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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

Prudential requirements - Operational risks

Question

(a) Is the definition of a “critical service provider” referred to in Article 68 of the RTS on CSD Requirements restricted to a party that has a contract to provide services to the CSD?

(b) Article 69 of the RTS on CSD Requirements refers to measures to be put in place to

mitigate operational risks in the context of arrangements between a CSD and other market infrastructures. Does the reference to “market infrastructures” include trading venues?

(c) Do overnight deposits with a central bank, an authorised credit institution or a CSD authorised to provide banking-type ancillary services fulfil the requirements specified in Article 82(1) of the RTS on CSD Requirements?

(d) Do central banks providing cash settlement in central bank money for CSDs qualify as critical service providers referred to in Article 68 of the RTS on CSD Requirements?

(e) Does TARGET2-Securities (T2S) qualify as a critical service provider within the meaning of Article 68 of the RTS on CSD Requirements?

(f) In Article 82(2) of the RTS on CSD Requirements, does “access to financial instruments on the same business day when the decision to liquidate the financial instruments is taken” mean that these financial instruments should be liquidated on the same business day?

ESMA Answer

24-05-2018

Original language

[ESMA70-156-4448 CSDR - CSD Q&A 6]

(a) No. A contract for the provision of services is not necessary to identify a critical service provider – however, once a service provider has been identified as critical by the CSD, in accordance with Article 68, the CSD needs to put in place adequate contractual and organisational arrangements with the respective provider “before any relationship with such providers becomes operational”.

(b) Yes. According to Article 53 of CSDR, market infrastructures include trading venues. Therefore, the same concept should apply to the RTS.

(c) A CSD can use overnight deposits and other time deposits with a central bank, an authorised credit institution or a CSD authorised to provide banking-type ancillary services, provided that the CSD can have immediate and unconditional access to its respective cash assets.

(d) No. Given the nature of the central bank provision of cash settlement services, payment systems operated by central banks should be considered as market infrastructures. Accordingly, the provisions referring to market infrastructures, i.e. Articles 35 and 45(6) of CSDR and Articles 69, 75(6)(d), 76(2)(c)(iv) and 79(c)(iv) of the RTS on CSD Requirements, should cover in their scope also payment systems operated by central banks.

(e) No. Article 30(5) of CSDR exempts CSDs from the requirements laid down in paragraphs 1 to 4 of Article 30 of CSDR, when they outsource some of their 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 on the basis of the requirements established in the CSDR. This exemption precludes the application of Article 68 of the RTS on CSD Requirements in the case of T2S, for which the organisational and operational safety, efficiency and resilience of T2S should be ensured through the dedicated legal, regulatory and operational framework and agreed governance arrangements.

(f) No. According to Article 82(2) of the RTS on CSD Requirements, a CSD should be able to dispose of the financial instruments on the day when the decision to liquidate (i.e. to convert into cash) is made, i.e. to be in a position, from a legal and operational standpoint, to order a liquidation of the financial instruments. It does not necessarily entail that a CSD should liquidate these financial instruments on the same business day.