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Additional Information

Level 1 Regulation

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

Topic

CSDR questions - Other topics

Subject Matter

Protection of securities of participants and those of their clients

Question

(a) Once Article 38 of CSDR applies (i.e. after the CSD has been authorised), do participants have a phase-in period after authorisation of the CSD to offer all clients the level of protection envisaged in Article 38(5) or should they be ready to offer the envisaged accounts as of the date on which the CSD is authorised?

(b) In accordance with Article 38(5) of CSDR, should all clients (existing and new) be offered the choice between omnibus client segregation and individual client segregation, and be informed of the costs and risks associated with each option, or just new clients?

(c) Are there specific account segregation requirements in the context of links between an EU CSD and a TC-CSD?

(d) Under Article 38(4) of CSDR, can a CSD maintain different types of securities accounts enabling participants to segregate the securities of any of the participants' clients ('individual client segregation'), such as securities accounts with or without the identification of the participant's client at the CSD level?

(e) When a CSD offers different types of individually segregated securities accounts (such as securities accounts with, and securities accounts without the identification of the participant's client at the CSD level), should the CSD participants offer in turn the same types of individually segregated securities accounts to their clients?

ESMA Answer

17-11-2017

Original language

[ESMA70-156-4448 CSDR - CSD Q&A 5]

(a) Article 38(5) of CSDR applies to all participants of a CSD as of the authorisation of such CSD. Therefore, participants should be ready to "offer their 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" at the time of the authorisation of the CSD that operates the securities settlement system in which they are participants. CSDs should be able to prove to their NCAs that they comply with Article 38 of CSDR, as this is one of the conditions to be granted authorisation under CSDR. This implies that CSDs need to coordinate with their participants (before they are granted authorisation under CSDR), in order to ensure that they take the necessary measures to be compliant with Article 38 of CSDR.

(b) All clients (existing and new) should be offered the choice between omnibus client segregation and individual client segregation, and be informed of the costs and risks associated with each option.

(c) The creation of links between EU CSDs and TC-CSDs is dealt with in Article 84 (Conditions for the adequate protection of linked CSDs and of their participants) and Article 85 (Monitoring and management of additional risks resulting from the use of indirect links or intermediaries to operate CSD links) of the RTS on CSD Requirements.

It follows that in the context of:

? standard links with a TC-CSD: no specific account segregation requirements apply, but the comparability of the level of the asset protection shall be positively assessed by the requesting CSD;

? indirect links with TC-CSDs: a specific account segregation requirement is prescribed by the RTS on CSD Requirements, but it can be waived provided that an adequate level of protection of the securities is nonetheless ensured. The relevant provisions are: points (a)(i), (a)(ii) and (h) and the last subparagraph of Article 85(1) of the RTS on CSD Requirements, according to which:

(i) the relevant intermediary shall comply with segregation and disclosure

requirements at least equivalent to those laid down in Article 38(5) and (6) of CSDR; (ii) an individually segregated account at the receiving CSD shall be used for the operations of the CSD link;

(iii) where an individually segregated account at the receiving CSD is not available, the requesting CSD shall inform its competent authority about the reasons justifying the unavailability of individually segregated accounts and shall provide it with the div on the risks

resulting from the unavailability of individually segregated accounts;

(iv) the requesting CSD shall in any case ensure an adequate level of protection of its assets held with the TC-CSD.

(d) Yes. Article 38(4) of CSDR does not impose a specific type of individual segregation arrangement, nor does it prevent a CSD to maintain several types of individually segregated securities accounts for its participants. Under CSDR, the CSD may or may not have access to information on the identity of its participants' clients.

(e) No, Article 38(5), first paragraph, of CSDR only requires a CSD participant to offer its clients a choice between omnibus client segregation and individual client segregation, and does not impose to offer a specific type of individually segregated securities account. In addition, Article 38(4) of CSDR provides that a CSD shall keep accounts enabling a participant to segregate the securities of any of its clients "as required by the participant".

Hence, if a CSD offers its participants to maintain several types of individually segregated securities accounts, a CSD participant may decide, in accordance with any applicable national legal and regulatory requirements, to offer to its own clients only one or several of the types of individually segregated securities accounts offered by the CSD.