS on CSD Requirements).

A change in the membership of either the senior management or management body would impact the conditions of the authorisation. It would therefore qualify as a substantive change and be reported to the NCA. The CSD should transmit to the NCA all relevant information to be provided under Articles 9 to 15 of the RTS on CSD Requirements, in relation to the new member of the management.

Under Article 57 of the RTS on CSD Requirements, the business records need to reflect any substantive changes in the documents held by the CSD and need to include the organisational charts for the management body, senior management, relevant committees, operational units and all other units or divisions of the CSD.

- Upon request from CA: It should be noted that under Article 40(1)(c) of the RTS on CSD

Requirements, a NCA may also request the provision of any additional information that is “necessary for assessing the compliance of the CSD and its activities with the provisions of [CSDR and relating regulations]”.

(d) CSDR does not provide a definition of the term “independent member”. This being said, Article 27(3) of CSDR provides that “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.”

It may be inferred from this provision that “independent members” should be, at least, nonexecutive members of the management of the CSD.

In addition, the definition of the term “independent member” provided for in other Union legislation has to be taken into account. In this respect, Article 2(28) of EMIR requires that an “independent member” of the CCP board (which is equivalent to the CSD management body) is a member of the board who has no business, family or other relationship that raises a conflict of interests regarding the CCP concerned or its controlling shareholders, its management or its clearing members, and who has had no such relationship during the five years preceding his membership of the board.

ESMA considers the same requirements should apply to independent members of management bodies of CSDs.

(e) No, however the sharing of staff is subject to certain conditions, as detailed below.

In line with other European legislation (cf. EMIR Q&A CCP Question no.13(b)), the term “staff” encompasses any person working for the CSD who is directly engaged in the services or activities which the CSD is authorised to provide or perform, and any natural person directly managing or supervising such persons.

The principle for the sharing of staff is set in Article 49(1) of the RTS on CSDR Requirements, which provides that “a CSD shall have adequate staff to meet its obligations” and that “a CSD shall not share staff with other group entities, unless it does so under the terms of a written outsourcing arrangement”.

This implies that outsourcing provisions set out in the CSDR (in particular Article 30 of CSDR) should also apply to the sharing of staff when the staff in question is part of other group entities.

In accordance with its powers under Articles 17 and 22 of CSDR, the competent authority should assess the appropriateness of sharing of staff considering the compliance with the Regulation, risks to the CSD (as well as risks created by the CSD for the smooth functioning of securities markets) and the level and suitability of resources available, having a special regard to Article 26(1) of CSDR.

Further, Article 50(3) of the RTS on CSD Requirements allows for the sharing of personnel exercising the functions of chief risk officer, chief compliance officer, chief technology officer or internal audit with other entities of the same group, provided that the governance arrangements ensure that related conflicts of interest at group level are appropriately managed.

Even though nothing is provided in respect of other functions, it is expected that for the sharing of personnel exercising any function in the CSD, the same requirements should apply. (f) No. Pursuant to Article 28(1) of CSDR and Article 16 of the RTS on CSD Requirements, members of a user committee should be elected among issuers and participants of the relevant securities settlement system operated by a CSD.

An agent of issuers or participants can be a member of a user committee in that capacity, under the following conditions:

a. where there are clear rules for management of conflict of interests (in particular with respect to the agent’s other clients), and

b. if at some point during its membership at the user committee, its mandate is terminated, or its principal terminates its contract with the CSD, such agent should no longer be a member of that user committee.

(g) No, each CSD should have its own risk monitoring committees.

(h) Yes, risk monitoring committees of CSDs belonging to the same group could be composed of the exact same members under certain conditions. The rules relating to the composition of such committees, to the sharing of staff and to the management of conflicts of interest should be strictly complied with. In particular, it should be ensured that each committee’s composition and skills are sufficiently tailored for each CSD of the group.

(i) Article 30 of CSDR should be complied with in respect of the outsourcing of all “services and activities” of a CSD. This should cover the outsourcing, including to other entities of the same group of companies, of:

a. the core services listed in Section A of the Annex to CSDR,

b. the non-banking type ancillary services permitted under Section B of the same Annex,

c. the banking-type ancillary services permitted under Section C of the same Annex, and

d. any activities of a CSD that have an impact on the CSD’s ability to discharge its obligations under CSDR (such as risk management function, the IT services needed for the operation of the securities settlement system, the archiving of documents, etc., but not services such as cleaning or catering provided by third parties to the CSD).