



European Securities and
Markets Authority

Consultation Paper

Technical Standards under the CSD Regulation



Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

1. respond to the question stated;
2. indicate the specific question to which the comment relates;
3. contain a clear rationale; and
4. describe any alternatives ESMA should consider.

ESMA will consider all comments received by **19 February 2015**.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations', using the [reply form](#).

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading [Legal Notice](#).

Who should read this paper

This document will be of interest to all stakeholders involved in the securities markets. CSDR and the related technical standards will affect not only CSDs but also their participants, CCPs, and other entities, directly (e.g. settlement internalisers subject to the requirements under Article 9 of CSDR, and investment firms subject to the requirements under Article 6 of CSDR) or indirectly (e.g. registrars). Given the provisions on the recognition of non-EU based CSDs this document may also be of interest to a number of non-EU stakeholders.

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1 Executive Summary

Reasons for publication

On 7 March 2012 the European Commission (EC) proposed a Regulation on improving securities settlement in the European Union (EU) and on central securities depositories (CSDs) and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (CSDR). On 18 December 2013, the European Parliament and the Council of the European Union agreed the CSDR text. On 26 February 2014, the Permanent Representatives Committee, on behalf of the Council of the European Union, confirmed the agreement with the European Parliament (EP). On 15 April 2014, CSDR was formally adopted by the EP. On 16 July 2014 the EP and the Council published the agreed text, ready for publication in the OJ. Finally, the CSDR was published in the OJ on 28 August 2014 and entered into force on 17 September 2014.

CSDR introduces an obligation to represent all transferable securities in book entry form and to record these in CSDs before trading them on regulated markets. It harmonises settlement periods and settlement discipline regimes across the EU. It introduces a common set of rules consistent with international standards addressing the risks of the CSDs' operations and services. As CSDs will be subject to identical substantive rules across the EU, they will benefit from uniform requirements for licensing and an EU-wide passport, which will help remove the existing barriers of access. This will also impact on other structures, directly (e.g. investment firms under Article 6) and indirectly (e.g. registrars).

CSDR confers powers to the EC to adopt regulatory technical standards (RTS) and implementing technical standards (ITS) on a number of areas (see Section 8 for the legal mandate). This Consultation Paper (CP) covers the draft technical standards (TS) being developed by ESMA.

ESMA has considered the consistency of the proposed draft technical standards with the CPSS-IOSCO Principles for Financial Market Infrastructures (PFMIs), in line with recital 6 of the CSDR.

ESMA has prepared this Consultation Paper (CP) in order to consult interested parties for the purpose of elaborating its draft technical standards to be submitted to the EC. Respondents to this consultation are encouraged to provide the relevant background information, and qualitative and quantitative data on costs and benefits, as well as concrete redrafting proposals, to support their arguments where alternative ways forward are called for. If respondents envisage any technical difficulties in implementing the

proposed requirements, they are encouraged to provide details regarding the specific technical and operational challenges and specify the costs involved, which are important for the cost-benefit analysis.

Contents

This CP covers all the mandates where ESMA is expected to deliver technical standards under CSDR, as further specified in the Annexes. CSDR requires ESMA to prepare draft RTS and ITS on a large number of provisions. Articles 10 and 15 of the ESMA Regulation require ESMA to conduct open public consultations on TS and to analyse the related potential costs and benefits, where appropriate. Such consultations and analyses shall be proportionate in relation to the scope, nature and impact of the TS. CSDR also entails a number of provisions empowering the EC adopt delegated acts (DAs). ESMA has been requested by the EC to provide technical advice in order to develop such DAs, covered in a separate CP.

Next Steps

ESMA will consider the responses it receives to this CP and finalise the TS for submission to the EC by 18 June 2015.

ESMA will finalise the cost-benefit analysis regarding the proposed measures, to be included in the Final Report to be submitted to the EC. One essential element in the development of TS is the analysis of the costs and benefits that the proposed measures may imply. The limited information available did not allow ESMA to produce a quantitative impact study for the purpose of this CP. The input from stakeholders will help ESMA in finalising the technical standards and the relevant impact assessment. Therefore, respondents to this consultation are strongly encouraged to provide solutions for any problems raised and to support the drafting proposals with relevant data.



Acronyms and definitions used

BIC	Business Identifier Code. An 11-character alpha-numerical code that uniquely identifies a financial or non-financial institution. It is defined by ISO code 9362
CCP	Central counterparty
CEBS	Committee of European Banking Supervisors
CESR	Committee of European Securities Regulators
CP	Consultation Paper
CRD IV	Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC
CRR	Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012
CSD	Central Securities Depository
DA	Delegated act to be adopted by the EC
DP	Discussion Paper
EBA	European Banking Authority
EC	European Commission
ECB	European Central Bank
EEA	European Economic Area
EMIR	Regulation (EU) No 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories



ESCB	European System of Central Banks
ESMA Regulation	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC
ESMA	European Securities and Markets Authority
ETF	Exchange-traded fund
EU	European Union
FMI	Financial market infrastructure
IOSCO	International Organisation of Securities Commissions
ISD	Intended settlement date
ISIN	International Securities Identification Number: a 12-character alpha-numerical code that uniquely identifies a security. It is defined by ISO code 6166
ISO	International Organization for Standardization
ITS	Implementing Technical Standards
LEI	Legal Entity Identifier: a 20-character alpha-numerical code, defined by ISO 17442
MiFID II	Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU
MiFIR	Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments and amending Regulation (EU) No 648/2012
MS	Member State
MTF	Multilateral trading facility
NCA	National Competent Authority



OJ	The Official Journal of the European Union
OTC	Over-the-counter
RM	Regulated market
RTS	Regulatory Technical Standards
SFD	Directive 98/26/EC of the European Parliament and of the Council on settlement finality in payment and securities settlement systems
SFTR	Securities Financing Transactions Regulation (EC Proposal for a Regulation of the European Parliament and of the Council on reporting and transparency of securities financing transactions)
SMSG	ESMA Securities and Markets Stakeholder Group
SSS	Securities settlement system
TV	Trading venue
UTC	Coordinated Universal Time

2 Settlement Discipline

2.1 Preventing Settlement Fails

Article 6 CSDR

ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the measures to be taken by investment firms in accordance with the first subparagraph of paragraph 2 of Article 6 of CSDR, the details of the procedures facilitating settlement referred to in paragraph 3 of Article 6 of CSDR, and the details of the measures to encourage and incentivise the timely settlement of transactions referred to in paragraph 4 of Article 6 of CSDR.

1. Under Article 6 of CSDR, ESMA is required to specify the measures to be taken by investment firms in accordance with the first subparagraph of paragraph 2 of Article 6 of CSDR, the details of the procedures facilitating settlement referred to in paragraph 3 of Article 6 of CSDR, and the details of the measures to encourage and incentivise the timely settlement of transactions referred to in paragraph 4 of Article 6 of CSDR.
2. In developing the draft technical standards on preventing settlement fails and with a view of fostering international consistency, ESMA has taken into account the Principles for Financial Market Infrastructures issued by the Committee on Payment and Settlement Systems and the International Organization of Securities Commissions (PFMIs) which serve as a global benchmark for regulatory requirements for central securities depositories (CSDs). The draft technical standards also take into account the Recommendations for Securities Settlement Systems issued by the Committee on Payment and Settlement Systems and the International Organization of Securities Commissions, covering trade confirmation, settlement cycle, and securities lending.

Measures to be taken by investment firms to limit the number of settlement fails in accordance with Article 6(2) of CSDR

3. With regard to confirmation and allocation measures between investment firms and their clients, ESMA did not make any proposals in the DP, but only asked for input on possible elements to be included in the draft technical standards.
4. A few respondents provided input. Several respondents advocated for automated processes, including harmonised messaging requirements and matching criteria (covering also standard settlement instructions). Some respondents were against any standards on confirmation and allocation.

5. ESMA believes that investment firms should ensure that they have all the necessary settlement details as much as possible on the business day in which the transaction takes place. In order to achieve this, if the investment firms do not already have the necessary settlement information, they should communicate with their clients in order to obtain the respective information, which should include standardised data useful for the settlement process. This is reflected in Article 2 of the draft RTS included in Chapter I of Annex I.

Q1: Do you think the proposed timeframes for allocations and confirmations under Article 2 of the RTS on Settlement Discipline are adequate?

If not, what would be feasible timeframes in your opinion?

Please provide details and arguments in case you envisage any technical difficulties in complying with the proposed timeframes.

6. ESMA considers that, as market-wide achievement of straight through processing (STP) is essential both for maintaining high settlement rates as volumes increase and for ensuring timely settlement of cross-border trades, the initiatives aiming to achieve STP should be encouraged, and direct and indirect market participants should achieve the degree of internal automation necessary to take full advantage of STP solutions. In this respect, investment firms should offer their professional clients the possibility to send confirmations and allocation details electronically, by the use of international open communication procedures and standards for messaging and reference data. At the same time, CSDs should facilitate STP and, when processing settlement instructions, CSDs should make use of processes designed to work on an automated basis by default.

Manual intervention

7. For the CSD processing of settlement instructions, CSDs should make no use, or very limited use, of manual intervention. Manual intervention should only be allowed in exceptional circumstances that, if any, should be clearly specified in the technical standard.
8. The majority of the DP respondents mentioned that processes should be designed to work on an automated basis by default, while highlighting that limiting the type of exceptions where manual intervention might be allowed could be counterproductive, as manual intervention may be useful to facilitate the smooth settlement by amending information, correcting mistakes and as contingency measure for different circumstances and different transaction types.

9. ESMA considers that, in order to facilitate STP, a CSD should process settlement instructions on an automated basis. In addition, in order to cater for specific circumstances, as highlighted by the DP feedback, where manual intervention might be necessary, a CSD should report any types of manual intervention to the competent authority without any delay. At the same time, ESMA believes that, in order to limit as much as possible the manual intervention cases, the competent authority should have the possibility to ask the CSD not to use manual intervention in specific cases, where it considers that the manual intervention not to be appropriate for the smooth functioning of the securities settlement system.

Communication procedures and standards to ensure straight through processing ("STP")

10. ESMA asked for input in the DP on concrete proposals on how the relevant communication procedures and standards could be further defined to ensure STP.
11. The majority of the respondents mentioned that this point is already covered by Article 35 of CSDR, and that STP should be promoted but not the mandating of a specific ISO standard, as ISO does not cover all functionalities and other local standards might be appropriate and efficient.
12. Some respondents recommended the use of "already matched" transactions as a way to facilitate STP.
13. As the final text of CSDR (Article 35 CSDR) already obliges CSDs to use international open communication procedures and standards for messaging and reference data, ESMA has decided not to include additional requirements in this respect in the draft technical standards.

Matching

Compulsory matching

14. The majority of the respondents supported the view that matching should be compulsory, while some mentioned that more exemptions would be necessary than those included in the DP. Some respondents stressed that transfers between (investor) accounts in direct holding markets should be able to go FOP and therefore without matching.

15. ESMA believes that, in order to promote settlement early on the intended settlement date (ISD), matching at CSD level should be compulsory, unless the settlement instructions are already matched or is not necessary in exceptional situations, as specified under Article 3(2) of the RTS included under Chapter II of Annex I.

Q2: Do you agree with the cases when matching would not be necessary, as specified under Article 3(2) of the draft RTS?

Should other cases be included? Please provide details and evidence for any proposed case.

Continuous matching

16. Most of the respondents shared ESMA's view expressed in the DP that the matching of settlement instructions by CSDs should be fully automated, and should occur as early as possible, and that CSDs should therefore offer matching real-time; and continuously throughout each business day. Some indicated that most CSDs already provide continuous matching but that enough time should be given to the others to adapt their systems.
17. Based on the DP feedback, ESMA considers that CSDs should also offer matching possibilities continuously throughout the day.

Standardised matching fields

18. The views were split on the issue of standardising matching fields. Most of the respondents did not think that the matching fields should be prescribed in the RTS, and they mentioned that they are already harmonised by T2S and matching standards. The DP respondents mentioned that ESMA should not do more than propose a non-exhaustive list of matching fields. Some respondents supported having the fields standardised, although they raised the issue of maintenance in the case of market practice changes.
19. ESMA considers that, in order to facilitate settlement and to ensure consistency across securities settlement systems, CSDs should require that their participants use a minimum list of mandatory matching fields for the matching of settlement instructions. The proposed matching fields specified under Article 3(3) of the draft RTS included under Chapter II of Annex I take into account the T2S mandatory matching fields. In addition to the T2S

mandatory matching fields, they also include a 'transaction type' field (which is a mandatory field in T2S messages, even if it is not a T2S mandatory matching field), and which ESMA believes would be useful for settlement discipline (by asking participants to exchange and agree crucial, standardised information for settlement at an earlier stage), and would provide a tool for facilitating the correct identification of transactions, which may be needed in the context of the buy-in process. In addition, ESMA considers that it would be useful to incentivise market participants to correctly populate the type of transaction field also having in mind the future reporting obligations regarding securities financing transactions under the Securities Financing Transactions Regulation.

Tolerance levels

20. The idea of having tolerance amounts is supported by a large majority of respondents. Some think that the RTS should prescribe tolerance amounts between 0 and 25 EUR. It is also ESMA's view that CSDs should set appropriate tolerance levels in the settlement amounts in order to smooth the matching process. Given the DP feedback, the tolerance levels proposed by ESMA are between 0 and 25 EUR (or equivalent values for other currencies calculated based on the official exchange rates) per settlement instruction. In order to accommodate the specificities of different products and markets, ESMA believes that a CSD should be able to have in place different tolerance levels, including for different types of settlement instructions or financial instruments.

Incentives for early input of settlement instructions

Disincentives

21. There was almost no support for the proposal to introduce disincentives for settlement instructions not received by the CSD by the end of ISD-2. Most respondents highlighted that the penalties for settlement fails would be sufficient. Some argued that imposing penalties for late settlement instructions might lead to incomplete instructions being sent. Several respondents argued that there was necessarily no correlation between early matching and high settlement efficiency). Others mentioned that ISD – 2 was too early, as many trades might be executed late in the day and chains of intermediaries and different time zones might be involved. Some respondents proposed that disincentives should be applied only to "matching completed after trade date", to avoid brokers using longer settlement cycles. It was also mentioned that many CCPs provide their delivery instructions to CSDs shortly before ISD (ISD-1/ISD: corresponding to settlement T+1 and T+O).
22. Some respondents mentioned that the RTS should give CSDs a tool kit to incentivise early input of settlement instructions (including some or all of the measures described in

paragraphs 21–34 of the DP), which should be under the control of the CSD and its competent authority.

23. Given the lack of support for the proposal to introduce disincentives for settlement instructions not received by the CSD by the end of ISD-2, ESMA has decided not to include such requirements in the draft RTS.

Hold and release mechanism and bilateral cancellation facility

24. According to ESMA's proposal in the DP, CSDs should offer hold and release and bilateral cancellation facilities. Most of respondents highlighted that hold and release and bilateral cancellation should be encouraged as best practice, in case of market demand.
25. Mandatory hold and release was supported by some respondents. Some mentioned that CSDs should offer participants the relevant toolkit to enable them to match early with relevant control over the settlement process, which should include "hold and release", "linking" and "prioritisation".
26. Given that bilateral cancellation is a right of participants under CSDR (Article 7(3)), ESMA considers that a CSD should offer its participants a bilateral cancellation facility that enables them to bilaterally revoke settlement instructions that form part of the same transaction.
27. ESMA believes that, in order to incentivise early matching while granting participants more control over the settlement of their instructions, a CSD should offer its participants a hold and release mechanism, composed of a hold mechanism by which pending settlement instructions may be blocked by the instructing participant from settlement and a release mechanism by which pending settlement instructions that have been blocked by the instructing participant are released by it for settlement processing.

Information to participants

28. All respondents supported ESMA's proposal included in the DP regarding the fact that CSDs should have procedures to inform participants about pending settlement instructions of counterparties that are unmatched. However, many respondents (particularly the CSDs) were against the RTS detailing how such information should be provided. Most also stressed that CSDs would not necessarily know why an instruction did not match.

29. Some respondents advocated that a notification of the allegation issued should also be sent to instructing counterparty, and that CSDs should provide transaction status/settlement updates back to the relevant instructing parties within 30 minutes of any change in transaction status.
30. ESMA believes that, in order to encourage and incentivise timely settlement by CSD participants, CSDs should give participants real-time access to the information regarding the intended settlement date and the status of their settlement instructions in the securities settlement system that the CSD operates. At the same time, ESMA considers it would also be helpful for a CSD to inform its participants about pending settlement instructions of counterparties at least within 1 hour after the first unsuccessful attempt to match the instructions and 1 hour from the beginning of the intended settlement date.

System functionalities

31. ESMA's proposal included in the DP, according to which CSDs should be obliged to offer at least 3 daily settlement batches, unless they operate on an RTGS basis, was supported by the majority of the intermediaries respondents, but most preferred RTGS or more than 3 batches. The CSD respondents were against the proposal, as some securities settlement systems have less than 3 batches due to lack of market demand. Some CSD respondents also mentioned that the timing of the batches (taking into account time zones) was as important as the number when it came to improving settlement efficiency. The CSD respondents asked for sufficient implementing time if the 3-batch requirement were introduced.
32. ESMA believes that, in order for CSDs to be able to complete final settlement no later than the end of the value date, and preferably intraday or in real time, to reduce settlement risk, CSDs should offer their participants real-time gross settlement (RTGS) throughout each business day or at least three daily possibilities to settle. The three batch settlements should be evenly spread across the business day according to market needs.
33. In the DP ESMA also consulted on other system functionalities that might contribute to settlement efficiency: optimisation algorithms, partial settlement/splitting, recycling and shaping. Most of the DP respondents highlighted that these tools should not be mandated as it was unclear what the benefits of the tools were; the tools should be used by CSDs where appropriate and CSDs should be allowed to do so. Some respondents mentioned that partial settlement and recycling should be mandatory. Some respondents argued that CSDs should not be allowed to perform shaping, as this would give too much discretion to the CSDs. ESMA believes that partial settlement and recycling functionalities should be provided by CSDs, as they would contribute to settlement efficiency.

Lending facilities

34. ESMA's proposal in the DP was that CSDs should not be obliged to offer arrangements for the lending and borrowing of securities. Should the service be provided, it should be framed in a harmonised manner.
35. No DP respondents supported mandatory securities lending and borrowing. ESMA proposal is therefore unchanged in that respect.

Proportionality of measures

36. ESMA believes that CSDs should have sound and efficient system functionalities, policies and procedures that enable them to facilitate and incentivise settlement on the intended settlement date (ISD). However, in order to ensure that the system functionalities that a CSD should offer to reduce settlement failures are proportionate to the CSD's actual settlement fails observed in the past, ESMA believes that certain system functionalities (hold and release mechanism, recycling facility and partial settlement facility) should not be compulsory if the value of settlement fails for the securities settlement system operated by a CSD does not exceed 2,5 billion EUR/year, and if the settlement fails rate for the securities settlement system operated by a CSD is below 0.5%, as specified under Article 3(11) of the draft RTS included under Chapter II of Annex I. As proposed in the draft RTS, a CSD should assess its efficiency rate on a quarterly basis, and should inform its competent authority of the results. If the settlement fails rate is above 0.5% during 2 quarters in a row, or if the value of settlement fails for the securities settlement system operated by a CSD exceeds 2,5 billion EUR per year, the CSD should implement the additional system functionalities (hold and release mechanism, recycling facility and partial settlement facility) within 3 months.
37. ESMA believes that a pure proportionate principle based on a percentage only would not be appropriate, because it might leave a significant part of the market without the envisaged measures to prevent settlement fails. For this reason, in addition to the above-mentioned percentage, also a quantitative threshold has been introduced. The proposed threshold mentioned above was determined on the basis of the one envisaged under Article 54(5) of CSDR in the context of the provision of banking type of ancillary services. Although the purpose of the threshold under Article 54(5) of CSDR is different, it still identifies a size of the CSD activity that ESMA finds appropriate in the context of introducing proportionate measures for certain system functionalities.

Q3: What are your views on the proposed approach under Article 3(11) of the draft RTS included in Chapter II of Annex I?

Do you think that the 0.5% settlement fails threshold (i.e. 99.5% settlement efficiency rate) is adequate? If not, what would be an adequate threshold? Please provide details and arguments.

Do you think that the 2,5 billion EUR/year in terms of the value of settlement fails for a securities settlement system operated by a CSD is adequate? If not, what would be an adequate threshold? Please provide details and arguments.

Q4: What are your views on the proposed draft RTS included in Chapter II of Annex I?

2.2 Monitoring Settlement Fails

Article 7 (15)(a) CSDR

ESMA may, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the details of the system monitoring settlement fails of transactions in financial instruments and the reports on settlement fails that a CSD has to establish for each securities settlement system it operates.

38. Under point a) of Article 7(15) of CSDR, ESMA is required to specify the details of the system monitoring settlement fails of transactions in financial instruments and the reports on settlement fails that a CSD has to establish for each securities settlement system it operates.

Reports on settlement fails to public authorities

39. Most of the respondents to the DP suggested that the normal level of reporting should be done on a monthly basis, but that the regulator should always have the option to request additional details more frequently if needed. Some of the respondents said that while the reporting could be done with a monthly frequency, the data in the reports could be more frequent (i.e. daily). ESMA agrees with this approach, which is reflected in the draft RTS included in Section 1 of Chapter III of Annex I. ESMA believes that, in order to allow competent authorities to perform their functions, they should have access, upon request, to more detailed additional information on settlement fails or on a more frequent basis, and that, if a competent authority receives additional or more frequent information, the competent authority should share it with the relevant authorities without undue delay.
40. With regard to the cost implication for CSDs to report fails to their competent authorities on a daily basis, most of the respondents said that monthly reporting would be sufficient and not too costly. However, some of the respondents said they already provided such reporting to regulators on a daily basis. T2S would provide similar reporting to CSDs themselves on a daily basis. Given the DP feedback, ESMA believes that its proposal as mentioned under paragraph 2 above represents a balanced solution.

41. With regard to the reports to be sent by competent authorities to ESMA, in order to enable ESMA to assess the settlement efficiency for domestic and cross-border operations for each Member State, as well as any potential systemic risks, the competent authorities should submit to ESMA the same information on settlement fails they receive from the CSDs.
42. The majority of the respondents agreed that the reporting should be harmonised at EU level to allow for comparison and aggregation, and that the current ESMA template established voluntarily by ESMA and the competent authorities should be used as a basis, after adjustments to meet the needs of the future reporting under CSDR. Some of the respondents hoped that the reporting would be organised in peer groupings according to business model in order to enable benchmarking against peers. Based on the DP feedback, ESMA has further developed the template currently used for reporting of settlement fails by CSDs and competent authorities, as included in Section 1 of Chapter III of Annex I.
43. Several respondents said that ESMA should consider the implications that different account structure/settlement system processes (omnibus/segregated accounts, netting, etc.) have on reporting since these can affect what is considered a fail and therefore making the statistics non-comparable. ESMA considers that the technical standards should not discriminate between different holding systems.
44. Some respondents mentioned that the reporting should distinguish between DvP and FoP, while some other respondents stressed that CCP instructions should be reported separately because they can affect fail rates due to their internal practices. ESMA has taken these suggestions into account in the draft RTS as included in Section 1 of Chapter III of Annex I.
45. Most of the respondents considered ISIN-code level to be too detailed with suggestions to either divide between stocks and bonds or to use a maximum of 5 categories of assets. Based on the DP feedback, and given the need to monitor the settlement fails rate per category of financial instruments with similar characteristics, ESMA considers that the reports on settlement fails should cover at least the following types of asset classes:
 - a) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares;
 - b) bonds or other forms of securitised debt, including depositary receipts in respect of such securities;
 - c) exchange-traded funds (ETFs);
 - d) units in collective investment undertakings, other than ETFs;
 - e) money-market instruments;
 - f) emission allowances.

46. Several respondents said that distinguishing between domestic vs. cross-border was not possible, instead a distinction should be made between internal vs. external in terms of whether the settlement takes place within the CSD or between two CSDs. ESMA agrees with this approach, and this is reflected in the draft RTS as included in Section 1 of Chapter III of Annex I.
47. Some respondents said that it should be noted that identifying the failing party was difficult because of the possibility that they could be clients of a CSD participant and because of the possibility of long chains of fails triggered by one failing party. ESMA believes that CSDs should set up a working flow with the participants with the highest rates of settlement fails, as well as, if feasible, with relevant CCPs and trading venues, in order to identify the main reasons for settlement fails and to establish measures to improve settlement efficiency.
48. Many respondents mentioned that the data on fails should be collected in absolute terms instead of percentages. ESMA believes that, in order to have an accurate and complete picture of settlement fails, it would be useful for the reports to include details on the number and value of failed settlement instructions (covering both settlement fails for lack of securities and lack of cash), together with the rates of failed settlement instructions based on the number and value of failed settlement instructions.
49. Some respondents highlighted the importance of the format being machine readable. ESMA agrees and has incorporated a requirement in the draft RTS according to which the reports should be transmitted in a machine readable format.

CSD system monitoring settlement fails and information that participants should receive to monitor settlement fails

50. Most of the respondents highlighted that CSDs should provide data enabling participants to monitor settlement fails, but that participants should be able to subscribe to such data as part of the contractual arrangements. Some respondents also mentioned that CSDs should be allowed to charge a "reasonable" fee for providing such data.
51. The majority of the respondents suggested that participants should be able to get sufficient and timely data on fails, both as deliverers and receivers of securities. Some hoped that this would include the reasons for why the party's trades fail. Some also suggested that a participant should have also access to (anonymised) aggregated data of its peers for benchmarking.

52. ESMA considers that, in order to enable the participants to monitor the status of their settlement instructions and to take timely measures to achieve settlement on the intended settlement date, a CSD should give its participants real-time access to the information regarding the intended settlement date and the status of their settlement instructions in the securities settlement system that the CSD operates, including per intended settlement date. This requirement is included under Article 3(9) of the RTS included in Section 1 of Chapter III of Annex I, while the details of the CSD system monitoring settlement fails are specified under Article 4 of the same RTS.

Information to be made public by CSDs

53. With regard to the information to be made public by CSDs, almost all respondents suggested that ESMA should consider providing a standard European format, at least for the minimum disclosure requirement, in order to allow comparison of peers. ESMA agrees that, to ensure a consistent and transparent approach across the EU and to allow comparability between CSDs, they should use a single template for disclosing settlement fails data to the general public. A template is included in the draft RTS under Section 1 of Chapter III of Annex I.
54. Several respondents stressed that the publicly disclosed information should be on anonymised and aggregated basis. Some even suggested that the information should not be made public at all, but disclosed only to participants. ESMA notes that the requirement for CSDs to make publish the reports in an aggregated and anonymised form on an annual basis comes from the Level 1 (Article 7(1) CSDR).

Q5: What are your views on the proposed draft RTS on the monitoring of settlement fails as included in Section 1 of Chapter III of Annex I?
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2.3 Cash Penalties

Article 7(15) (b) CSDR

ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the process for the collection and redistribution of cash penalties and any other possible proceeds from such penalties.

55. Under the Article 7 (15) (b) CSDR, ESMA is required to specify the process for the collection and redistribution of cash penalties that will support the enhancement of settlement efficiency.
56. In the DP, ESMA noted that the mechanism would need to consider the level of the penalty that would be set through the Commission DA. It was not possible, at that time, to further expand on the penalty mechanism given the early stage of the process. As a result, no detailed analysis was proposed in the DP and a general call for views was made.
57. Stakeholders have shared general opinions on the penalty mechanism. Those views that are related to the calculation and the level of the cash penalty are part of the TA that will be provided to the EC, which is included in a separate consultation. ESMA proposals on the mechanism for the collection and distribution of penalties are developed below and organised in items related to the collection of the cash penalty, its redistribution and the situation where a CCP is involved.

The collection of the cash penalties

58. Some stakeholders noted that when designing a penalty mechanism, the different models of trading and settlement should be considered and that no different obligations should be imposed upon participants and intermediaries depending on the settlement model they use and their position in the intermediary chain. They also requested that the use of a gross (single instruction based) or multilateral net model would not be imposed to all CSDs and that each CSD should be able to choose either model without resulting in significant distortion to the market. Others called for a harmonised system across the Union.
59. ESMA considers that it is important to harmonise the penalty mechanism and to apply a single model across the Union. Indeed participants should be able to settle in different markets knowing that the same penalty mechanism would apply. This will also ensure a

level playing field among different CSDs and their participants. ESMA also agrees that the mechanism should not disadvantage one settlement system over another, i.e. direct holding system and indirect holding systems. ESMA therefore proposes to apply the penalty on each matched settlement instruction that is failing on intended settlement date, including those that are on hold. Indeed, the on hold function does not change the intended settlement date but allows a participant to suspend settlement of an instruction, for instance when the instruction is that for a client that has not received the financial instrument in the client omnibus account of the participant and therefore prevents “tirage sur la masse”. With this approach, the CSD would be able to automate the collection of the cash penalty, the participant would know the transaction to which the penalty relates to and as a result would be in a position to recharge it to its clients. This approach would put on the same field both the direct holding system and the indirect holding systems.

60. It is ESMA’s view that the penalty should also apply to settlement instructions that are entered into the settlement system after their intended settlement date. In this situation, the penalty should be calculated as of the intended settlement date, irrespective of the date when it is entered into the SSS. The aim is to avoid possible circumventions and disincentives late settlement instructions. Indeed, in order to support settlement efficiency and prevent that settlement instructions would only be entered into the system when the financial instruments are ready for delivery, it is important to keep the intended settlement date as the point as from which the penalty is calculated.
61. In order to limit the flow of cash, the participant should be able to net the amount due with the amount it should receive. As a result, only the cash amount due by the participant would be paid. The CSD should however provide the participant with the detail of the calculation so that the participant, when it is an intermediary, can recharge the penalty to its clients. With this approach, the penalty mechanism would reach the same outcome in a direct holding model and in an indirect holding model.
62. In order to enhance efficiency and favour harmonisation, ESMA is of the view that when CSDs are using a common settlement infrastructure, they should jointly manage the cash penalty system. This approach would allow streamlining automation of the process and limiting related costs for implementation, maintenance and operation for the mechanism. Furthermore the operational functioning of the common infrastructure may entail some modification compared with the current operational structure of links between CSDs that would prevent the penalty mechanism to be implemented unless it is operated at the level of the common infrastructure. For instance, a number of CSDs will share a common settlement platform with T2S and this will allow cross execution of orders between different SSS with a different operational set up as the one we currently know. Depending on such operational set up, the SSS may only have a limited view on the settlement of the instruction and would have no mean to charge and re-distribute the penalty when another CSD would be involved. As a result unless we get an implementation at the level of the

common infrastructure, the penalty mechanism would collapse. It is therefore essential to provide for a solution in that situation in order to maintain the efficiency of a deterrent and proportionate cash penalty system.

The redistribution of the cash penalties

63. Some respondents answered that the amount of the cash penalty should be used to cover the costs of the penalty mechanism and that the remaining part should be redistributed to the suffering party or when not possible the community of participants for projects benefiting to the market.
64. The CSDR has clarified that the cash penalty shall not be configured as a revenue source for the CSD. In line with this approach, ESMA considers that the cash penalty should not be used in order to cover the cost of the penalty mechanism. Instead, and as suggested by some stakeholders, the full amount collected as a penalty should be redistributed to the participant that suffered from the fail. The amount to be paid to the participant would be netted with the amount that would be payable by the participant so that only the net amount would be paid / redistributed. The payment of the penalty and the redistribution would occur at least on a monthly basis in order to minimise the operational burden and limit the number of cash transfers to be performed. This is in line with comments received from stakeholders following the DP that were suggesting a monthly periodicity. As for the collection / redistribution of the penalty from the participants to their clients, the CSD should provide the details of the calculation of the penalties to be paid / received so that the participant could transfer / collect the cash amount to / from its clients.
65. The advantage of a mechanism whereby the amount of the penalty collected would be redistributed to the participant that suffered from the settlement fail lies with the immunisation reached in case of chains of settlement fails. Indeed, in case of multiple fails, those participants that are in the middle of the chain would have to pay a penalty but would also receive the amount of the penalty collected from the previous transaction. As a result of netting, the participant would not have a cash flow but would be incentivised to cure the fail as in such case it would receive the penalty amount but would not pay itself a penalty. This result is better achieved when the amount collected and received by a participant are of the same value. This is the approach proposed in the draft technical advice from ESMA to the EC related to the level of the cash penalty, which is part of a separate consultation paper.

The situation where a CCP is involved

66. The CSDR provides that the penalty mechanism shall not apply to failing participants that are CCPs. The exemption does not apply to the failed instruction but to the entity that is a CCP. This is justified by the fact that the CCP participants might fail and these failed

participants should equally be subject to the penalty regime. As a result, in order for the penalty to apply to the transaction and allow automation of the penalty mechanism, ESMA proposes that when a CCP is involved as a failing participant or as a failed participant, the penalty should not be collected from or paid by the CCP but the CSD should provide the calculation to the CCP that should collect and redistribute the penalty from/to its clearing members. This approach would maintain the immunisation principle whereby in case of chain of transactions, the amount would be paid and collected. The deterrent effect would apply to cleared transactions without impact on the CCP. Finally, the CCP would not have to develop a specific system as it would rely on the calculation performed by the CSD.

Q6: What are your views on the proposed draft RTS related to the penalty mechanism? Do you agree that when CSDs use a common settlement infrastructure, the procedures for cash penalties should be jointly managed?

2.4 The Buy-in Process

Article 7(15) (c) to (h) CSDR

ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify (1) the details of operation of the appropriate buy-in process including the timeframes to deliver the financial instruments, (2) the circumstances under which the extension period could be prolonged, (3) the timeframe that renders buy-in ineffective for operations composed of several transactions, (4) a methodology for the calculation of the cash compensation when buy-in fails or is not possible, (5) the conditions under which a participant is deemed consistently and systematically to fail to deliver the financial instruments, and (6) the settlement information a CSD shall provide to CCP and trading venues to enable them to process the buy-in.

Buy-in process

67. Under the Article 7 (15) (c) CSDR, ESMA is required to specify the process for the operation of the buy-in, including the timeframe to deliver the financial instruments.
68. In order to develop harmonised rules, ESMA performed a survey of current practices which demonstrated that there are currently no uniform approach to buy-in by the CSDs, CCP and trading venues. In the discussion Paper, ESMA further shared its views that the procedure should include notices of the activation of the buy-in procedure, of the start and of the results of the buy-in process, as well as the duration of the extension period, the

deadline for choosing the cash compensation or deferral of the buy-in, the method for execution of the buy-in.

69. ESMA consulted on the above and in particular on whether the procedure should specify other minimum requirements, on timelines, on circumstances when a buy-in would not be possible and on the coordination of multiple buy-ins on the same financial instruments.
70. In their answers, most stakeholders call for a consistent regulatory framework across Europe for buy-in regimes. They consider that the buy-in process should be automatic and harmonised where possible.
71. Generally, respondents stressed that the CSD should not be involved and exposed to risks in the buy in process. Some respondents call for the buy-in to be executed by a bank or an execution dealer, not connected to parties in the failed transaction.
72. There were a limited number of comments on the possibility for the CSD, CCP or trading venue to send notices to participants at different stages of the process and no major issue was raised.
73. When the buy-in is not possible, the receiving participant can choose to receive cash compensation. Some respondents considered that buy-in is not possible where the securities no longer exist (redeemed or suspended, blocked, converted, etc...), where the securities are not available due to lack of liquidity (e.g. free float below 40%, buy-in again sole market-maker). All stakeholders that expressed a view in that respect favoured a non-exhaustive list of circumstances where buy-in would not be possible. Generally, CCPs considered that seeking competent authority approval before deciding whether a buy-in is not possible, would slow down the decision-making process and suggested that specific set of instruments/scenarios be pre-determined in the rules of the CCP, CSD or trading venue.
74. In answers to the consultation, some expressed the view that the buy-in mechanism should be operated at the trading party level and not at the level of the participants that are intermediaries (settlement agent) or at settlement level (CSD). It was also proposed to co-ordinate multiple buy-in by appointing the same intermediary to execute the buy-in. Having a global view, this intermediary would be able to measure the impact of the buy-ins on the market.
75. On the timeframe to deliver the financial instruments, many respondents believe that the execution period for the delivery of the financial instruments should have the same duration as the extension period and stakeholders expressed a general agreement that

the execution period to deliver the financial instruments and the extension period should depend on the liquidity and type of instruments.

76. Most of respondents expressed the view that a 4 day extension period for liquid securities representing equities, and 7 days for less liquid, less traded securities would be appropriate. Some referred to up to 15 days for SME Markets instruments.
77. Most respondents propose to distinguish between (1) bonds (both sovereign and corporate) for which some consider that the extension period should be of 7 business days; (2) liquid equities for which the extension period should not be prolonged; (3) less liquid and less traded securities for which there is a general agreement that the extension period should be prolonged to 7 business days in order to prevent a disastrous impact on markets. It was also suggested that ETF should be subject to a 7 business day extension period as a significant number of underlying financial instruments in different markets need to be bought/sold. The same approach was suggested for depository receipts and securitised derivatives.
78. Some stakeholders noted that it should be distinguished between cleared and non-cleared illiquid instruments. However, it is important to note that the CSDR provides that the prolongation of the extension period does not apply to transactions for shares that are cleared by a CCP. It is therefore not possible in the scope of the extension period to consider a longer extension period for cleared transactions in shares.
79. Some stakeholders also considered that the liquidity should not be taken into account in order to determine the prolongation of the extension period. Others call for only considering liquidity and not the asset type. However, it is important to remind that the CSDR requires ESMA to consider both the asset type and liquidity of the instrument for the purpose of determining the prolongation of the extension period.
80. On the definition of liquidity/illiquid instrument, most stakeholders call for consistency with the MIFID/R definition, or with the Short Selling definition.
81. Some CCPs expressed concerns that the treatment of illiquid cleared shares would incentivise a run away from clearing for those instruments as it would introduce a structural bias towards trading in an un-cleared environment. They call for a calibration of the execution period for illiquid cleared shares that could mitigate such risk.
82. In view of the above and following further analysis, ESMA developed draft RTS aiming at harmonising the buy-in process and at limiting undue risks for the CSD, CCP or trading venue. The buy-in would be executed by auction or by a buy-in agent that could be appointed by the infrastructure or the receiving participant. Given that the delivering

participant was unable to cure the fail during the extension period, it was considered appropriate to give the possibility to the receiving participant to appoint the buy-in agent so that, ultimately, the financial instruments are delivered to the receiving participant.

83. Given that the initiation of the buy-in i.e. getting to the market to effectively buy the financial instruments, and the end of the buy-in are the two key moments in the process and that stakeholders generally did not comment, ESMA proposes that the CSD, CCP or trading venue send a notice to the participants at that time.
84. When the participant does not allow the delivery of partials, an instruction may fail to settle although a part of the financial instruments is available in the account of the delivering participant. In this case, ESMA proposes that the buy-in would only be initiated for the missing part. For instance, in the case of an instruction to deliver 100 securities A, if 80 securities A are available in the account, the buy-in would only be initiated for 20 securities A. This will allow reducing the buy-in to what is absolutely necessary in order for the instruction to settle. As a result and in order to achieve settlement, it is necessary to reserve the securities standing on the account of the participant for the purpose of that settlement instruction. Indeed, the instruments could be used in the scope of another settlement instruction resulting in a failure to fully settle the instruction although the buy-in would have been successful. It is important however, to consider that some securities could not be available for the settlement of an instruction. A participant may need to indicate that, although securities of the type to be settle are standing on the account, they cannot be used for the settlement of an instruction. This may be the case for a participant having an omnibus client account, where the instruction is for client A but the securities standing on the account belong to client B. In this case, the instruction could be put on hold, in which case, the buy-in would be executed for the full amount of the instruction.
85. Given that the purpose of the CSDR is to prevent settlement fails, ESMA contemplates that when an instruction does not settle because all financial instruments are not available in the account of the delivering participant, partial settlement would take place on the last day of the extension period which is the last moment before initiating the buy-in. This means that at the end of the extension period (even if prolonged) the quantity of financial instruments available in the account of the delivering participant would settle and the instruction would remain outstanding for the remaining part. The buy-in would be processed for the remaining part of the financial instruments only and the penalty would apply on that remaining part. The partial delivery would not apply to instructions that are on hold as the “on hold” status may indicate that the instruments do not belong to the relevant underlying counterparty to the transaction. As a result, on the last day of the extension period, the financial instruments available in the account of the delivering participant would be delivered to the receiving participant. This approach may allow limiting the cases of settlement fails and ESMA invite you to share your views on this approach.

86. When the buy-in is processed, it may be successful for a part only e.g. for a buy-in of 20 securities A, settlement may be successful for 15 securities only. In such a situation, ESMA proposes that the part of the financial instruments received be delivered to the receiving participant need to be accepted. The receiving participant would then have the choice for the remaining part (5 securities A) to defer the buy-in or receive a cash compensation. This would ensure the successful performance of buy-ins even if partial and reduce operational burdens in case the buy-in is not fully completed.
87. ESMA agrees that the situation where a buy-in is not possible cannot be subject to a case by case approval by the competent authority as it could create a heavy process requiring time that would not be compatible with the need to limit uncertainty and the timeframe of the buy-in process. However, the framework should be set in advance in the rules of the infrastructure and should allow a clear determination. ESMA proposes to consider that a buy-in is not possible in situations that include the redemption of the relevant financial instruments. ESMA notes that it would be difficult to link the possibility to process a buy-in to a measure of the liquidity of a financial instrument. Indeed, this measure could be very volatile and this would render the buy-in process difficult to perform. Furthermore, the fact that a financial instrument does not have a liquid market does not always prevent a buy-in to be successfully processed.
88. The different steps that should be followed in case the buy-in is not possible are further determined. First, the CSD, CCP or trading venue should be informed that the buy-in is not possible. Then, the cash compensation should be paid. Finally, the instruction for which the cash compensation is paid should be cancelled.
89. In order to mitigate the risk of multiple buy-in in case of chains of settlement fails, and in view of comments received from stakeholders supporting involvement of the trading parties, ESMA proposes that participants should provide to the CSD some information on the instructions linked to the failed instruction. For that purpose, the participant may have to receive information from its own client through the chain down to the trading parties. This information would allow the CSD to anticipate that the settlement of an instruction would result in the settlement of some other instructions and therefore to initiate the buy-in for one failed instruction instead of several ones. This should happen within the framework set in the CSDR i.e. for instructions on the same financial instruments and with the same date of expiry of the execution period. This approach could not be used for cleared transactions given the difficulty to directly link the trades submitted to clearing and the settlement instruction resulting from the clearing of those trades.

The CSD should perform a consistency check on information provided by the participant and should only process those that are consistent with the information it has on pending receipt instructions in the account of the participant.

Q7: What are your views on the proposed draft RTS related to the buy-in process? In particular, what are your views on applying partial settlement at the end of the extension period? Do you consider that the partialling of the settlement instruction would impact the rights and obligations of the participants? What do you think about the proposed approach for limiting multiple buy-in and the timing for the participant to provide the information to the CSD?

Buy-in timeframe and extension period

90. When a settlement instruction fails to settle, the participant can still cure the fail during the extension period. At the end of the extension period however, if the settlement has not taken place, the buy-in will be processed with the aim of getting the financial instruments delivered to the receiving participant. This should happen in a reasonable timeframe in order to limit the period of uncertainty.
91. In order to set the timeframe for the delivery of the financial instruments, ESMA has considered the liquidity and the nature of the financial instruments. In line with most comments received from stakeholders, ESMA considers that, for shares or bonds, the liquidity should be the criteria allowing setting their timeframe for delivery to the receiving participant. The liquidity of the shares and bonds should be determined by reference to the definition of liquid market used in MIFID. This will allow to have a consistent approach and to benefit from the work and analysis performed in that scope. To avoid complexity, as requested by stakeholders, ESMA proposals envisage that liquid share or bond should be delivered within 4 business days and the other shares or bonds within 7 business days.
92. This timeframe should apply irrespective of whether the shares are cleared or whether the shares or bonds are SME growth markets instruments. Indeed, the CSDR provides that the extension period cannot be prolonged for cleared shares but does not provide for restrictions on the timing for the delivery to the receiving participants. Therefore, the shares should be subject to the same timeframe for the delivery to the receiving participant, irrespective of whether they are cleared or not. Regarding the SME growth market instruments, given that they benefit from a 15 days extension period in order to cure the fail and given that up to 49.9% of the issuers could be no SMEs, in order to balance the specificities and the liquidity of the instruments with the need to limit the period of uncertainty, this timeframe would be reasonable.
93. Exchange traded funds (ETF), depositary receipts (DR), certificates and other financial instruments have a specific nature that involve that more time is needed in order for the buy-in to be performed. As a result, it is not necessary to refer to their liquidity in order to

set the timeframe for their delivery to the receiving participant. Instead, they should all be subject to the same timeframe of 7 business days.

94. Regarding the extension period, in line with the above approach and comments from stakeholders, ESMA proposes that the extension period of liquid bonds or shares should not be prolonged and that of non-liquid bonds and shares be extended to 7 business days following the intended settlement date. Indeed, for liquid bonds and shares, 4 days should be sufficient for the participant to cure the fail whereas 7 business days may be required for bonds and shares that have less liquid markets. Contrary to the approach adopted for the timeframe to deliver the financial instruments that are shares or bonds, the extension does not apply to cleared shares as provided in the CSDR and does not apply to the SME growth markets instruments given that the specificities of those instruments are already considered in the 15 business days granted in the CSDR.

Q8: What are your views on the proposed draft RTS related to the buy-in timeframe and extension period?
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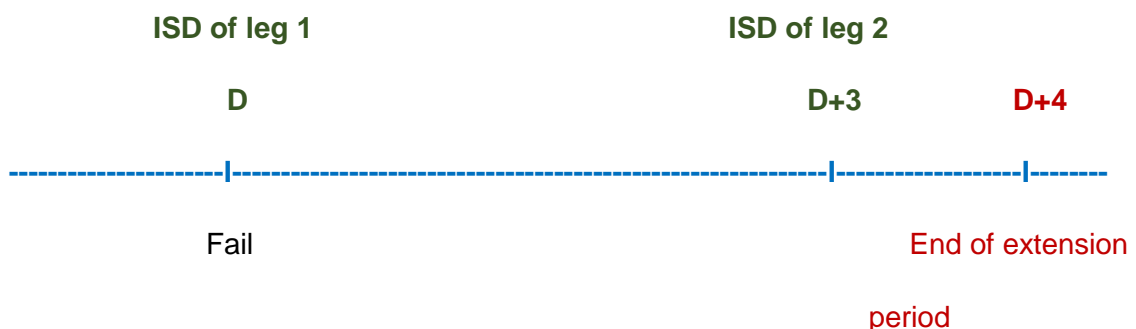
Type of operations and their timeframes that render buy-in ineffective

95. The CSDR provides that the buy-in process does not apply to operations composed of several transactions, including repo and securities lending, where the timeframe of those operations is sufficiently short and renders buy-in ineffective. Under Article 7(15)(e) of CSDR, ESMA is required to specify the type of operations and their specific timeframes that renders buy-in ineffective.
96. In its discussion paper, ESMA noted that a buy-in for an operation composed of several transactions such as repo would be ineffective when the ISD of the forward leg would be anterior to the end of the extension period.
97. Some respondents stressed the difficulty to identify those instructions that relate to an operation composed of several transactions. They also indicated that such transactions can be concluded on an open ended basis, meaning that the ISD of the second leg of the transaction is not known in advance. One stakeholder noted that an approach linked to the ISD of the legs of the transactions could dry the market for open ended transactions and push the market towards short term operations in order to avoid application of the buy-in.
98. ESMA considers that the operations composed of several transactions are typically those operations where in a first leg the securities are delivered to a receiving participant and in a second leg, that may happen at a set date or at an open date, similar securities are

returned by the receiving party to the initial delivering party. These are for instance repo and securities lending transactions. The period of time between the two legs of the transactions may be known in advance, in such case may range from overnight to several weeks or months, or be for an open period.

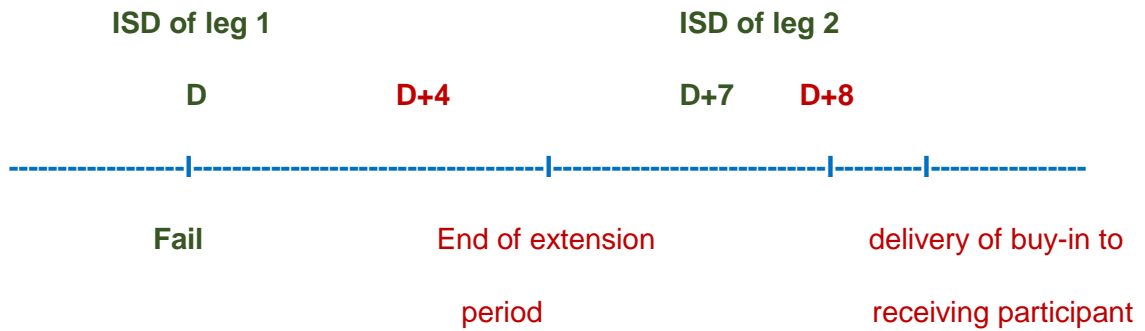
99. ESMA agrees that in order for the provision to apply, the operation shall first be identified as such. A field in the instruction, and that already exists in some CSDs, should allow addressing that difficulty. Furthermore, when an operation is entered into on an open-ended basis, it is not possible to establish its timeframe as long as the date of the second leg is not set.
100. In order to specify the timeframe under which the buy-in would be ineffective, it is necessary to establish a relationship between the timeframe of the transaction and the timeframe of the buy-in. Stakeholders generally agree that the second leg should be considered as a straight sale and therefore that the buy-in could apply to this leg as long as the instruction related to the first leg settled. The focus should therefore be on the first leg of the transaction for the purpose of establishing the timeframe that renders buy-in ineffective. As a result, and in view of the CSDR provisions, ESMA considers that whenever the ISD date of the second leg of the transaction is before or on the day when the timeframe for the delivery of the financial instruments would elapse, the buy-in to address the fail of the first leg of the transaction would be ineffective.

Example 1: 3 day-repo on a liquid share



Given that the ISD of the second leg is set before the end of the extension period for leg 1, the buy-in would not take place.

Example 2: 9 day- repo on a liquid share



Given that the ISD of the second leg is set before the end of the delivery period of the buy-in for leg 1, the buy-in would not take place.

Q9: What are your views on the proposed draft RTS related to the type of operations and their timeframe that render buy-in ineffective?

Calculation of the cash compensation

101. Under Article 7(15)(f) of CSDR, ESMA is required to specify a methodology for the calculation of the cash compensation to be paid if the buy-in fails or is not possible, or financial instruments are not delivered to the receiving participant at the end of the deferral period.
102. Respondents generally agree that the cash compensation should consider the current market price and stress the difficulty to get a market price for some OTC transactions and some illiquid instruments, especially when the buy-in fails or is not possible. It was suggested that a theoretical price could be considered. CCPs note that the settlement fails may result from the clearing of several underlying transactions and stress the need to recognise that they could set the price at the appropriate level.
103. In line with comments received, ESMA agrees that when the participants have agreed in advance on the price to settle the cash compensation or the method to determine such price, the choice of the participants should be respected. However, absent such pre-agreed choice, ESMA considers that the price should be set by a third party to avoid conflicts between parties and proposes that the buy-in agent would be in charge of determining the price. The determination of the price would depend on whether a recent price is available on the relevant trading venues or not. When the price of the previous day is available on trading venue, the closing price would be used. In case such a price is not available, the buy-in agent would have to refer to available market prices.
104. Given that the cash compensation is paid, when the financial instruments are not delivered and the price is not paid, only the positive difference between the actual price and the instruction price should be paid.

Q10: What are your views on the proposed draft RTS related to the calculation of the cash compensation?
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Conditions for a participant to consistently and systematically fail

105. Under Article 7(15)(g) of CSDR, ESMA is required to specify the conditions under which a participant is deemed consistently and systematically to fail to deliver the financial instructions.
106. In the discussion paper, ESMA envisaged two thresholds. One threshold was related to a percentage of the overall value of the settlement instructions submitted by the failing participant over a certain number of months, and the second threshold to the number of

the settlement instructions submitted by the failing participant over a certain number of months.

107. Respondents generally stressed that the suspension is a last resort measure and should never be triggered automatically as some degree of discretion is needed for the CSD, CCPs and trading venues to consult with regulators and assess the possible consequences of a suspension on systemic risk.
108. Some stakeholders indicated that a threshold should consider the type of product and the type of participant. Furthermore, some responses indicated that a failed trade may not be under the control of the participant, particularly where the participant is settling transactions on behalf of others. It was noted that a one size should not fit all circumstances and that a quantitative threshold should in any case be reasonably low be it in volume or value, and should be assessed over a 12-month period.
109. ESMA considered the comments regarding the need to perform the assessment on a period of time that is relevant and that one single approach may not fit all situations. As a result, it is proposed to perform the assessment over a 12 months period and over a certain number of days. ESMA contemplated setting the percentage of fails as a fixed percentage across markets but considered that this may not appropriately reflect and capture the different settlement efficiency rates between markets and their evolution in the time. Instead, ESMA considers that a percentage set by reference to the settlement efficiency of each market would be more appropriate as it will allow capturing the specificities of the markets and its evolution in time. As a result, ESMA proposes a threshold set by reference to the settlement efficiency rate of each securities settlement system. ESMA proposes to consider a 10% deviation, in value or volume.
110. In order to develop its proposal, ESMA noted that pursuant to the CSDR, there is no automatism in the decision to suspend a participant. Indeed, the CSDR provides that in its procedure related to the suspension of participants that consistently and systematically fail, the CSD, CCP or trading venue should give to the participant the possibility to submit its observation and should duly inform the competent authority. ESMA has therefore not repeated this point in its proposal.,

Q11: What are your views on the proposed draft RTS related to the conditions for a participant to consistently and systematically fail?
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Settlement information for CCPs and trading venues

111. Under Article 7(15)(h) of CSDR, ESMA is required to specify the settlement information a CSD shall provide to the CCP and trading venue to enable them to fulfil their obligations related to the buy-in.
112. In the DP, ESMA exposed its views that a CCP and a trading venue need to be able to associate the activity of a clearing member and participant to a securities account, and raised the question of the segregated accounts.
113. Some answers indicates that the information should relate to the current status of instructions received from the CCPs or trading venues and should be specified in the transaction feed agreement signed between the relevant infrastructures, when applicable. Respondents considered that there should not be segregation of the accounts of all trading and clearing members at CSD level.
114. ESMA agrees that the information should relate to the current status of the instruction sent by the CCP or the trading venue to the CSD and proposes a list of such information. Furthermore, ESMA considers that when the instruction is not sent by the trading venue although the transaction is executed on the trading venue, the participant should indicate in the settlement instruction the details of the trading venue and of the transaction.

Q12: What are your views on the proposed draft RTS related to the settlement information for CCPs and trading venues?

2.5 Anti-avoidance rules for cash penalties and buy-in

115. The buy-in process and the cash penalties mechanism should be applied by all CSDs, CCPs and trading venues in a consistent manner. Each of them may have different operational structure or models, for instance CSDs may participate or not in T2S, CCP may use a trade date netting model or a continuous net settlement model. This difference in models or systems should not lead to a different application of the regulation: the cash penalty should be applied as from the first day of the settlement fail and for as long as the fail remains outstanding and the timeframe for the buy-in process should be computed in the same manner pursuant to the regulation.
116. For this purpose ESMA proposes to provide for an anti-circumvention provision. This approach allows all the systems to operate, including those that continuously recycle the instructions, still ensuring a level playing field on settlement discipline whatever is the model or structure used by the CSD, CCP or trading venue.

Q13: What are your views on the proposed draft RTS related to anti-avoidance rules for cash penalties and buy-in?

2.6 Phase-in for Settlement Discipline

117. In response to ESMA's DP, there was a major call for a phase-in regarding the settlement discipline measures. According to the majority of DP respondents, the parallel implementation of TARGET2-Securities and of the move to a T+2 settlement cycle need to be taken into account as all sectors of the market, not just CSDs, will have their roadmaps fully consumed by these projects.
118. According to most stakeholders, a transition period of maximum 3 years (2015-2017), i.e. by 2017 after the 4th T2S migration wave is completed, would allow market participants and infrastructures to make the necessary adaptations and avoid an unnecessarily complex and costly implementation of some functionalities that will be provided by T2S, given the changes required in CSD systems to accommodate for a harmonised settlement discipline regime (e.g. database changes, introduction of new messages, new billing mechanisms). DP respondents argued that such changes would not only take months to implement, but they should also be reflected by CSD participants so that they could pass on fines to their own clients, if appropriate.
119. The publication of the RTS on settlement discipline in the OJ is expected for late 2015. According to Article 75(5) of CSDR, the settlement discipline measures referred to in Article 7(1) to (13) and the amendment laid down in Article 72 shall apply from the date of entry into force of the delegated act adopted by the EC. This means that, in order to allow for a phase-in for the settlement discipline measures, the effective entry into force of the respective RTS would have to be delayed.
120. As indicated in the draft recital 36 of the RTS on Settlement Discipline (Annex I), given that the measures to address settlement fails related to buy-in and penalties would require time for the CSDs to consult with CCPs, trading venues and participants in order to define the set-up of the system and its specifications and then in order to develop and implement the IT system changes, ESMA believes that sufficient time should be allowed before the entry into force of the relevant measures.
121. The legislators clearly decided to separate the date of application of the settlement discipline regime and the date of authorisation of CSDs under the CSDR. We consider that such a choice is due to the fact that the settlement discipline regime should apply at the same time in the entire EU and if it were linked to the date of authorisation of the CSDs, this harmonised and consistent approach could not be reached. ESMA agrees that the date of application for authorisation under CSDR and the date of application of the settlement regime should not be linked, and one single date should be defined for the application of the settlement discipline regime. However, this does not mean that this date should be anterior to the minimum time given to CSDs to be authorised.

122. For the appropriate, effective and efficient application of the settlement discipline regime, the settlement discipline processes and procedures that a CSD needs to put in place should be carefully assessed before they are applied. Therefore, an appropriate time lag should be envisaged between the date of publication and the entry into force of the Regulation on settlement discipline. This timeframe should take into account the time that CSDs will need to put in place their systems following the publication of the Regulation on settlement discipline and the time for competent authorities to assess them. This would ensure that the CSDs meet the necessary requirements and would also avoid potentially burdensome and costly changes, affecting also their participants, if the proposed measures have to be implemented prior to authorisation.
123. For the reasons explained above, ESMA believes that the date of application of the settlement discipline regime (i.e. the date of entry into force of the RTS on settlement discipline) should be 18 months following the publication of the RTS, in order to give the necessary time to CSDs to implement the required changes, to NCAs to assess these changes and to market participants to adapt to them.
124. At the same time, ESMA believes that concrete data and evidence would be necessary in order to justify a phase-in for the settlement discipline regime. Therefore, respondents to this consultation are encouraged to provide concrete data and evidence to support an appropriate timeframe for the application settlement discipline regime under CSDR.

Q14: Do you agree that 18 months would be an appropriate timeframe for the implementation of the settlement discipline regime under CSDR? If not, what would be an appropriate timeframe in your opinion? Please provide concrete data and evidence justifying a phase-in for the settlement discipline measures and supporting your proposals.

3 CSD Authorisation, Supervision and Recognition

3.1 CSD Authorisation

Article 17 CSDR

ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the information that a CSD should provide to the competent authority in its application for authorisation, as well draft implementing technical standards to establish standard forms, templates and procedures for the application.

125. Under the Article 17 of CSDR, ESMA is required to specify the information that a CSD should provide to the competent authority in its application for authorisation, as well as the standard forms, templates and procedures for the application.
126. For the identification of the information that the applicant CSD should provide to the competent authority in the application for authorisation, ESMA has considered the CRA Regulation and the TR provisions under EMIR and also the current national practices, which ESMA assessed via a survey among CSD supervisors.
127. ESMA consulted in its Discussion Paper (DP) on whether the below requirements were appropriate for the information to be provided in the application of authorisation for a CSD.
 - a) General information on the applicant CSD

Information on the identification and legal status of the CSD, its structure, services to be provided as well as information on policies and procedures and information on groups.
 - b) Financial reports and business plans

Financial reports and business plans for the 3 preceding years, including pro-forma statements and expected business status 6 months after authorisation is granted and an indication of future plans for the establishment of subsidiaries and their location.
 - c) Organisational requirements

Requirements for information pertaining to corporate governance, staffing policies and procedures, internal control mechanisms, management of conflict of interest,

confidentiality, senior management and shareholders, the user committee and record keeping.

d) Conduct of business rules

Information on goals and objectives, complaint handling, participation requirements and pricing policy transparency.

e) Requirements for CSD services

Information on book entry form, intended settlement dates, measures to address settlement fails, integrity of the issue, protection of participants' securities, settlement finality, participant default rules and procedures as well as portability.

f) Prudential requirements

Requirements for information in relation to legal risks, general business risks, operational risks, investment policy as well as capital requirements.

g) Links

Information on existing links, procedures in relation to processes involving links and the applicable law.

h) Access

Information on procedures for dealing with requests of access for issuers to the CSD, between CSDs and between the CSD and another market infrastructure.

128. The majority of the DP respondents agreed and supported the general topics of information that the CSD should provide information on in its application for authorisation.

129. However, there appeared to be some confusion amongst DP respondents between requirements and information, with some respondents commenting that requirements should be harmonised across the member states, rather than being proposed as a 'minimum'. To clarify, ESMA's intention is standardise the authorisation requirements, but competent authorities are allowed to ask for additional information, in order to satisfy themselves that the CSDR requirements (including the regulatory technical standards (RTS) and the implementing technical standards (ITS) requirements) are met. This has been duly reflected in the draft technical standards.

130. Some respondents noted that it would be too burdensome to require a complete re-assessment of all CSD links. However, ESMA believes that, in order to verify the safety of

the applicant CSD's link arrangements, assess the equivalence of rules applied in the linked systems and evaluate the risks stemming from such links, the competent authority should receive from the applicant CSD relevant information for such an analysis, together with the CSD assessment of the link arrangements.

131. Some respondents asked for transitional periods to be granted for settlement discipline measures, record keeping requirements and business continuity policy with regards to CSD secondary processing sites as time is required for these changes to occur and, in the interim, it would cause an un-level playing field amongst CSDs. ESMA believes that phase-ins may be considered, but, in order for transitional periods to be granted, the onus is on the industry to provide robust evidence to justify the need for phase-ins in connection with each specific requirement.
132. Responses received also suggested that CSDs should be allowed to leverage off reports that they have previously produced for CPSS-IOSCO assessments, or are in the public domain or already available to the competent authority to avoid inflation of the application file. This suggestion was considered, but was found to not always be feasible as in some cases, the competent may need to consult with other authorities and these authorities may not have the same accessibility to this information. Responses also proposed that CSDs should be allowed to provide hyperlinks, instead of paper copies where documentation is publicly available. As hyperlinks may expire over time if websites are updated, it could potentially be an unreliable method of providing data. The medium through which the documentation is provided will be the discretion of each competent authority.
133. Some respondents commented that it was not clear what specific information needed to be provided where the CSD wishes to provide a service listed under Annex B of CSDR. Given the nature of Annex B and that it is non-exhaustive, it would prove challenging to create a specific set of information to be provided. A CSD will have to provide information relating to the provision of this service and the draft RTS contains a specific article for this, but the information requirement is general and non-specific.
134. The proposed RTS is primarily based on the approach outlined in the DP, which has been further developed to cover all the requirements for CSDs under CSDR. The draft RTS on Authorisation can be found in Chapter II of Annex II. Some of the main points covered in the RTS are reflected below:
 - a) An applicant CSD should provide information on the structure of its internal controls and the independence of its governing bodies, in order to enable the competent authority to assess whether the corporate governance structure ensures the independence of the CSD and whether that structure and its reporting

lines as well as the mechanisms adopted for managing possible conflicts of interest are adequate.

- b) For the purpose of enabling the competent authority to assess the good reputation, as well as the experience and skills of the applicant CSD's senior management and members of the management body, an applicant CSD should provide the relevant information to perform such an assessment.
- c) Information on branches is necessary in order to enable the competent authority to clearly identify the CSD organisational structure and evaluate any potential risk for the CSD due to the activity of branches.
- d) Information on the entities within the same group of a CSD, including on any subsidiary, is necessary in order to enable the competent authority to clearly identify any potential interdependencies between those entities and the applicant CSD.
- e) The applicant CSD should provide information to the competent authority to demonstrate that it has the necessary financial resources at its disposal and adequate business continuity arrangements for the performance of its functions on an on-going basis.
- f) In order to have a complete overview of the services that the applicant CSD intends to provide, it is important for the competent authority to be provided with information on ancillary services of the applicant CSD, or other business lines that it intends to offer in addition to the information on the core activities..
- g) In order for the competent authority to assess the continuity and orderly function of an applicant CSD's technological systems, that applicant CSD should provide the competent authority with descriptions of those relevant technological systems and how they are managed, including in case these systems are outsourced.
- h) The fees associated with the services provided by CSDs are important information which should form part of the application for authorisation of a CSD in order to enable the competent authorities to verify whether they are proportionate, non-discriminatory and unbundled.
- i) In order to secure non-discriminatory access to the notary, central maintenance and securities settlement services within the financial market, issuers, other CSDs and other market infrastructures should be granted access to the CSD in accordance with the provisions of the Regulation (EU) No 909/2014. An applicant CSD should therefore provide the competent authority with information about its access policies and procedures.

- j) In order to carry out its authorisation duties effectively, the competent authority should receive all information from applicant CSDs, related third parties, including third parties to whom applicant CSDs have outsourced operational functions and activities.
 - k) For the purpose of ensuring the general transparency of governance rules of the applicant CSD, the competent authority should be provided with documents confirming that the applicant CSD has adopted necessary arrangements for a non-discriminatory establishment of an independent user committee for each securities settlement system.
 - l) For the purpose of securing the orderly function of core infrastructure services within the financial market, the applicant CSD should provide the competent authority with all necessary information to demonstrate that it has adequate policies and procedures for ensuring reliable record-keeping systems as well as effective mechanisms for CSD services, including in particular the measures for preventing and addressing settlements fails, and the rules concerning the integrity of the issue, the protection of securities of participants and those of their clients, settlement finality, participant default and portability.
 - m) The risk management models associated with the services provided by an applicant CSD are a necessary item in its application for authorisation so as to enable the competent authority to evaluate the reliability and integrity of the adopted procedures and help market participants make an informed choice.
 - n) In order to verify the safety of the applicant CSD's link arrangements, assess the equivalence of rules applied in the linked systems and evaluate the risks stemming from such links, the competent authority should receive from the applicant CSD relevant information for such an analysis, together with the CSD assessment of the link arrangements.
135. With respect to the ITS, the DP proposed that the application should be provided in a durable medium, the CSDs should allocate reference numbers to the documents for ease of identification by the competent authority and a template to structure the application. DP feedback conveyed general support for the ITS template, although some respondents commented that they would like to have flexibility on the referencing of documents, so that it could be aligned with existing mechanisms. The proposed template does not prescribe the actual document number references that must be used, but only that documents should be labelled with the corresponding references included in the proposed template for ease of identification. The template has been modified such that it now lists the required information, which should act as a checklist for the CSD to ensure all required information is submitted. The draft ITS can be found in Chapter I of Annex VI.

136. ESMA believes that the application for authorisation submitted to the competent authority should be accompanied by a letter signed by a member of the management body of the applicant CSD and a member of the senior management, attesting that the submitted information is accurate and complete to the best of their knowledge, as of the date of that submission. At the same time, ESMA acknowledges that it may be difficult for CSDs to comply with potentially tight deadlines during the authorisation process for the submission of supplementary information, and considers that the application letter should also specify the CSD staff member who is authorised to submit additional information to the competent authority during the authorisation process, without requiring in this case the signature of a member of the management body and of a member of the senior management.

Q15: What are your views on the proposed draft RTS on CSD authorisation (Chapter II of Annex II) and draft ITS on CSD authorisation (Chapter I of Annex VI)?

3.2 CSD Review and Evaluation

Article 22 CSDR

ESMA shall, in close corporation with the members of the ESCB, develop draft regulatory technical standards to specify:

- (a) the information that the CSD shall provide to the competent authority for the purposes of a review.*
- (b) the information that the competent authority shall supply to the relevant authorities.*
- (c) the information that the competent authorities shall supply to one another.*

ESMA shall, in close corporation with members of the ESCB, develop draft implementing technical standards to determine standard forms, templates and procedures for the provision of this information.

137. Under the Article 22 RTS regarding the review and evaluation of CSDs, ESMA is required to specify: (a) the information that the CSD shall provide to the competent authority for the purposes of a review; (b) the information that the competent authority shall supply to the relevant authorities; (c) the information that the competent authorities shall supply to one another. Under the Article 22 ITS, ESMA is required to determine standard forms, templates and procedures for the provision of this information.
138. The DP proposed that the information that a CSD should deliver to the competent authority for the purposes of the review and evaluation process, should be based on the authorisation requirements under Article 17 CSDR, to evidence that the CSD complies with these on an ongoing basis. The majority of the respondents expressed support for this general approach towards the information to be provided.
139. ESMA also proposed that the CSD should only provide relevant documentation that has been modified since the authorisation process or since the last review, although noted that the competent authority always has the right to ask for additional information where necessary. This appears to be in line with the views expressed by the DP respondents, who felt that the focus should be on quality of the documentation, not the quantity and that the reviews should primarily be on the material changes that could affect the CSD's risk profile, rather than duplication or summaries of existing documentation. To complement this, ESMA also proposed that the CSD should provide a report to summarise the material changes that had occurred since authorisation or the last review, to help provide the competent authority with the context of the changes. Only one stakeholder raised a particular concern with this aspect of the proposal, as they found it unclear how 'material' should be interpreted or how detailed the report needed to be. On reflection, it is difficult to define material, as this could cover a range of circumstances and should not be restrictive, therefore ESMA believes this should be left to the discretion of the CSD to determine and for the competent authority to check.

140. ESMA also proposed a specific category of information and documents relating to events that by nature occur on a periodic basis, which should be provided to the competent authority in order for them to perform the evaluation of risks to which the CSD is or might be exposed. This list included documentation covering financial statements, minutes of management body meetings, information on any significant litigation proceedings, results of business continuity exercises, records of any significant technical incidents that may have occurred and its respective mitigation, cases where conflicts of interest has been identified and how they have been addressed and any instances where the CSD's policies had been breached. DP feedback expressed that the minutes of management body meetings should not be required. ESMA understands that CSDs already tend to provide these minutes to their competent authorities and therefore no significant costs would be incurred for introducing this requirement.
141. A large proportion of DP respondents also commented that the reviews carried out under Article 22 of CSDR should replace existing reviews carried out using other frameworks such as the ESCB- CESR to avoid unnecessary duplication. ESMA notes that when the technical standards under CSDR come into force, which are binding in the EU and which take into account the CPSS-IOSCO Principles for Financial Market Infrastructure, the assessment to be performed in accordance with CSDR should replace the former assessments with respect to the areas covered by the CSDR and related technical standards.
142. An summary of the main proposals under the Article 22 RTS (please see Chapter III of Annex II for full details) is presented below:
- a) The information that a CSD should provide to its competent authority for the purposes of the review and evaluation, is broadly similar to that proposed in the DP. The basis of the requirements are what the CSD needs to provide to demonstrate compliance against the authorisation requirements under Article 17 (providing those documents which have been updated), together with information relating to the operation or risks of a CSD on events that by nature occur on a periodic basis.
 - b) Following the DP consultation, ESMA believes that the competent authority should also be provided with statistical data on the scope of the CSD's business activities, in order to be able to carry out a comprehensive risk evaluation assessing the smooth functioning of the securities market. Statistical data would enable the competent authority to monitor the size and importance of securities transactions and settlements within the financial markets, as well as to assess the on-going and potential impact of a given CSD on the securities market as a whole. The proposed categories of statistical data are specified under Article 42 of the draft RTS as included under Chapter III of Annex II and are considered necessary to perform these duties.

Q16: What are your views on the proposed draft RTS on CSD review and evaluation (Chapter III of Annex II) and draft ITS (Chapter II of Annex VI)?

3.3 Cooperation Arrangements

Article 24(8) CSDR

ESMA shall, in close cooperation with the members of the ESCB, develop draft implementing technical standards to establish standard forms, templates and procedures for the co-operation arrangements between competent authorities.

143. Under Article 24(8) of CSDR, ESMA is required to establish standard forms, templates and procedures for the co-operation arrangements between competent authorities, where a CSD provides services in a host Member State, including through setting up a branch.
144. ESMA did not previously consult on the forms, terms and procedures for the co-operation arrangements between competent authorities in the DP, as this concerns the practical working relationship between authorities, rather than directly concern the CSDs and industry participants. The proposed approach is summarised below and the draft ITS can be found in Chapter III of Annex VI.
145. ESMA has considered Responsibility E (“Cooperation with other authorities”) under the CPSS-IOSCO Principles (April 2012), Recommendation 18 (“Regulation, supervision and oversight”) of the ESCB-CESR Recommendations of Securities Settlement Systems (May 2009), the IOSCO Principles regarding cross-border supervisory cooperation (May 2010) and section 5 (“Cooperative oversight”) of the CPSS Central bank oversight of payment and settlement systems document (May 2005) for the development of the draft ITS.
146. ESMA believes that the exchange of information between competent authorities should be proportionate and assessed on a risk based approach, to avoid any unnecessary information flows and ensure the process is as efficient as possible.
147. ESMA believes that it is important for the co-operating authorities to ensure that they provide each other with up to date contact details. In order to cooperate in an efficient manner, ESMA also considers that authorities should have the flexibility to choose the language of co-operation (a language customary in the sphere of international finance), the method by which they should communicate, and the respective roles and responsibilities of both authorities in the case of an on-site visit to a branch of a CSD (taking into account the legal framework and statutory obligations).
148. In order to ensure an effective coordination and an efficient use of resources, ESMA considers that the competent authority of the home Member State and the competent authority of the host Member State should reach a common understanding on the terms and scope of an on-site inspection of the branch, particularly by determining the respective roles and responsibilities of both competent authorities. The competent

authority of the home Member State and the competent authority of the host Member State should assist each other in reviewing, interpreting and analysing the content of public and non-public documents relevant for the on-site inspection in the branch and in obtaining information from the directors and the senior management of the branch.

149. In order to streamline the communication between authorities and ensure an effective follow-up, ESMA believes that it is important for the exchange of information regarding the activities of a CSD in the host Member State to be done by using standardised templates.
150. So as to ensure that any issues that might be raised by the competent authority of a host Member State (if it has reasons to believe that a CSD providing services within its territory is in breach of the obligations under CSDR), are adequately addressed by the competent authority of the home Member State, ESMA considers that the competent authority of the home Member State should, where appropriate, propose an action plan developed in co-operation with the CSD in question, to work towards ensuring compliance within a set timeframe. The action plan should contain a detailed analysis of the issue raised by the competent authority of the host Member State, a proposed solution, an implementation plan of the proposed solution and a binding timeframe of the implementation plan, which should be shared at the same time with the competent authority of the host Member State and ESMA.

Q17: What are your views on the proposed draft ITS on cooperation arrangements as included in Chapter III of Annex VI?

3.4 CSD Recognition

Article 25 CSDR

ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the information that the applicant CSD is to provide to ESMA in its application for recognition under paragraph 6.

151. As noted in the DP, ESMA believes that the development of rules on EU recognition of CSDs should follow the general principle of non-discrimination between EU and non-EU CSDs. This suggests that the definition of the items that a non-EU CSD could provide for EU recognition purposes could be similar to the elements required for the registration of an EU CSD, as defined in Article 17 CSDR, with due adaptations. The adaptations regard the fact that the supervision of the recognised CSD would be performed outside the EU, and ESMA should rely on cooperation with the home supervisor.
152. Only a much reduced number of stakeholders commented on recognition issues, but mostly supporting the proposed approach agreed with this approach, provided that the necessary adaptations are in line with the PFMI and that detailed requirements evidencing compliance with CSDR are not required.
153. ESMA has taken this feedback into consideration when drafting the RTS and suggesting that the standards are prescriptive, replicating the EMIR approach and specifying a list of all requirements for third country CSDs to apply for recognition.
154. Some stakeholders also proposed that the recognition process is on-going rather than one-off, i.e. that ongoing supervisory equivalence is ensured, and that no recognition is granted to CSDs from countries that do not recognise EU CSDs.
155. The suggestions on reciprocity and ongoing equivalence assessments regard the EC duties on the equivalence process rather than the ESMA duties under the recognition process, so they could not be taken on board. It is worth noting that equivalence will be a pre-requisite for EU recognition and as part of the equivalence process the European Commission will need to assess whether the third country has an effective equivalent system for the recognition of CSDs authorised under third country legal regimes.
156. The current CCP recognition practice at ESMA suggests that there is added value in receiving an assurance letter from the third country competent authority for the applicant CCP. A similar approach should be followed under the CSD recognition technical standards and such letter, addressed to ESMA, should confirm that the applicant CSD is duly authorised, supervised and compliant with all relevant requirements in the equivalent jurisdiction.

157. In addition to this letter, ESMA is also considering a self-assessment by the applicant CSD, so that apart from the third country competent authority that confirms that the CSD is supervised, the applicant CSD would also demonstrate how they comply with the equivalent third country requirements.
158. The current ESMA proposal is as follows:
- a. to require the third country CSD to provide a broad set of information which evidences that it meets the third country regulations and the essential requirements outlined in the PFMI;
 - b. to include ownership and structure of the legal entity, the services it intends to provide in the Union, its settlement discipline procedures, financial resources, participation criteria, links, investment policy. Information on this is essential to assess the structure of the CSD, the way in which services are offered in the EU and the risks that this might entail;
 - c. to require the applicant CSD to provide a confirmation from its competent authority certifying that the third country CSD is duly authorised, supervised and compliant with all relevant requirements in that jurisdiction; and
 - d. to require the applicant CSD to submit an objective self-assessment of compliance with the equivalent third country requirements.

Q18: What are your views on the proposed draft RTS on CSD recognition (Chapter IV of Annex II)?

3.5 Relevant Currencies

Article 12 CSDR

ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards specifying the conditions under which the Union currencies referred to in point (b) of paragraph 1 are considered to be the most relevant, and efficient practical arrangements for the consultation of the relevant authorities referred to in points (b) and (c) of that paragraph.

159. Under this mandate, ESMA is expected to define the criteria to determine which are the most relevant currencies to be considered for the purposes of ensuring that the central banks in the Union issuing the most relevant currencies in which settlement takes place are consulted by a CSD competent authority in the context of CSD authorisation and supervision.
160. This mandate regards cooperation among supervisors and other authorities rather than requirements for CSDs. For this reason this section has not been included in the DP. ESMA is now consulting formally on all draft technical standards and following discussions amongst authorities, presents the draft under Article 12 for public comments, considering that CSDs might be interested and want to comment on the relevance for certain authorities to receive detailed information on their activity.
161. The current ESMA approach is to consider the relative share of currency in the CSD's total value of securities settled on a delivery-versus-payment basis, calculated over a period of one year. In this vein, the most relevant Union currencies should be the three currencies with the highest relative calculated in accordance with paragraph 1 provided that each individual share exceeds 5%. The calculation of the relative share of the currencies should be calculated on an annual basis, in order to allow that the composition of the relevant authorities is regularly updated on the basis of the CSD activity.
162. ESMA has taken as a basis Article 1 of the Commission Delegated Regulation (EU) No 876/2013 (RTS on colleges for central counterparties) that regards the determination of the most relevant currencies for CCP college decisions. In line with that RTS, ESMA believes that in order for a currency to be relevant, a minimum percentage should be determined. Whilst percentages are always a challenge to define, the need for legal certainty and practical application suggests that a clear number should be provided for in the legislation. The number being proposed in this case is 5%, half of the one under EMIR, given that in the case of CSDs there are no mandatory colleges. In particular, the type of cooperation arrangements envisaged under CSDR contemplate exchange of information only. No specific role or voting power is granted to the relevant authorities.

Q19: What are your views on the proposed approach regarding the determination of the most relevant currencies?

3.6 Banking Type of Ancillary Services

Article 55 CSDR

ESMA shall, in close cooperation with the members of the ESCB and EBA, develop draft regulatory technical standards to specify the information that the CSD is to provide to the competent authority for the purpose of obtaining the relevant authorisations to provide the banking-type services ancillary to settlement.

ESMA shall also, in close cooperation with the members of the ESCB and EBA, develop draft implementing technical standards to establish standard forms, templates and procedures for the consultation of the authorities prior to granting authorisation.

163. In the DP, ESMA outlined the scope of information that a CSD should provide in its application to provide banking type of ancillary services or designate a credit institution.
164. Article 54 of CSDR states that a pre-requisite for a CSD, would be for the entity providing the cash settlement to already have a banking license and have an adequate recovery plan. Therefore this evidence must be provided in the application. Other proposed information to be provided in the application included evidence that the CSD or the separate entity meets the prudential requirements set out in Article 59 of CSDR, programme of operations and evidence that demonstrates that there are no adverse interconnections and risks stemming from the activities of the CSD or its relations with a designated credit institution. DP respondents expressed general support for this approach.
165. DP respondents provided suggestions of additional items that should also be included within the information to be provided. This included evidence of compliance with all outsourcing arrangements not just service level agreements, the alignment of recovery and resolution plans of the two entities where a credit institution is designated and the way in which possible conflicts of interest are addressed. ESMA considers these to be useful suggestions and has incorporated them into the proposed RTS.
166. DP respondents also noted that where a CSD is applying to designate a credit institution, it should also be required to demonstrate that it allows the credit institution to have prompt access to the collateral (in form of securities) related to its short term credit provision, which is maintained at the CSD. ESMA considered this and noted that the need for prompt access to collateral is not captured under Article 59 of CSDR (the prudential

requirements for credit institutions or CSDs authorised to provide banking type of ancillary services). Therefore this has also been incorporated into the proposed RTS.

167. One DP respondent commented that in order to reduce risk in the settlement system, CSDs should only perform banking services to a limited degree. However imposing limitations on the degree of banking services that a CSD can perform is outside the scope of the CSDR RTS/ITS mandates received by ESMA.
168. Another DP respondent commented that CSD core and related services should be provided by a different legal entity than that providing banking type of ancillary services, although they may be part of the same group. The rationale provided was that there would be implications on risk profile, particularly in insolvency proceedings, if all services are performed in the same legal entity. Requiring the separation of CSD core services and ancillary banking services in different legal entities is outside the scope of ESMA's mandate.
169. The main proposals contained in the Annex are as follows.
 - a. The RTS lists the information the CSD should submit to the competent authority in its application to provide banking type of services or designate a credit institution. The proposed approach and rationale is the same as that outlined in the DP, with the refinement of some points, as described above, following the DP feedback.
 - b. The RTS also includes the format and template that the CSD should use to structure and submit its application. CSDs should allocate reference numbers to the documents for ease of identification by the competent authority. The proposed template also lists all the required information, which should act as a checklist for the CSD to ensure all necessary information is submitted. This approach was taken successfully in previous occasions, notably applications for registration at ESMA as a credit rating agency or a trade repository.
 - c. The ITS outlines the steps that need to be followed once a competent authority receives an application for provision of banking-type ancillary services or designation of a credit institution. ESMA has proposed standardised templates to be used for:
 - the competent authority request for a reasoned opinion of other authorities;
 - the reasoned opinion by the competent authority;
 - the reasoned decision of the competent authority in response to a negative reasoned opinion from other authorities; and
 - requests from authorities for ESMA assistance in relation to the authorisation decision.

These templates should help to ensure that key information is provided in a clear and efficient manner, as well as facilitate supervisory convergence in the EU.

Q20: What are your views on the proposed draft RTS on banking type of ancillary services (Chapter VI of Annex II) and draft ITS on banking type of ancillary services (Chapter IV of Annex VI)?

4 CSD Requirements

4.1 CSD Participations

Article 18 CSDR

ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the criteria to be taken into account by the competent authorities to approve the participation of CSDs in legal persons other than those providing the services listed in Sections A and B of the Annex. Such criteria may include whether the services provided by that legal person are complementary to the services provided by a CSD, and the extent of the CSD's exposure to liabilities arising from such participation.

170. Article 18(4) determines that an authorised CSD may only have a participation in a legal person whose activities are limited to the provision of services set out in Sections A and B of the CSDR Annex, unless such a participation is approved by its competent authority on the basis that it does not significantly increase the risk profile of the CSD.
171. Recital 29 of the CSDR states that “in order to avoid any risk taking by the CSDs in other activities than those subject to authorisation under this Regulation, the activities of the authorised CSDs should be limited to the provision of services covered by their authorisation”. Additionally, they should not hold any participation, as defined in the Regulation by reference to the Fourth Council Directive 78/660/EEC of 25 July 1978, based on Article 54(3)(g) of the Treaty, on the annual accounts of certain types of companies, or any ownership, direct or indirect, of 20% or more of the voting rights or capital in any other institutions than the ones providing similar services.
172. An exception to the above rule is allowed in case of a participation approved by CSDs' competent authorities on the basis that it does not significantly increase their risk profile. This exemption is motivated by the existence of participations of CSDs which only bring limited risks (e.g. in trading venues).
173. The technical standard should specify the conditions under which the competent authorities may approve participations of CSDs to make sure that CSDs are not subject to additional risks, by means of a participation in another legal person with activities other than those specified in annexes A and B to CSDR. These criteria may include whether the

services provided by that legal person are complementary to the services provided by a CSD, and the extent of the CSD's exposure to liabilities arising from that participation.

174. Following the Discussion Paper feedback:

- a. on guarantees ESMA had considered to prohibit any CSD guarantees that lead or may possibly lead to an unlimited liability in virtue of a participation. This approach is being kept.

In response to the DP, there was wide support for this approach.

- b. On allowing for limited liabilities, ESMA's preliminary view was that they should be admitted under the condition that they are fully capitalised by means of highly liquid assets, with minimal market and credit risk (as under Article 46 on investment policy) and these items would only be able to be used in case of guarantee disbursement.

There was wide support for this approach with some concerns from two CSDs on implementation.

ESMA proposes to keep the approach and consider further implementation work, should stakeholders provide ESMA with further details on concrete implementation challenges and feasible ways forward.

- c. On limiting control, ESMA had considered to prohibit CSDs to have participations for which they have ensured control (or run the risk of being regarded as being in control by the relevant authorities or in a litigation case) unless covered by liquid capital, including retained earnings, which can only be used in case of materialisation of this risk. In addition, the CSD should provide independent risk analyses and a legal opinion by an independent law firm to properly quantify the risk and make it evident.

CSDs expressed substantial disagreement with this option since they believe that control may actually be useful to manage the risk from the participation and some highlighted that the recovery plan of the CSD could include these subsidiaries. Two stakeholders proposed that capital requirements should be used to control credit exposure and operational risk rather than limiting participations. This is however not possible to consider since CSDR expressly provides for capital requirements and (cumulatively and not alternatively) limits to participations, in different and complementary articles.

One stakeholder also proposed an exemption of CSDs with a banking licence from the participation requirements rules. ESMA did not take this view forward

since the exemptions are already provided for in CSDR itself. ESMA's view is therefore that the recovery plan would increase even more the depletion of CSD assets towards a subsidiary and this would not assist in keeping risk-free CSDs.

For these reasons the approach on limiting control was kept.

- d. On capping the percentage of income from participations, ESMA had proposed in the DP to limit these revenues to 20% of the total income of the CSD, based on the average of the preceding three years, if available. If not available, e.g. for newly established CSDs, the 20% limit should be based on the estimated revenues. No respondent expressed support for this measure, but also did not provide alternatives that satisfy the mandate, apart from expecting the NCAs to supervise. It must be noted that the vast majority of the 13 respondents to this question are CSDs. One CSD however raised an interesting point on the risk of CSDs to become dependent on the cost sharing from the participation (IT systems, employees, etc.).

175. ESMA has considered the arguments raised by stakeholders and decided to delete the 20% requirement and rely on the other proposed provisions under this mandate.

- a. On limiting participations to the securities chain, ESMA considered in the DP that participations of CSDs should be limited to entities pursuing the activities foreseen in the Annex to CSDR. Some CSDs called for a more flexible approach. ESMA is now proposing that CSDs may participate in entities that provide complementary services to the core or ancillary services of the CSD, including services offered by EMIR CCPs, MiFID regulated markets and EMIR TRs, but that such participations should in any case follow the other criteria (e.g. no unlimited liabilities, full capitalisation of potential liabilities emerging from participated entities, ...).
- b. Finally, a possible banning of CSDs from directly participating in CCPs divided stakeholders.

The respondents agreeing with the ban noted that such participation should not be admitted if the CCP recovery and resolution plan endangered the survival of the CSD. Conversely, respondents that rejected the ban stated that 'most likely no CSD will do such participation' due to capital requirements ('sufficient to regulate this without an explicit ban') and 'some benefits of common ownership' although not explaining them further.

ESMA's proposal is not to consider such a ban, provided that the CSD respects all the conditions set out to ensure a zero risk participation (e.g. no

unlimited liability/guarantee; control; no costs resulting from liquidity pressure or the insolvency of the CCP as they should be fully capitalised; and no extra capital burden on the CSD following the recovery or resolution of the CCP).

176. Following the general feedback to the DP, ESMA proposes that competent authorities may approve participations of CSDs in legal persons other than those providing the services listed in Sections A and B of the CSDR Annex if all conditions specified in the draft technical standards Annex III, Chapter II to this consultation paper are respected.

Q21: What are your views on the proposed draft RTS on CSD participations (Chapter II of Annex III)?

4.2 CSD Risk Monitoring Tools

Article 26 CSDR

ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards specifying at the CSD level and at the group level:

- a) the monitoring tools for the risks of the CSDs;*
- b) the responsibilities of the key personnel in respect of the risks of the CSDs;*
- c) the potential conflicts of interest;*
- d) the audit methods; and*
- e) the circumstances in which it would be appropriate, taking into account potential conflicts of interest between the members of the user committee and the CSD, to share audit findings with the user committee.*

177. In the DP, ESMA proposed that CSD should have a clear organisational structure with well-defined, transparent and consistent lines of responsibilities and effective processes to identify, manage, monitor and report the risks to which it is or might be exposed. ESMA was of the view that the CSD should take an integrated and comprehensive view of all relevant risks, which include the risks it bears from and poses to its participants and to the extent practical, clients and other entities. Many DP respondents expressed that monitoring tools should be limited to the risks faced by CSDs only, as it would not be realistic to assume that they can monitor the risks of their participants' clients. ESMA has considered this, but decided to keep the approach proposed in the DP to the extent possible as this is in line with the PFMI3, KC 3.
178. ESMA also proposed that a CSD should have a dedicated chief risk officer, a dedicated compliance officer, a dedicated chief technology officer and a dedicated independent internal audit function in order to ensure that key risks are appropriately managed. Many DP respondents believed that functions should be attributed to a single individual, but that individual should not be mandated to carry out that function full time as it may not always justify a full time job and some CSDs would not have sufficient resources to have separate functions. Some DP respondents also expressed their view that CSDs which are part of a group, should be allowed to share these functions within a group. Upon further reflection and consideration of the costs involved, ESMA now proposes that different individuals must carry out these functions, but these individuals may carry out other tasks within the CSD provided that any conflicts of interests are sufficiently managed. This is with exception of the internal audit function, which should not fulfil any other role in the CSD for independency reasons. If the CSD is part of a group it may share any of these functions with the group, or alternatively it can outsource the internal audit function to a third party in accordance with Article 30 of CSDR. If the internal audit function is outsourced, then the outsourced party cannot also be the external auditor.

179. In the DP, ESMA proposed that a CSD should maintain and operate effective written organisational and administrative arrangements to identify and manage any potential conflicts of interests and provided examples of what could constitute a conflict of interest. Respondents felt that some examples were too vague and further clarification was needed e.g. whether holding shares in a company that is a client of a CSD would automatically constitute a conflict, if the shareholding is not material. Within the draft RTS, ESMA provides examples of what a conflict of interest could be, but this is not a definitive or exhaustive list and ultimately it will up to the CSD to appropriately identify and manage any such conflicts.
180. ESMA stated that independent audits on a CSD's operations, risk management processes, internal control mechanisms and accounts should be performed on at least an annual basis in the DP. Respondents felt that it would be more proportionate to conduct these audits on a risk based approach rather than mandate it every year. Upon further consideration of costs and risks, ESMA is now of the view that these independent audits should be performed at least every 1-3 years, with the individual frequencies for different elements based on a documented risk assessment. Furthermore, there appeared to be some confusion amongst stakeholders whether independent audits had to be conducted by an internal or external auditor. This will be the CSD's discretion, as long as the audit is independent. However ESMA is of the view that a CSD should conduct an external audit on the internal audit function at least every 5 years to ensure it is effective.
181. ESMA previously consulted on what circumstances it would not be appropriate to share the audit report or findings with the user committee. The responses expressed by stakeholders were mixed. Some, mostly CSDs were of the view that results of audits should not be shared with the user committee by default, as it is likely to contain non-public information on detailed risk management procedures that should not be disclosed outside the CSD (with the exception of to its competent authority). Others felt that the audit report should be shared with the user committee where possible for transparency reasons, with any conflicts of interests assessed on a case by case basis rather than strict rules. Upon further reflection, ESMA is of the view that CSDs should not share its audit findings with the user committee by default as this may compromise the effectiveness of the internal audit function and the contents of the reports. ESMA has drafted the proposed RTS based on reasonable circumstances stated in the DP responses and would welcome any further input on this topic.
182. DP respondents also commented that ESMA should take into account that CSDs with a banking license are already subject to extensive audit requirements under CRD IV and any duplication and inconsistencies should be avoided. ESMA did not identify major inconsistencies between the audit requirements for CSDs and those for entities with a banking licence.

Q22: What are your views on the proposed draft RTS on CSD risk monitoring tools (Chapter III of Annex III)?
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4.3 CSD Record Keeping

Article 29 CSDR

ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the details of the records on the CSD services and activities to be retained by CSDs for the purpose of monitoring the compliance of CSDs with the provisions of CSDR, and draft implementing technical standards to establish the format of those records.

183. Under Article 29 of CSDR, ESMA is required to specify the details of the records on the CSD services and activities to be retained by CSDs for the purpose of monitoring the compliance of CSDs with the provisions of CSDR, as well as the format of those records.
184. Record keeping is an essential element for assessing CSD compliance with the relevant regulations and a useful tool to monitor CSD participants and, where relevant, clients activities and behaviours. Having considered the responses to the DP, ESMA has made a number of changes to the draft technical standards as set out below.
185. The DP feedback highlighted that rules on recordkeeping should primarily aim at allowing regulators to assess compliance with CSDR, and that they should not be meant to provide regulators with transaction data allowing them to oversee the activities of market participants. Therefore, several respondents suggested that the list of compulsory recordkeeping items should be reduced accordingly, and a more balanced approach to be found. In this respect, a suggestion was made to remove the following items from the list of CSD records as proposed in the DP:

SR3	Persons exercising control on Issuers
SR4	Country of establishment of persons exercising control on issuers
SR13	Persons exercising control on Participants
SR14	Country of establishment of persons exercising control on Participants
FR3	Client of the delivering participant, where applicable
FR9	Client of the receiving participant, where applicable

186. Having regard to the feedback from the DP, ESMA has removed fields SR3, SR4, SR13, and SR14 from the draft technical standards (while keeping fields FR3 and FR9, where known to the CSD), and has streamlined the proposed fields based on the relevant CSDR

requirements, in order to ensure that CSDs keep adequate records enabling at the same time the CSDs to comply with the applicable requirements depending on the services they provide, and the competent authorities to monitor the CSD's compliance.

187. Several respondents were in favour of a “maximum requirements” approach, providing a harmonised list of records that would ensure truly harmonised standards and a level playing field for CSDs. They argued that a minimum requirements approach could result in some national regulators ‘gold-plating’ the ESMA list and adding additional requirements, thereby introducing distortions among CSDs. At the same time, according to the respondents, ESMA should also give some flexibility to competent authorities not to require records that are not relevant for the particular CSD. On the other hand, they recognised there will be cases where a need is identified for regulators to have access to certain information that is not part of regular recordkeeping. In such cases, they argued that competent authorities should retain the possibility to request CSDs to keep and provide such information, but such requests will typically have a different justification and other purposes than assessing CSDR compliance.
188. Some respondents mentioned that, since the definition of a CSD in Article 2 of CSDR does not require CSDs to provide all three core services, but only two out of the three, recordkeeping requirements should take this into consideration.
189. Acknowledging the above-mentioned arguments put forth by stakeholders, ESMA has included a harmonised list of records and formats in the draft RTS (Chapter IV of Annex III) and draft ITS (Annex VII), which a CSD has to keep depending on the individual services provided by a given CSD in accordance with CSDR. At the same time, recognising that there may be cases where a need is identified for regulators to have access to certain information that is not part of regular recordkeeping, ESMA believes that the records required should be without prejudice to any further requests by the competent authority, while granting reasonable time for the CSD to implement the record-keeping of such additional information.
190. The majority of the responses to the DP highlighted that the quantity of data to be stored over (a minimum of) 10 years and related functionalities would result in potentially huge IT costs, as would require many CSDs to build an entirely new IT system, or at least to substantially overhaul their existing systems. Some of the proposed technical requirements, such as an online inquiry possibility, the possibility to re-establish operational processing, a query function through numerous search keys, and direct data feeds were found to be much more demanding than current CSD recordkeeping practices. According to the DP feedback, adapting to these requirements would require a combined investment of tens of millions of euros for CSDs.

191. It was also mentioned that, for CSDs participating in T2S in particular, having to develop a parallel system outside T2S would create a lot of complexity while negatively impacting the cost efficiencies generated by the use of a single, centralised platform for all T2S markets.
192. Another point that was raised was the presumably limited added value in keeping an unnecessarily heavy amount of data, especially given the burden it would potentially impose on regulators themselves, when making use of the data.
193. Many respondents argued that it is not necessary (and sometimes not possible) to require CSDs to maintain records online (immediately available) but that it should be sufficient to store the data offline as long as this data could be retrieved within a few days. They proposed the possibility to store the data offline as long as this data could be retrieved within a few days. This was seen to be a much more practical approach, considering the high amount of data involved.
194. Having regard to the DP feedback, ESMA has decided that the online inquiry possibility, the query function through numerous search keys, and the direct data feeds should not be mandated. However, given the need to ensure both that CSDs maintain adequate records that are useful for the provision of their services, and that competent authorities and relevant authorities have timely access to the relevant information for the exercise of their duties, ESMA considers that CSDs should maintain full and accurate records of all their activities, which should be readily accessible, including for business continuity purposes. In order to cover all the relevant requirements in accordance with CSDR, as well as the services provided by CSDs, taking into account the critical role of CSDs in guaranteeing a safe and efficient transfer and record of securities that exist to a large extent only in book entry form, and that are central points of reference for the securities markets, ESMA believes CSDs should keep the following categories of records:
 - a) Transaction/settlement instruction (flow) records (records of all transactions, settlement instructions and settlement restriction orders a CSD processes, including all information necessary to conduct a comprehensive and accurate reconstruction of each operation);
 - b) Position (stock) records in connection to the core services provided by a CSD (records of positions corresponding to all the securities accounts maintained by the CSD);
 - c) Ancillary services records depending on each of the ancillary services provided by a CSD;
 - d) Business records related to the CSD business and internal organisation.

195. Several respondents were against imposing the use of open, non-proprietary standards for recordkeeping purposes, as such a requirement would entail huge costs and would require significant changes to CSDs' system. The DP feedback highlighted that CSDs should be allowed to maintain records in a proprietary format wherever this format can be converted without undue delay into an open format that is accessible to regulators. ESMA agrees that a CSD may use a proprietary format only if this format can be converted without undue delay into an open format for reporting purposes to authorities in accordance with CSDR. This proposal is reflected in the draft ITS included in Annex VII.
196. The majority of the respondents were against the use of Legal Entity Identifiers (LEI) by CSDs in their records. According to the responses, such identifiers are not currently in use at CSD level, and their implementation has been limited so far to OTC derivatives markets, where CSDs are typically not involved. The respondents mentioned that imposing the compulsory use of LEI would require costly changes to current CSD systems and would also increase costs for CSD participants (who would subsequently be required to adapt their systems as well). Some respondents also mentioned that such a requirement would exceed the Level 1 mandate under Article 29 of CSDR.
197. Some respondents mentioned that specific challenges for direct holding markets should be carefully considered, given that, if the requirement to use LEIs were to include all account holders at these CSDs, this could encompass several hundred thousand companies. In their view, beyond imposing significant administrative costs on these companies, such a requirement would go against the principle, stated in the CSDR, of neutrality in relation to different account holding models in Europe. They also mentioned that the same general reasoning would apply if the requirement were to include issuers, most of which do not use LEIs today. Without denying the benefits linked to the use of LEIs in terms of harmonisation, the respondents emphasised that the CSDR technical standards would not be the right place to promote their wider use, that more analysis was needed, and that a gradual implementation of LEIs outside derivatives markets should be coordinated at global level.
198. ESMA believes that, in order to ensure consistency, including amongst requirements under different EU Regulations such as EMIR, MIFIR/MIFID2, all legal entities should be identified by a unique code. ESMA believes that to carry out their duties effectively and consistently, the authorities referred to in Article 29(2) of CSDR should be provided with data that is comparable among CSDs. The use of common formats also facilitates post-trading integration and the communication processes between CSDs and their participants based on an integrated technical environment. The use of common formats across different financial market infrastructures facilitates the greater use of these formats by a wide variety of market participants, thus promoting standardisation. ESMA believes that standardised procedures and data formats across CSDs reduce the costs for market participants and facilitate the tasks of supervisors and regulators. At the same time, ESMA

acknowledges the significant financial burden that the compulsory use of LEIs especially in the context of CSD communication processes with participants could impose on CSDs and CSD participants. Therefore, ESMA considers that Bank Identification Codes (BIC) may be used as an alternative to LEIs, provided that the CSDs are able to convert to LEIs for reporting purposes to authorities, which would enable the authorities to centralize and compare the data received under different regulations and better monitor, supervise and oversee the market activity, the activity of single market players and eventually better detect possible sources of systemic risk.

199. The DP feedback highlighted that CSDs would require sufficient time to implement the recordkeeping requirements, and would face a considerable challenge in mobilising the required human resources. It was suggested that CSDs would need on average slightly more than 14 months in order to fully comply with the recordkeeping rules as presented in the DP. ESMA believes that, in accordance with CSDR, CSDs will have to comply with the recordkeeping requirements in order to be authorised under CSDR, which, in principle, would need to happen within 12 months after the entry into force of the relevant technical standards (6 months for a CSD to apply for authorisation and 6 months from a complete application for the competent authority to grant or refuse authorisation). As mentioned in the previous paragraphs (see the 3rd, 11th, 12th, 15th paragraphs of this section), ESMA has not included in the proposed technical standards the requirements that were found to be the most burdensome by the DP respondents, ESMA's view is that no additional time would be necessary for the CSDs to comply with the CSD requirements.

Q23: What are your views on the proposed draft RTS on CSD record keeping (Chapter IV of Annex III) and draft ITS on CSD record keeping (Annex VII)?

Q24: What are your views on the types of records to be retained by CSDs in relation to ancillary services as included in the Annex to the draft RTS on CSD Requirements (Annex III)? Please provide examples regarding the formats of the records to be retained by CSDs in relation to ancillary services.

4.4 Reconciliation Measures

Article 37 CSDR

ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the reconciliation measures a CSD is to take in order to ensure the integrity of the issue.

200. Under Article 37 of CSDR, ESMA is required to specify the reconciliation measures a CSD is to take in order to ensure the integrity of the issue.
201. ESMA believes that the preservation of the rights of issuers and investors is essential for the orderly functioning of a securities market. Therefore, ESMA considers that a CSD should employ appropriate rules, procedures, and controls to prevent the unauthorised creation or deletion of securities, and conduct at least daily reconciliation of the securities issues that it maintains. A CSD should, in particular, maintain robust accounting practices and perform auditing to verify that its records are accurate, and that its reconciliation measures as well as the cooperation and information exchange measures in connection to reconciliation are adequate.
202. ESMA also believes that, in order to effectively ensure the integrity of the issue, the reconciliation measures referred to in Article 37 of CSDR should apply to all CSDs regardless of whether or not they provide the notary service referred to in CSDR in relation to the respective securities issue.

Extra reconciliation measure comparing the previous end of day balance with all settlements made during the day and the current end-of-day balance

203. ESMA has consulted on the costs and benefits of an extra reconciliation measure consisting in comparing the previous end of day balance with all settlements made during the day and the current end-of-day balance. On the one hand, the majority of the CSD respondents were against the extra reconciliation measure, specifying that it would not be necessary. On the other hand, the respondents representing CSD participants were strongly in favour of such a measure. No concrete estimates of costs were provided. Given the strong support expressed by CSD participants, ESMA has decided to include a requirement regarding the extra reconciliation measure in the draft RTS.

Preventing settlement in a securities issue until reconciliation problems have been fixed

204. The DP feedback showed split views on the measure to prevent settlement in a securities issue until reconciliation problems have been fixed. Some respondents mentioned that blocking settlement in case of a reconciliation problem is disproportionate. Others strongly supported blocking settlement of a securities issue in case of a reconciliation problem, as not having this in place could significantly increase the discrepancy in times of high

settlement volumes. They also highlighted that this function will be provided by T2S with the support of industry participants.

205. In order to ensure a proportionate approach without jeopardising the integrity of the issue, ESMA considers that CSDs should analyse any problems resulting from the reconciliation process and try to solve them before the beginning of settlement on the following business day. Where the reconciliation process reveals an undue creation or deletion of securities, ESMA believes that it is crucial for ensuring the integrity of the issue for the CSD to suspend the securities issue from settlement until the undue creation or deletion of securities has been remedied. In the event of suspension of the settlement, the CSD should inform without undue delay its participants and its competent authority and relevant authorities. The CSD should take all the necessary measures to remedy the undue creation or deletion of securities as soon as possible and should inform its competent authority and relevant authorities with regard to the measures taken. The CSD should resume settlement as soon as the undue creation or deletion of securities has been remedied, and should inform its participants and its competent authority and relevant authorities as soon as the undue creation or deletion of securities has been remedied.

Special reconciliation measures for corporate actions

206. The DP feedback reflected opposition from the majority of respondents to special reconciliation measures for corporate actions. Some respondents pointed out that the issuer or its agent is legally responsible for reconciliation of individual payments with individual shareholders in the case of dividend payments. Other respondents put the onus on participants to reconcile their own internal book-entry systems with the CSD records: the CSD should notify direct participants of entitlements, which would allow participants to clarify and eliminate discrepancies between determined values.
207. Some respondents stated that external reconciliation was the key to corporate actions processing: any inconsistencies should be solved urgently to allow the same baseline for corporate actions processing.
208. One respondent questioned why a CSD would not already have all necessary resources to fulfill these function.
209. Several respondents were in favour of regular reconciliation rather than special measures for corporate actions, and they also advocated for some flexibility for different market practices, and were keen to ensure that technical standards only applied to where a CSD was reconciling entitlements rather than where registrars might be doing so.
210. Given the fact that most of the reconciliation problems occur in the case of corporate actions processing, ESMA believes that CSDs should have additional reconciliation for corporate actions. At the same time and in order to take into account the concerns expressed during the DP consultation, ESMA considers that these measures should only apply in the case of corporate actions that would change the balance of securities accounts maintained by the CSD. The additional measures are specified in the draft RTS in Chapter V of Annex III.

Double-entry accounting principle and additional measures

211. In the DP, ESMA consulted on the use of the double-entry accounting principle and on whether it would give a sufficiently robust basis for avoiding securities overdrafts, debit balances and securities creation, and whether the technical standards should also specify other measures.
212. The DP feedback showed strong support for the double-entry accounting principle. Most of the respondents did not believe that additional measures would be necessary.
213. One respondent proposed the introduction of accounts that allow exclusively debit or credit balances. ESMA believes that this would not be in line with Article 37(3) of CSDR, according to which securities overdrafts, debit balances or securities creation shall not be allowed in a securities settlement system operated by a CSD.
214. Another proposal was the reconciliation of the double accounts intraday on a continuous basis, as well as reconciliation with participants' accounts.
215. One respondent also noted that in certain markets the record of ownership is maintained by the CSD participants rather than 'upstream' by a registrar or the issuer. As part of the requirements to ensure integrity of the issue, they therefore recommended that all CSDs should be required to provide participants with any necessary information to facilitate 'downstream' reconciliation.
216. ESMA welcomes the proposal regarding the need to involve participants in the reconciliation process and believes this is extremely important in order to ensure the integrity of the issue across the holding chain. Therefore ESMA believes that it is important for CSD participants to reconcile their records with the information received from the CSD on a daily basis. In order to achieve this, the participants and other holders of securities accounts maintained by a CSD should be entitled to receive the necessary information from the CSD for each securities account and for each securities issue on a daily basis. At the same time, ESMA considers that it is equally important that, upon request by the CSD, its participants and other holders of accounts in the CSD, as well as account operators, should provide the CSD with information that it deems necessary to ensure the integrity of the issue, in particular to solve any reconciliation problems.

Securities subject to immobilisation

217. Where the reconciliation process concerns securities subject to immobilisation, ESMA believes that a CSD should put in place adequate measures to protect the physical securities from theft, fraud, and destruction. Such measures should at least include the use of vaults whose design and location ensure a high level of protection against floods, earthquakes, fire and other disasters. Independent audit controls of the vaults, including physical inspections, should be performed at least annually, and the CSD should share the results of the audit controls with the competent authority.

Other entities involved in the reconciliation process

218. Where other entities are involved in the reconciliation process for a certain securities issue within the meaning of Article 37(2) of CSDR, ESMA considers that the measures to be taken by the CSD and those other entities to ensure the integrity of the issue should include at least the measures specified in the draft RTS included in Chapter V of Annex III.
219. At the same time, to accommodate specific practices and the different roles of the entities involved, ESMA is of the opinion that the competent authority should be able to require the CSD to implement other cooperation and information exchange measures in addition to those specified in the draft RTS.
220. In order to ensure that the cooperation and information exchange measures with other entities are adequately updated, ESMA believes that the CSDs should review them at least annually. Any material change to the cooperation and information exchange measures should be approved by the competent authority prior to its implementation.
221. In accordance with Article 48(6) of CSDR, linked CSDs should comply with the additional requirements for cooperation and information exchange measures provided in the draft RTS on Links and Access included in Chapter V of Annex III.

Q25: What are your views on the proposed draft RTS on reconciliation measures included in Chapter V of Annex III?

Q26: Do you believe that the proposed reconciliation measures where other entities are involved in the reconciliation process for a certain securities issue within the meaning of Article 37(2) of CSDR are adequate? Please explain if you think that any of the proposed measures would not be applicable in the case of a specific entity. Please provide examples of any additional measures that would be relevant in the case of specific entities.

Q27: What are your views on the proposed reconciliation measures for corporate actions under Article 15 of the draft RTS included in Chapter V of Annex III?

4.5 CSD Operational Risk

Article 45 CSDR

ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the operational risks and the methods to test, to address or to minimise those risks, including the business continuity policies and disaster recovery plans and the methods of assessment thereof.

222. In the DP, ESMA consulted on whether the definition of operational risk to be included in the RTS, should follow PFMI17.
223. The majority of the DP respondents agreed with the notion of aligning the RTS with the PFMI in this regard. Some respondents believed that ESMA should go beyond the PFMI definition to also include other aspects such as legal risk (similar to the definition of operational risk used in CRR) or loss.
224. After further consideration, ESMA has decided to not include a formal definition of operational risk in the RTS, but has aligned the specification of operational risk in the RTS to the PFMI17, and other complementary aspects that the CSD should consider.
225. In the DP ESMA proposed that a CSD should actively identify, monitor and manage the plausible sources of operational risk and establish clear policies and procedures to address them. This included an integrated system to identify, measure, monitor, report on and mitigate operational risk.
226. A number of respondents felt that the procedures should be for material operational incidents rather than all, as they believe that insignificant incidents will not affect the functioning of the CSD.
227. However ESMA is of the view that the RTS procedures should focus on all operational incidents, although how the CSD deals with them can depend on the materiality and significance. It is worth noting that a large number of insignificant incidents on the same issue could cause materiality, and some minor incidents may become major with time or changes in circumstances, so these should still be accounted for.
228. ESMA also proposed that a CSD should have a central function for managing operational risk.
229. Some respondents commented that CSDs should not be required to have an exclusive central function, due to limited resources as otherwise market participants would ultimately need to pay for the resulting costs. They also believed that operational risk management is inseparable from the business process management.

230. ESMA has taken into account the views expressed by stakeholders and clarified that the central risk function, which is already required (i.e. the presence of at least a chief risk officer) should also manage operational risk¹. This is without prejudice of the appropriate arrangements to mitigate over-reliance on individual employees.
231. ESMA had proposed that the operational risk management processes and measurement systems should be subject to regular reviews performed by internal or external auditors.
232. Stakeholders expressed that the operational risk management framework should only be subject to reviews by the internal auditor, not the external auditor.
233. ESMA took this comment into account and now requires an independent audit to be conducted as frequently as necessary after a documented risk assessment and at least every 2 years. It will be up to the CSD's discretion as to whether this independent audit is conducted by internal or external auditors, to the extent that its independence can be demonstrated.
234. On whether ESMA's proposed approach to risk identification and mitigation was sufficiently robust, the respondents agreed that CSD should consider all threats or causes of loss and potential disruption (i.e. material risks) and also agreed that the process should be both proactive through regular reviews and reactive following an incident.
235. ESMA now included more safeguards against cyber-threats, also following the recent regulatory developments on that front at the global level².
236. ESMA's proposal on information technology systems and the information security framework included an annual review as a minimum. The majority of respondents suggested that such review should be carried out every 3 to 5 years.
237. Further consideration has been given and ESMA concluded that an independent IT review should be done on at least an annual basis, given that operational risk is the primary risk that a CSD faces and robust IT systems are integral to mitigating this.
238. With reference to whether IT systems can be outsourced to another entity in the group or to a third party, CSDs are currently outsourcing their IT systems to the legal entities in the group the CSD is a part of and propose ESMA to allow them to continue performing such outsourcing.
239. ESMA kept the possibility of outsourcing, although it requires a number of conditions to be fulfilled, also including that the CSD should inform its competent authority before any IT systems related to the processing of core services are outsourced, and that this should

¹ As noted under risk monitoring tools and governance arrangements, a single individual should have the responsibility for each of the key functions (e.g. chief risk officer). These individuals may undertake other functions as well, provided that these are not operational or otherwise commercial and that specific procedures are adopted to identify and manage any actual or potential conflicts of interest.

² CPMI, *Cyber resilience in financial market infrastructures*, November 2014, <http://www.bis.org/press/p141111.htm>

also include an analysis of alternative service providers as well as robust arrangements for the selection and substitution of such providers.

240. Initially ESMA considered to require CSDs to be able to develop a model to forecast clients' demands for product and services to allow the CSD to correctly adapt its operational capacity.
241. CSDs suggest that they are not able to predict such a demand. ESMA considers that the approach used to achieve this outcome could be left to the CSD's discretion as long as the CSD has resilient systems that are adequate to deal with its operational needs and risks faced, including in the circumstances referred to in the draft RTS (Annex III, Chapter VI).
242. In the DP ESMA asked for input on elements to be taken into consideration for an adequate secondary processing site including its geographical risk profile compared to the primary site.
243. Respondents expressed that a minimum distance between the primary and secondary site should not be specified. They also felt that the CSD should be allowed to have its secondary site located in another Member State and the outsourcing of the operation of a secondary site to another legal entity. Another DP respondent expressed that at least one of the CSD's backups should be within the Union.
244. ESMA has taken these views into consideration, and in line with PFMI17, proposes that the secondary site should be located at a geographical distance from the primary site that is sufficient to have a distinct risk profile, but not specify the minimum distance or any restrictions on the country.
245. In the context of business continuity, ESMA proposed in the DP that in the event of disruption, backup systems should commence processing immediately with a maximum recovery time for the CSD's critical functions of 2 hours.
246. Some respondents disagreed with this proposal and claimed that T2S would foresee a maximum recovery time of 4 hours for critical CSD functions, not 2 hours.
247. Since T2S will be compliant with the PFMI1s and require a maximum recovery time of 2 hours for critical IT functions, ESMA proposes to keep a maximum recovery time of 2 hours for critical IT functions in line with the PFMI1s. This does not apply to non-critical IT functions of a CSD, where longer periods may be considered by the CSD, nor some cases of cyber-attacks, where the CSD may need some extra-time to trace the origin of the attack, possibly in cooperation with the authorities, including criminal or similar authorities.
248. In relation to disaster recovery and business continuity, one DP respondent commented that the terms 'Business Continuity Policy' and 'Disaster Recovery Plan' were used confusingly and a clear distinction should be made between policy and plan.

249. Finally, upon reflection ESMA considers that insurance should be allowed as an additional method to financially cover any risks where internal controls are not sufficient or eliminating risk is not a feasible option. This will bring an additional level of protection to the CSDs.

Q28: What are your views on the proposed draft RTS on CSD operational risks included in Chapter VI of Annex III?

4.6 CSD Investment Policy

Article 46 CSDR

ESMA shall, in close cooperation with EBA and the members of the ESCB, develop draft regulatory technical standards specifying the financial instruments that can be considered to be highly liquid with minimal market and credit risk as referred to in paragraph 3, the appropriate timeframe for access to assets referred to in paragraph 2 and the concentration limits as referred to in paragraph 5. Such draft regulatory technical standards shall, where appropriate, be aligned to the regulatory technical standards adopted in accordance with Article 47(8) of Regulation (EU) No 648/2012.

250. Under investment policy, in the DP ESMA has defined:
- a number of elements according to which financial instruments may be considered as highly liquid with minimal market and credit risk and hence investable by a CSD;
 - the appropriate timeframe for access to assets; and
 - the concentration limits in order to avoid that a CSD is over-exposed to the institutions in which it holds its own assets.

ESMA approach was to follow similar conditions applicable to highly liquid financial instruments as listed in the RTS for CCPs under EMIR (as envisaged explicitly by the CSDR) and do not discriminate between CSDs that are banks and CSDs that are not.

251. Only 14 out of 65 respondents to the DP commented on investment policy specifically. The main points raised are described below.
252. As regards a more detailed definition of highly liquid financial instruments, 'prompt access' and concentration limits, the vast majority of respondents stated that there is no interest in further definitions and some stated that:
- CSD's have a low risk profile (and managed via Art 59 for CSDs with a banking licence).
 - CSDs do not usually have investments other than cash.
253. A number of stakeholders disagreed with the correlation between maturity and liquidity on paragraph 181 of the DP. In particular, the proposed maximum of 2 year maturity for a CSD investment was considered restrictive. Stakeholders called for an extension of this period, taking into account that CSD's liquidity needs are lower than CCP's. An EU trade association proposed a *de minimis* threshold. One CSD suggested that CSDs with a 5 to

20 million capital might not need concentration limits. Another CSD suggested that maturity should be extended from 2 to 5 years and also combined requirements, e.g. 5 year average maturity for products with maturities below 11 years. There was no specific justification for these numbers. A third CSD suggested considering the proportion of assets/exposures to single entity against CSD's equity capital, because one single exposure may or not have significant impact on the risk of the CSD. Others found that "Central bank eligibility, in combination with the possibility to allow a wider range of instruments specifically for CSDs with a banking licence, should be considered for this purpose", and that the crisis illustrated that some highly liquid instruments may become illiquid, thus suggesting a strict definition of highly liquid instruments and also conservative definitions of concentration limits and policies to quickly access assets. Given the absence of convincing arguments and proper evidence supporting these arguments, the maturity requirement was kept.

254. Investment on derivatives was also defended by stakeholders, at least for hedging purposes. ESMA considers that investment in derivatives can bring risks to the CSDs and that a definition of hedging could be counterproductive as regards legal clarity. For this reason, the approach suggested specifies the case in which hedging may be duly justified and possibly necessary for the performance of CSD activities. This approach already departs from the one envisaged for CCPs, where investing in derivatives is allowed only for managing a default. ESMA is therefore sensitive to the argument that a CSD that performs multicurrency settlement may have exposures to more than one currency that need to be hedged. Where derivatives are the most appropriate way to cover this risk, and not for other purposes (e.g. profit), their use is allowed but limited to derivatives in respect of which reliable price data is published regularly and only for the time necessary to reduce the currency risk affecting the CSD.
255. There was also a call for ESMA to allow CSDs to consider external ratings and not solely an internal assessment before investing on financial instruments. On this last point ESMA underlines that the European Commission has strongly incentivised legislators in the EU to reduce the reliance on ratings³. This has also been the stance of the Financial Stability Board world-wide⁴. Not requiring or otherwise favouring external ratings under the CSDR technical standards may assist in this regard, so the suggestion to consider external ratings is not being taken on board. This does not prevent the use of external ratings. However, they cannot be relied upon as the sole of main assessment.
256. On the specific approach of not distinguishing between CSDs that do not provide banking services and CSDs that do so, some stakeholders disagreed with treating CSDs equally irrespective of whether they have a banking licence. Most respondents find that CSDs with banking services are subject to a more comprehensive regulatory framework (CRD/CRR) and that as a consequence, the RTS should only apply to CSDs that are not banks. In particular:
- some respondents agreed with the equal treatment of CSDs (banks/non-banks);

³ http://ec.europa.eu/internal_market/rating-agencies/docs/140512-fsb-eu-response_en.pdf as a followup of Regulation 462/2013 and Directive 2013/14/EU and the recent global commitments.

⁴ http://www.financialstabilityboard.org/publications/r_140512.htm

- others called for less stringent requirements for CSDs in comparison with CCPs, because:
 - o CSDs do not guarantee settlement like CCPs guarantee clearing;
 - o CSDs allegedly keep their capital in cash deposits.
- 257. CSDR does not enable CSDs that are banks to be treated differently from CSDs that are not banks as regards operational requirements since this is already addressed in CSDR via capital requirements (surcharge / Article 59) and specific authorisation requirements (Article 55) – the proposed standards do not discriminate between these two CSD types. Furthermore, the fact that CSDs do not guarantee settlement is not a valid argument to keep the CSDs at risk, by allowing them to invest in unsecured instruments.
- 258. On the appropriate timeframe for access to assets there was no input from stakeholders (which will also be taken into account in the cost-benefit analysis). ESMA's preliminary view is that a CSD should be able to access its cash assets on the same day and able to liquidate any securities it holds under its own name on the business day following the day where a decision to liquidate the assets is taken, to avoid further increases in liquidity risk of the CSD
- 259. On limits to the concentration of CSD assets in certain depositories or custodians, the ESMA approach is to assess exposures on both an individual (entity by entity) and an aggregated basis. If concentration is assessed in aggregate form, the relevant exposures should be treated as a single risk. In this context, the CSD should give consideration to the interconnections between credit institutions that are also major participants in the CSD. If and when concentration limits are surpassed, the CSD should take appropriate measures to bring the exposures within the limits, without any delay.
- 260. In order to further ensure that a CSD invests its financial resources in highly liquid instruments with minimal market and credit risks and for these investments to be liquidated rapidly with minimal price effect, as required under Article 46 of CSDR, ESMA included a requirement for CSDs to diversify their asset portfolio and establish appropriate concentration limits on the instruments and issuers in which to invest their resources. This approach is similar to the one taken in the case of CCPs under EMIR and fills the gap of the earlier ESMA proposals as presented in the DP.
- 261. Finally, to ensure a greater degree of protection to CSD assets, ESMA finds that a CSD should maintain its assets in a segregated account at CSD level also in the cases of links or other holding chains.

Q29: What are your views on the proposed draft RTS on CSD investment policy (Chapter VII of Annex III)?

5 Access and Links

5.1 Access of Participants to CSDs

Article 33 CSDR

ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the risks to be taken into account by CSDs when carrying out a comprehensive risk assessment following a request for access by a requesting participant, and by competent authorities when assessing the reasons for refusal by a CSD to grant access to a requesting participant, and the elements of the complaint procedure.

ESMA shall, in close cooperation with the members of the ESCB, develop draft implementing technical standards to establish standard forms and templates for the procedure regarding the assessment of a complaint following the refusal by a CSD to grant access to a requesting participant.

262. Under Article 33 of CSDR, ESMA is required to specify the risks to be taken into account by CSDs when carrying out a comprehensive risk assessment following a request for access by a requesting participant, and by competent authorities when assessing the reasons for refusal by a CSD to grant access to a requesting participant, and the elements of the complaint procedure. At the same time, ESMA is required to establish standard forms and templates for the procedure regarding the assessment of a complaint following the refusal by a CSD to grant access to a requesting participant.

Types of risks

263. The wide majority of respondents to the DP supported the ESMA proposal to distinguish between legal, financial and operational risks, while highlighting that this should not be an exhaustive list. The respondents found that the distinction between legal, financial and operational risks was reasonable and added clarity. In addition, the respondents agreed that the examples provided by ESMA for each category should not be considered as an exhaustive list. Some respondents mentioned that the list should not be considered binding. Having regard to the DP feedback, ESMA considers that CSDs should be able to take into account any risks provided that they fell into one of the three categories: legal, financial and operational risks.
264. According to some respondents, the criteria proposed by ESMA might also be a reason to terminate or block a relationship temporarily if the criteria were no longer met on an ongoing basis by the CSD participant. ESMA agrees with this suggestion, and this is reflected under the RTS included under Annex IV, which specify that a requesting party should comply on an on-going basis with the requirements concerning access, and that a

CSD can withdraw access where the requesting party no longer complies with the relevant access requirements.

265. Several respondents suggested the inclusion of other risks areas such as Anti-Money Laundering (AML), Know Your Customer (KYC), and compliance or commercial risks. ESMA has analysed these proposals and has concluded that AML should not be specifically mentioned under the technical standards, as CSDs are not in the scope of *Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing*. With regard to the compliance aspect, the proposed draft RTS specify that the requesting party should provide the information needed to assess its compliance with the legal requirements for participation in the securities settlement system operated by the CSD, or, as the case may, for the provision of services by the CSD, including the legal opinions or any relevant legal arrangements that demonstrate the ability of the requesting party to meet its obligations towards the CSD. As far as the commercial grounds are concerned, ESMA believes that including such a criterion would be contrary to the Level 1.
266. A large number of respondents argued that the risk analysis mentioned in Article 33(3) of CSDR should only be required in case of refusal of access. These respondents considered that the standards should not impact the procedure followed by CSDs when approving a new participant, but should be limited to exceptional cases where the CSD had doubts regarding a requesting participant's eligibility, and thus would want to refuse access. The criteria for refusal provided by ESMA should also not be interpreted as a substitute for the regular approval process for CSD participants based on participation criteria specified by each CSD. The cases of refusal should also be limited to certain circumstances whereby, even if the applicant met general access requirements, the CSD had doubts on its eligibility considering the relevant situation and the specific risk profile of the participant. ESMA agrees with these views.
267. Some respondents found the risk analysis to be unnecessarily detailed. In developing the draft RTS, ESMA has taken into account the PFMI (especially Principle 18 on Access and participation requirements, and Principle 20 on FMI links). ESMA therefore believes that the granularity included in the draft RTS is necessary to fully implement the relevant PFMI.
268. According to the majority of the respondents, a CSD should not assess the legal risk requirement on compliance with prudential requirements. According to these respondents, a CSD should be allowed to rely on the existing authorisations obtained by the requesting party, as, in most cases, participants would be subject to the relevant laws for investment firms (irrespective whether they are domiciled in the EU), meaning that they would already have had to demonstrate compliance to their relevant competent authority regarding most of the legal risks specified. According to the respondents, in these scenarios, it should be sufficient for the CSD to confirm that an entity was subject to relevant EU or non-EU regulation and should not require this information as a condition for membership. The argument for this was that, if a participant complied with the prudential requirements in its jurisdiction, then the CSD would not be in a position to make a judgement on the compliance of the participant with applicable prudential rules, which is an assessment that should be left to the relevant supervisor. ESMA believes that it is

important in order to ensure the safety of the securities settlement system operated by a CSD that all its participants, including third country participants comply with equally stringent requirements. As such, ESMA considers that, in the case of a requesting party established in a third country, the requesting party should be subject to a regulatory and supervisory framework comparable to that of the home Member State of the CSD, and the rules of the CSD concerning settlement finality referred to in Article 39 of CSDR should be enforceable in the jurisdiction of the requesting party.

269. Regarding legal risk, one respondent mentioned that the admission process and the CSD's eligibility policy should place a burden of proof on the applicant to demonstrate that it was in a position to protect the CSD from the risk of a breach of money laundering, terrorist financing, market abuse and applicable sanction provisions. According to the respondent, the applicant should be able to demonstrate that it had the policies, compliance frameworks and the tools to discharge this duty effectively. ESMA agrees with these suggestions and this is reflected in the draft technical standards.
270. Some respondents mentioned that in certain cases specific participation criteria were determined by national law in terms of entities that would be legally eligible as participants in the CSD. Yet, the respondents assumed that current national rules would need to be adapted in line with the new technical standards. It is ESMA's view that, according to Article 33(1) of CSDR, CSDs will have to adapt their participation requirements, in order to ensure that they are transparent, objective, and non-discriminatory allowing for fair and open access to the CSD with due regard to risks to financial stability and the orderliness of markets. In accordance with the draft RTS on CSD Authorisation proposed by ESMA included in Chapter II of Annex II, the participation requirements will have to be reviewed by the competent authorities as part of the process of authorisation under CSDR, and later on as part of the review and evaluation process.
271. Certain respondents believed that the technical standards should not prevent unregulated entities (such as corporates) to become participants, as corporates would often use the CSD services in the repo market. ESMA believes that the types of entities that may be participants in a securities settlement system operated by a CSD should observe the Settlement Finality Directive (SFD) requirements alongside the requirements specified under CSDR and the relevant technical standards.

Timeframes

272. The wide majority of respondents supported the timeframes propose in the DP and qualified them as reasonable.
273. Some respondents mentioned that the standards regarding access to participants would benefit from a far fuller consultation with enforcement agencies to address the scenario that an applicant was refused by the CSD because it had failed to satisfy the client due diligence and know your customer standards of the CSD. They also mentioned that the interpretative burden should not be underestimated, as, for instance, third countries applied sanctions regimes extra-territorially and a CSD should therefore assess, often on

the basis of unclear and untested legal assessments, the degree to which it would be exposed to a risk of violation.

274. Some respondents considered the timeframes as being unreasonably long and not proportionate to the risk of inappropriate access being provided, as, in a worst case scenario, a potential participant would have to wait 10 months prior to on-boarding taking place.
275. ESMA considers that, in order to ensure a harmonised and transparent approach across the EU, it is useful to have specific deadlines for each stage that is part of the complaint. The timeframes proposed by ESMA are specified under Article 4 of the RTS included in Annex IV.

5.2 Access of Issuers to CSDs

Article 49 CSDR

ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the risks to be taken into account by CSDs when carrying out a comprehensive risk assessment following a request by an issuer for recording its securities in a CSD, and competent authorities when assessing the reasons for refusal by a CSD to provide services to an issuer, and the elements of the complaint procedure.

ESMA shall, in close cooperation with the members of the ESCB, develop draft implementing technical standards to establish standard forms and templates for the procedure regarding the assessment of a complaint following the refusal by a CSD to provide services to an issuer.

276. Under Article 49 of CSDR, ESMA is required to specify the risks to be taken into account by CSDs when carrying out a comprehensive risk assessment following a request for access following a request by an issuer for recording its securities in a CSD, and by competent authorities when assessing the reasons for refusal by a CSD to provide services to an issuer, and the elements of the complaint procedure. At the same time, ESMA is required to establish standard forms and templates for the procedure regarding the assessment of a complaint following the refusal by a CSD to provide services to an issuer.

Types of risks

277. A distinction of legal, financial and operational risks was widely supported and considered reasonable. The DP respondents found the examples provided by ESMA for each category to be helpful indications but they said these should not be considered as an exhaustive list. These comments were similar to the one already described in the 2nd paragraph of Section 5.1 above, where ESMA's view was already reported.
278. Several respondents suggested that the proposed risks were not enough for carrying out a comprehensive risk analysis. In their opinion, further risk areas should be considered such as compliance, AML and KYC risks, legal risks with regard to the lack of reliable information sources (e.g. no publicly accessible commercial register) or tax conditions linked to the securities, as well as political and environmental risks and circumstances. ESMA already addressed similar comments under the 4th paragraph of Section 5.1 above and the same conclusions can be drawn in this case.
279. With regard to legal risks, some respondents mentioned that it might be questionable if a product which was considered to be a security in one jurisdiction should be accepted by a CSD if its own jurisdiction did not deem this product to be a security. ESMA considers that a CSD should be able to refuse to provide services to an issuer if the issuer is not able to

guarantee that the securities have been issued in a way enabling the CSD to ensure the integrity of the issue in accordance with Article 37 of CSDR.

280. Several respondents highlighted that the technical standards should not affect the general right for CSDs provided in Article 49 (3) of CSDR to refuse issuers in cases where the CSD did not provide notary services in relation to securities constituted under the law of the requesting issuer. ESMA agrees with this, and believes this is explicitly mentioned under Article 49(3) of CSDR.
281. Some respondents proposed that a rule on the language of the issuance documentation should be put in place, such as besides the home language, a certified translation in English is also provided. According to Article 49(1)(3) of CSDR, a Member States shall ensure that a list of key relevant provisions of their law is compiled and competent authorities shall communicate that list to ESMA by 18 December 2014. This information will be available in the original language and in English in ESMA website as of 18 January 2015.

Timeframes

282. The wide majority of respondents supported the timeframes proposed by ESMA in the DP, with a call for allowing for some flexibility in certain cases.
283. Some respondents argued that it would not be reasonable or proportionate for the regulatory authority to put itself in a position to force a CSD that it supervised to breach its compliance standards by requiring it to admit a specific security.
284. ESMA considers that in order to ensure a harmonised and transparent approach across the EU, it is useful to have specific deadlines for each stage that is part of the complaint. The timeframes proposed by ESMA are specified under Article 4 of the RTS included in Annex IV.

5.3 Access between CSDs

Article 52 CSDR

ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the risks to be taken into account by CSDs when carrying out a comprehensive risk assessment following a request for access by a requesting CSD, and competent authorities assessing the reasons for refusal by a CSD to grant access to a requesting CSD, and the elements of the complaint procedure.

ESMA shall, in close cooperation with the members of the ESCB, develop draft implementing technical standards to establish standard forms and templates for the procedure regarding the assessment of a complaint following the refusal by a CSD to grant access to a requesting CSD.

285. Under Article 52 CSDR, ESMA is required to specify the risks to be taken into account by CSDs when carrying out a comprehensive risk assessment following a request for access by a requesting CSD, and by competent authorities when assessing the reasons for refusal by a CSD to grant access to a requesting CSD, and the elements of the complaint procedure. At the same time, ESMA is required to establish standard forms and templates for the procedure regarding the assessment of a complaint following the refusal by a CSD to grant access to a requesting CSD.

Procedure

286. In general, ESMA's proposal was supported. Several respondents mentioned that, whenever the setup of the link required developments (customised link), those costs should be at the expense of the requesting CSD, and that the requesting and receiving CSDs would have to agree on the scope of development, cost and time frame as 8 months might not be sufficient for the developments. In order to accommodate this, ESMA proposes that, in the case of customised links that require a significant development of IT tools, a receiving CSD should have 8 months to grant access to a requesting CSD, unless otherwise agreed by the requesting and receiving CSDs (Article 4(10(2) of the draft RTS included in Annex IV).
287. According to several respondents, besides regulating the link acceptance or refusal procedures, the technical standards should also establish a reasonable timeframe in which the link should be implemented as link implementation timeframes had been access barriers in some markets in the past. ESMA agrees and this is reflected in the draft RTS.

TARGET2-Securities

288. The majority of the respondents mentioned that the technical standards should take into account that all T2S CSDs would open links with each other and should provide for a rule if the reason for a delay or refusal was T2S related.
289. The majority of the respondents highlighted that the technical standards should take into account that a CSD requesting to become a participant would imply setting up a CSD link, which may be standard, customised or interoperable. According to the respondents, the procedures and timelines for granting access for CSDs as participants and for standard CSD link access should be aligned and the timelines should be coordinated. At the same time, they mentioned that the standard access procedure would not be applicable in the case of interoperable links when as there would be specific authorisation requirements.

290. Several respondents mentioned that, having in mind T2S, the extension of the three-months' time period for a requesting CSD to provide full written reasons for a refusal should be possible upon request of the CSD and should not be unreasonably withheld. ESMA would like to underline that the three month deadline is specified in the Level 1 text (Article 52(1) of CSDR), therefore there is no room to depart from it at the level of the RTS.

5.4 Access between a CSD and another Market Infrastructure

Article 53 CSDR

ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the risks to be taken into account by CSDs when carrying out a comprehensive risk assessment, and by competent authorities when assessing the reasons for refusal in accordance with paragraph 3 of Article 53 of CSDR, and the elements of the procedure referred to in paragraph 3 of Article 53 of CSDR.

ESMA shall, in close cooperation with the members of the ESCB, develop draft implementing technical standards to establish standard forms and templates for the procedure referred to in paragraphs 2 and 3 of Article 53.

291. Under Article 53 of CSDR, ESMA is required to specify the risks to be taken into account by CSDs when carrying out a comprehensive risk assessment, and by competent authorities when assessing the reasons for refusal in accordance with paragraph 3 of Article 53 of CSDR, and the elements of the procedure referred to in paragraph 3 of Article 53 of CSDR. At the same time, ESMA is required to establish standard forms and templates for the procedure referred to in paragraphs 2 and 3 of Article 53.
292. Given that, under Articles 35 and 36 of MiFIR, ESMA has to develop draft technical standards covering access to a CCP by a trading venue and access to a trading venue by a CCP, following the public consultations on the draft technical standards under MiFIR and under CSDR, ESMA will analyse the need to further align the respective requirements.

Types of risks

293. In line with what already reported under the 2nd paragraph of Section 5.1 above, there was broad agreement regarding the types of risks to be taken into consideration in the risk analysis when justifying the refusal of links with other market infrastructures (distinguishing between legal, financial and operational risks was seen as reasonable). The examples provided by ESMA for each category were considered helpful indications, but at the same time the majority of the respondents highlighted that they should not be considered as an exhaustive list. Given the similarities of the issues already addressed, please refer to the 2nd paragraph of Section 5.1 for ESMA's view on the matter.
294. Similarly to what already described under the 4th paragraph of Section 5.1 above, several respondents mentioned additional risks which should be taken into consideration, such as: compliance risks (especially in the case of third country entities) with AML, anti-terrorism financing, and sanction regimes, KYC, while others were against the inclusion of the criterion regarding the necessary internal anti-money laundering, anti-terrorism financing

and anti-tax evasion measures. ESMA's view on these matters has already been reported under the 4th paragraph of Section 5.1 above.

295. With regard to legal risks, some respondents mentioned that, even if the requesting market infrastructure were a regulated entity and its framework might be comparable to that of the CSD, it might not have the regulated status required by the CSD, as, for example, in order to ensure adequate insolvency protection of transfer orders in the settlement system, the CSD should be able to require that the infrastructure fell within the scope of the CSD's local legislation regarding Settlement Finality. Therefore, the respondents proposed that this should be covered by adding a reference to compliance with the CSD's rules and procedures or by replicating the insolvency risk criterion listed under participation requirements. Please see ESMA's view as mentioned under the 7th paragraph of Section 5.1 above.
296. As far as operational risk is concerned, some respondents mentioned that, given that access by another market infrastructure to a CSD generally involved a set of customised bilateral arrangements to be put in place, and that such developments could put strains on the CSD's IT and operational prioritisation, even if the requesting infrastructure were willing to pay for certain customised developments, a CSD might not be able to find the necessary internal or external expertise to meet the request within a reasonable deadline without putting other critical projects at risk. Therefore, the respondents suggested that refusal on such grounds should be permitted under the technical standards. ESMA believes that a CSD could deny access if granting access required the receiving CSD to undertake significant changes of its operations that would affect the risk management procedures or the smooth functioning of the securities settlement system operated by the receiving CSD, but not for other reasons that are not risk related.

Scope

297. Several respondents highlighted that the CSDR foresees access from other market infrastructures to CSDs as well as access from CSDs to other market infrastructures. Therefore, in their opinion, limiting CSDR technical standards to specifying the conditions for the refusal of access of the CSD to other market infrastructures – and not covering the reverse situation – could result in a gap in the regulatory treatment of access between CSDs, CCPs and trading venues. While acknowledging the arguments put forth by the DP respondents, ESMA recognizes that the Level 1 mandate (Article 53(4) of CSDR) refers only to the risks to be taken into account by CSDs when carrying out a comprehensive risk assessment. Given the fact that the RTS under Article 53 of CSDR only refer to the risks to be taken into account in the context of access by a CCP and a trading venue to a CSD, and not also in the context of access by a CSD to a CCP or a trading venue ESMA considers that there will be a gap in the regulatory treatment of access between CSDs, CCPs and trading venues, especially as this type of access between infrastructures is not covered under MIFID II/ MIFIR either. Therefore, ESMA has prepared a separate CP in order to consult interested parties for the purpose of elaborating guidelines on the access to a CCP or a trading venue by a CSD, in order to clarify the application of Article 53 of CSDR.

298. CCP respondents mentioned that CCPs should be granted the same rights of the CSDs' in terms of refusal of access to other market infrastructures, and that the refusal procedures under Article 53 of CSDR and the respective technical standards should apply to all parties requesting access. ESMA supports this view, which is reflected in the technical standards included under Annex I. In this case, the Level 1 mandate (Article 53(4) of CSDR) covers the procedures involving access by a CSD to a CCP or to trading venue, not only access by a CCP or a trading venue to a CSD.

Authorisation

299. Several respondents mentioned that, for the authorisation process, CSDs and their competent authorities should be allowed to use some of their current supervisory or self-assessments and reporting tools/data flows to avoid duplication, such as for instance the assessments under the CPSS-IOSCO Principles for Financial Market Infrastructures (PFMIs), and ESCB assessments, including for CSD links. ESMA considers that once the technical standards under CSDR enter into force, they would supersede the PFMIs in the areas covered by the technical standards, however ESMA would like to emphasize that the technical standards developed under CSDR take into account the PFMIs

Timeframes

300. There was broad support regarding the timeframes proposed by ESMA in the DP. Several respondents proposed that the competent authority should have the possibility to grant an extension of the three months period for a fully reasoned response upon the dedicated request and justification by the receiving CSD. ESMA would like to underline that, similar to the deadline applicable in the case of responses to requests to establish CSD links (mentioned under the 6th paragraph of Section 5.3 above), the three month deadline is specified in the Level 1 text (Article 53(2) of CSDR).
301. Several respondents mentioned that the three months for the receiving party to provide access to the requesting party upon request of the competent authority might be insufficient for the CSD to provide access, as such access might entail IT and other investments due to which a secure and efficient roll-out might not be possible in such short timeframe. ESMA would like to underline that the three month deadline is specified in the Level 1 text (Article 53(3) of CSDR).

Q30: What are your views on the proposed draft RTS on access (Chapters I – III of Annex IV) and draft ITS on access (Annex VIII)?

5.5 CSD Links

Article 48 CSDR

ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the conditions provided for in paragraph 3 of Article 48 of CSDR under which each type of link arrangement provides for adequate protection of the linked CSDs and of their participants, in particular where a CSD intends to participate in the securities settlement system operated by another CSD, the monitoring and managing of additional risks referred to in paragraph 5 of Article 48 arising from the use of intermediaries, the reconciliation methods referred to in paragraph 6 of Article 48, the cases where DVP settlement through CSD links is practical and feasible as provided for in paragraph 7 of Article 48 and the methods of assessment thereof.

302. Under Article 48, ESMA is required to specify the conditions provided for in paragraph 3 of Article 48 of CSDR under which each type of link arrangement provides for adequate protection of the linked CSDs and of their participants, in particular where a CSD intends to participate in the securities settlement system operated by another CSD, the monitoring and managing of additional risks referred to in paragraph 5 of Article 48 arising from the use of intermediaries, the reconciliation methods referred to in paragraph 6 of Article 48, the cases where DVP settlement through CSD links is practical and feasible as provided for in paragraph 7 of Article 48 and the methods of assessment thereof.

Conditions for the adequate protection of linked CSDs and of their participants

303. In general, ESMA's proposal regarding the conditions for the adequate protection of linked CSDs and of their participants as included in the DP was supported. Several respondents raised concerns regarding the requirement for the receiving CSD to conduct an "extensive" analysis of the requesting CSD. Respondents proposed that existing link assessments should be taken into account to avoid duplication. Some respondents also mentioned that the risk analysis by the receiving CSD may be an unnecessary repetition if the requesting CSD is also subject to CSDR.
304. Some respondents mentioned that, for a standard link, the requesting CSD should go through a similar on-boarding process as a regular CSD participant, in addition to the procedure ESMA proposed in the DP. ESMA agrees that, in a direct link, a requesting CSD should meet the requirements of the receiving CSD's participation rules.
305. Some respondents highlighted that, for any link agreement regardless of whether it is standard, DVP, bespoke or interoperating, the place of settlement should be clarified for a given transaction to determine the underlying law to be taken into account. ESMA believes it is important in order to ensure legal certainty that, before the establishment of a link with a third country CSD, the requesting CSD should perform an initial verification of the local legislation applicable to the receiving CSD. In performing such verification, the CSD should ensure that securities maintained in the securities settlement system operated by the receiving CSD benefit from a level of asset protection that has

comparable effects to the one ensured by the regime applicable in the case of the securities settlement system operated by the requesting CSD. The requesting CSD should require legal opinions addressing at least the following issues:

- a) the entitlement to the securities, including the law applicable to proprietary aspects, nature of the rights on the securities, permissibility of an attachment or freeze of the securities; and
- b) the impact of insolvency proceedings on at least segregation, settlement finality, procedures and deadlines to claim the securities.

306. Several respondents suggested among the legal risks to be considered: the non-compliance with AML, anti-terrorism financing, sanction regimes. Please see ESMA's view as mentioned under the 4th paragraph of Section 5.1 above.
307. Some respondents opposed the equal treatment of standard and customised links. In their opinion, a standardised link should be treated as any participation request to a CSD, while a customised risk might actually deteriorate a CSD's risk profile due to diverging operating conditions applying to various participants. As such, it was suggested that the additional requirements should apply to customised links in addition to the "normal" participation requirements. ESMA maintains its view as expressed in the DP, according to which customised links and standard links should be treated equally from a risk perspective, as customisation is normally intended to reduce operational risk by providing for better efficiency and more automation in the communication procedures.
308. Some respondents mentioned that the entirety of the CPSS-IOSCO risk identification standards should apply, including custody risk and, in the case of customised links, the additional litigation risk and project management risk. ESMA has taken into account the CPSS-IOSCO PFMI when drafting the technical standards included under Annex IV.
309. In order to mitigate credit and liquidity risks that may arise from a CSD link, ESMA believes that a requesting CSD that is not authorised to provide banking-type ancillary services in accordance with Article 53 of Regulation (EU) No 909/2014 should not receive banking-type of ancillary services from a receiving CSD authorised to provide banking-type ancillary services in accordance with Article 53 of Regulation (EU) No 909/2014, in relation to the settlement of the cash leg to be processed through the link.

Interoperable links

310. In order to ensure safe and efficient interoperable links, ESMA considers that an interoperable link should be established and maintained under the following conditions:
- a) The linked CSDs should agree on common standards concerning reconciliation, the opening hours for particular processes, corporate action processing and cut-off times.

- b) The linked CSDs should establish a common IT interface for transmission of instructions between themselves and common communication structures.
- c) In case of an interoperable link allowing for DVP settlement, the linked CSDs should synchronise the settlement batches, where settlement occurs in batches.
- d) The linked CSDs should agree on common risk management models.
- e) The linked CSDs should agree on common contingency and default procedures.

Risk monitoring and management when using indirect links or an intermediary to operate a CSD link

- 311. In general, ESMA's proposal regarding the additional risks arising from the use of intermediaries as included in the DP was supported. CSD respondents would like an additional 6 months for the application of the requirements regarding the use of intermediaries in the case of links, allowing them enough time in order to perform the reassessment of indirect links. ESMA considers that CSDs already have 6 months for the application of the requirements in accordance with Article 69(2) of CSDR, according to which CSDs shall apply for all authorisations that are necessary for the purposes of this Regulation and shall notify the relevant CSD links within six months from the date of entry into force of all the regulatory technical standards adopted under Articles 17, 26, 45, 47, 48, and, where relevant, Articles 55 and 59 of CSDR.
- 312. Some respondents proposed that a differentiation should be made between indirect links involving a commercial bank and indirect links involving an investor CSD as intermediary. In their opinion, in the latter case, the risk profile of the link would be substantially reduced and therefore they proposed that this should be recognised by introducing different regimes for the two types of indirect links. It is ESMA's view that the so-called 'relayed links'⁵ are in fact composed of two direct links (one between the issuer SSS and the intermediary SSS, and one between the investor SSS and the intermediary SSS) and therefore the provisions regarding direct links should apply accordingly.
- 313. Some respondents mentioned that, in the case of indirect links within the EU, where custodian banks are used as intermediaries, they would already be regulated from the risks perspective by other regulations such as CRR.

⁵ A 'relayed link' is a contractual and technical arrangement that allows issuer and investor central securities depositories (issuer and investor CSDs) to hold and transfer securities through an account with a third CSD (a "middle CSD"), which acts as an intermediary (*Glossary of terms related to payment, clearing and settlement systems* published by the European Central Bank: <https://www.ecb.europa.eu/pub/pdf/other/glossaryrelatedtopaymentclearingandsettlementsystems.pdf>)

314. Some respondents suggested that recovery and resolution procedures of the intermediary should be examined as well. ESMA considers that, in order to ensure a high degree of protection of the assets of the CSD and of its participants, the use of an intermediary in a CSD link should ensure that the proceeds from settlement are promptly transferred to the requesting CSD.
315. In order to ensure the protection of CSD assets and of the CSD participants' assets against the insolvency of the intermediary, ESMA believes that at least an individually segregated account at the receiving CSD should be used for the operations of the link. The requesting CSD should ensure that it can access the securities held in the individually segregated account at any point in time, including in the event of a change or insolvency of the intermediary.
316. In order to ensure that an intermediary which operates a CSD link, i.e. an intermediary that operates the securities account(s) that the requesting CSD has in the receiving CSD, ESMA considers that the respective intermediary should not have any property rights on the securities that the requesting CSD has in the receiving CSD, and it should not provide safekeeping services for the requesting CSD.

Reconciliation measures in the case of linked CSDs

317. ESMA's proposal included in the DP regarding reconciliation measures in the case of linked CSDs was broadly supported. Given the DP feedback, ESMA has kept the reconciliation measures proposed in the DP and has included them in the draft RTS.
318. In order to ensure the integrity of the issue, ESMA considers that, where the reconciliation process reveals an undue creation or deletion of securities, the linked CSDs should suspend the securities issue for settlement until the undue creation or deletion of securities has been remedied. It is also important that the linked CSDs should analyse the impact and, where considered necessary, should harmonize any restrictions regarding the respective securities issue, involving also the intermediary in the case of an indirect link.
319. As another essential measure to ensure the integrity of the issue, ESMA believes it is important for linked CSDs to have an additional reconciliation measure in case of a corporate action that would change the balance of securities accounts held by a CSD with another CSD. For this, the issuer CSD should ensure the transmission, including through its participants, of timely information on corporate actions processing to all the investor CSDs involved in the holding chain for a specific securities issue, enabling the coordination of their actions with regard to the adequate reflection of the corporate actions in the securities settlement systems operated by the respective investor CSDs.

DVP settlement through CSD links

320. ESMA's proposal included in the DP regarding DVP settlement through CSD links was broadly supported. Some respondents mentioned that it might be necessary to indicate

how credit risk should be assessed and, if credit ratings are to be used, what the rating source should be. As specified under Article 6(1) of the draft RTS included under Annex IV, ESMA considers that, in order to ensure the proper management of the links and limit the risks connected to the links, the intermediary that can be used by a CSD in an indirect link or to operate a direct link should be one of the following:

- a) a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 that ensures the full segregation and protection of the securities, enables the requesting CSD prompt access to the securities when required and that the requesting CSD can demonstrate that the credit institution has low credit risk based upon an internal assessment by the requesting CSD. In performing such an assessment, the requesting CSD should employ a defined and objective methodology that should not fully rely on external opinions.
- b) a third country financial institution that is subject to and complies with prudential rules considered by the relevant competent authorities to be at least as stringent as those laid down in Regulation (EU) No 575/2013 and which has robust accounting practices, safekeeping procedures, and internal controls and that ensures the full segregation and protection of those securities, enables the requesting CSD's prompt access to the securities when required and that the requesting CSD can demonstrate to have low credit risk based upon an internal assessment by the requesting CSD. In performing such an assessment, the requesting CSD should employ a defined and objective methodology that should not fully rely on external opinions.

321. Given the need to ensure a safe and efficient access to cash in the currencies used for DVP settlement, as well as an adequate market demand, ESMA considers that DVP settlement should be regarded as practical and feasible under the following circumstances:

- a) There is a market demand for DVP settlement evidenced through a request from any of the User Committees of the linked CSDs.
- b) The linked CSDs may charge a reasonable commercial fee for the provision of DVP settlement, on a cost-plus basis, unless otherwise agreed by the CSDs and their User Committees.
- c) There is a safe and efficient access to cash in the currencies used for settlement by the receiving CSD for the requesting CSD and for its participants.

Third Country Links

322. Some respondents raised questions regarding the extent to which the requirements applying to links would apply to third country CSDs that established CSD links with EU CSDs. In their opinion, according to Article 48 and Article 25(3) of CSDR, the

requirements to be met by CSD links would apply to EU authorised CSDs, which would need to be satisfied that any CSD link (whether with an EU or a third-country CSD) met the specified standards, however Article 48 would not apply directly to a third-country CSD itself. In ESMA's view, the obligation to provide access applies to EU CSDs. This obligation relates to both EU entities and non-EU entities. Third country entities would therefore be covered as potential beneficiaries of the access obligation of EU CSDs, and, in practice, they would be foreign participants in the EU CSDs. At the same time, given the additional legal and prudential risks that third country entities may pose, the technical standards included under Annex IV specify that this should be taken into account as part of the risk assessment to be performed by EU CSDs.

Q31: What are your views on the proposed draft RTS on CSD links as included in Chapter IV of Annex IV?

6 Internalised Settlement

Article 9 CSDR

ESMA may, in close cooperation with the members of the ESCB, develop draft regulatory technical standards further specifying the content of the reporting regarding securities transactions settled by settlement internalisers outside securities settlement systems.

ESMA shall, in close cooperation with the members of the ESCB, develop draft implementing technical standards to establish standard forms, templates and procedures for the reporting and transmission of information regarding securities transactions settled by settlement internalisers outside securities settlement systems.

323. Under Article 9 of CSDR, ESMA is required to establish standard forms, templates and procedures for the reporting and transmission of information regarding securities transactions settled by settlement internalisers outside securities settlement systems. ESMA may also further specify the content of the reporting regarding securities transactions settled by settlement internalisers outside securities settlement systems.
324. ESMA has considered the Report on the outcome of CEBS's call for evidence on custodian banks' internalisation of settlement and CCP-like activities of 17 April 2009.

Scope and level of granularity of the suggested requirements

325. The majority of the DP respondents highlighted that the proposed requirements were too detailed and went beyond Level 1. The respondents mentioned that the requirements should be limited to aggregated levels of volume and value (and not to individual transaction level).
326. Some respondents argued that the proposed requirements duplicate existing requirements and supervisory practices (at least for large custodians or professional intermediaries).
327. The majority of the respondents underlined that the requirements would be burdensome for many financial institutions (potentially to the detriment of clients and customers which may bear higher costs in case the settlement internalisers would want to reimburse the additional reporting costs). They proposed that the reporting requirements should be narrowed down to essential information. One respondent suggested that the requirements should be limited to statistical data.
328. It was suggested to use the classification of financial instruments/products according to MiFID.

329. Some respondents mentioned that SWIFT messages allow only a distinction between RvP, DvP, DF, and RF settlement instructions (and not between repos, securities lending, collateral management transactions). However, ESMA found out that both ISO 15022 and ISO 20022 allow for the identification of transaction types. Therefore the issue is not linked to the absence of messages, but to the fact that they are currently not used.
330. Some respondents suggested to avoid referring to “transfer order”, since it has a specific meaning in Directive 98/26/EC (Settlement Finality Directive), and refer instead to “settlement instructions”, in order not to capture also portfolio transfers and collateral movements, but just real purchases and sales. It is ESMA’s view, that given the definition of ‘settlement internaliser’ under CSDR (“any institution, including one authorised in accordance with Directive 2013/36/EU or with Directive 2014/65/EU, which executes transfer orders on behalf of clients or on its own account other than through a securities settlement system”), which specifically refers to transfer orders (a term also defined under CSDR by reference to the second indent of point (i) of Article 2 of Directive 98/26/EC), the scope of the reporting under Article 9 of CSDR should cover a broad range of transactions as mentioned under point g) of Article 2(1) of the draft RTS.
331. Having regard to the DP feedback, ESMA has not included requirements covering rules and procedures, but only statistical data.
332. In order to provide a good overview of the scope and of the extent of internalised settlement, ESMA is considering that the reports on internalised settlement should cover the aggregated volume (by number of transfer orders) and value (EUR) of transfer orders settled by settlement internalisers outside a securities settlement, split by asset class, type of securities transactions, type of clients, and country where the securities have been issued. For the asset classes, ESMA has used the classification of financial instruments under MiFID2.
333. In order to help identify potential risks related to the internalised settlement activity, ESMA believes that the reports to be submitted by competent authorities to ESMA should specify the top settlement internalisers in each Member State, based on the number and value of transfer orders settled by settlement internalisers outside a securities settlement system.
334. To be able to determine the scale of internalised settlement, as well as related risks and any potential significant movement of settlement activity from the securities settlement systems operated by CSDs to the books of settlement internalisers, the reports should cover transactions in all financial instruments, that are settled by settlement internalisers established in the Union, including by their third country branches, as well as by branches of third country entities operating in the Union.

‘Settlement fails’ in the context of internalised settlement

335. Several respondents were not in favour of the report on the settlement efficiency. Other respondents proposed to align the settlement fails report with the one for CSDs in order to ensure consistency and comparisons.
336. Some respondents proposed an alignment of the legal and practical requirements for CSDs and settlement internalisers regarding investor protection through operational and accounting procedures (e.g. settlement or payment confirmations, end-of-day statement of transactions).
337. Some respondents mentioned that the underlying causes of the settlement fails should be limited to the “lack of securities/cash” or “unmatched transaction” because additional details would not be available. ESMA has taken this into account and has not introduced a requirement on the underlying causes of failed transfer orders (on the agreed settlement date).
338. ESMA believes it is important to cover the investor protection aspect. ESMA is aware of the fact that ‘settlement fails’ in the sense of the CSDR definition cannot be used in the context of internalised settlement, however ESMA believes that the technical standards may focus on whether the transfers made in the books of the settlement internalisers occur when intended (according to the settlement internalisers’ clients instructions, and evidenced by settlement or payment confirmations, end-of-day statement of transactions). ESMA has included a template for the reporting of failed transfer orders by settlement internalisers, which is a simplified version of the template proposed in the RTS on the reporting of settlement fails by CSDs.

Implementation of a de minimis rule through thresholds or exemptions

339. Some respondents suggested that volumes and values of unsubstantial importance should not be considered (e.g. transactions with retail clients which are released on a FoP basis). ESMA believes that this would not be in line with the mandate under CSDR.

Timeframes for reporting

340. In order to allow for sufficient time for the aggregation of data by settlement internalisers, ESMA proposes that a settlement internaliser should report the information on settlement internalisation to the competent authority within 10 working days from the end of each quarter.
341. So as to allow for a flexible approach enabling the competent authorities to submit either individual reports or batches, ESMA considers that the competent authorities should submit the information received from settlement internalisers to ESMA without undue delay and no later than 5 working days from the date of the receipt of each report.

342. In order to give sufficient time to competent authorities to assess the information received from settlement internalisers, ESMA believes that competent authorities should inform ESMA of any potential risk resulting from settlement internalisation in their jurisdiction within 30 working days from the end of each quarter.

Q32: What are your views on the proposed draft RTS on internalised settlement (Annex V) and draft ITS on internalised settlement (Annex IX)?

7 Summary of Questions

Q1: Do you think the proposed timeframes for allocations and confirmations under Article 2 of the RTS on Settlement Discipline are adequate?

If not, what would be feasible timeframes in your opinion?

Please provide details and arguments in case you envisage any technical difficulties in complying with the proposed timeframes.

Q2: Do you agree with the cases when matching would not be necessary, as specified under Article 3(2) of the draft RTS?

Should other cases be included? Please provide details and evidence for any proposed case.

Q3: What are your views on the proposed approach under Article 3(11) of the draft RTS included in Chapter II of Annex I?

Do you think that the 0.5% settlement fails threshold (i.e. 99.5% settlement efficiency rate) is adequate? If not, what would be an adequate threshold? Please provide details and arguments.

Do you think that the 2,5 billion EUR/year in terms of the value of settlement fails for a securities settlement system operated by a CSD is adequate? If not, what would be an adequate threshold? Please provide details and arguments.

Q4: What are your views on the proposed draft RTS included in Chapter II of Annex I?

Q5: What are your views on the proposed draft RTS on the monitoring of settlement fails as included in Section 1 of Chapter III of Annex I?

Q6: What are your views on the proposed draft RTS related to the penalty mechanism? Do you agree that when CSDs use a common settlement infrastructure, the procedures for cash penalties should be jointly managed?

Q7: What are your views on the proposed draft RTS related to the buy-in process?

In particular, what are your views on applying partial settlement at the end of the extension period? Do you consider that the partialling of the settlement instruction would impact the rights and obligations of the participants? What do you think about the proposed approach for limiting multiple buy-in and the timing for the participant to provide the information to the CSD?

- Q8: What are your views on the proposed draft RTS related to the buy-in timeframe and extension period?**
- Q9: What are your views on the proposed draft RTS related to the type of operations and their timeframe that render buy-in ineffective?**
- Q10: What are your views on the proposed draft RTS related to the calculation of the cash compensation?**
- Q11: What are your views on the proposed draft RTS related to the conditions for a participant to consistently and systematically fail?**
- Q12: What are your views on the proposed draft RTS related to the settlement information for CCPs and trading venues?**
- Q13: What are your views on the proposed draft RTS related to anti-avoidance rules for cash penalties and buy-in?**
- Q14: Do you agree that 18 months would be an appropriate timeframe for the implementation of the settlement discipline regime under CSDR? If not, what would be an appropriate timeframe in your opinion? Please provide concrete data and evidence justifying a phase-in for the settlement discipline measures and supporting your proposals.**
- Q15: What are your views on the proposed draft RTS on CSD authorisation (Chapter II of Annex II) and draft ITS on CSD authorisation (Chapter I of Annex VI)?**
- Q16: What are your views on the proposed draft RTS on CSD review and evaluation (Chapter III of Annex II) and draft ITS (Chapter II of Annex VI)?**
- Q17: What are your views on the proposed draft ITS on cooperation arrangements as included in Chapter III of Annex VI?**
- Q18: What are your views on the proposed draft RTS on CSD recognition (Chapter IV of Annex II)?**

- Q19: What are your views on the proposed approach regarding the determination of the most relevant currencies?**
- Q20: What are your views on the proposed draft RTS on banking type of ancillary services (Chapter VI of Annex II) and draft ITS on banking type of ancillary services (Chapter IV of Annex VI)?**
- Q21: What are your views on the proposed draft RTS on CSD participations (Chapter II of Annex III)?**
- Q22: What are your views on the proposed draft RTS on CSD risk monitoring tools (Chapter III of Annex III)?**
- Q23: What are your views on the proposed draft RTS on CSD record keeping (Chapter IV of Annex III) and draft ITS on CSD record keeping (Annex VII)?**
- Q 24: What are your views on the types of records to be retained by CSDs in relation to ancillary services as included in the Annex to the draft RTS on CSD Requirements (Annex III)? Please provide examples regarding the formats of the records to be retained by CSDs in relation to ancillary services.**
- Q25: What are your views on the proposed draft RTS on reconciliation measures included in Chapter V of Annex III?**
- Q26: Do you believe that the proposed reconciliation measures where other entities are involved in the reconciliation process for a certain securities issue within the meaning of Article 37(2) of CSDR are adequate? Please explain if you think that any of the proposed measures would not be applicable in the case of a specific entity. Please provide examples of any additional measures that would be relevant in the case of specific entities.**
- Q27: What are your views on the proposed reconciliation measures for corporate actions under Article 15 of the draft RTS included in Chapter V of Annex III?**
- Q28: What are your views on the proposed draft RTS on CSD operational risks included in Chapter VI of Annex III?**
- Q29: What are your views on the proposed draft RTS on CSD investment policy (Chapter VII of Annex III)?**

- Q30: What are your views on the proposed draft RTS on access (Chapters I-III of Annex IV) and draft ITS on access (Annex VIII)?**
- Q31: What are your views on the proposed draft RTS on CSD links as included in Chapter IV of Annex IV?**
- Q32: What are your views on the proposed draft RTS on internalised settlement (Annex V) and draft ITS on internalised settlement (Annex IX)?**

8 Legal Mandate for ESMA to Develop Technical Standards under CSDR

Article 6

ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the measures to be taken by investment firms in accordance with the first subparagraph of paragraph 2, the details of the procedures facilitating settlement referred to in paragraph 3 and the details of the measures to encourage and incentivise the timely settlement of transactions referred to in paragraph 4.

Article 7

ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify:

- (a) the details of the system monitoring settlement fails and the reports on settlement fails referred to in paragraph 1;
- (b) the processes for collection and redistribution of cash penalties and any other possible proceeds from such penalties in accordance with paragraph 2;
- (c) the details of operation of the appropriate buy-in process referred to in paragraphs 3 to 8, including appropriate time frames to deliver the financial instrument following the buy-in process referred to in paragraph 3. Such time frames shall be calibrated taking into account the asset type and liquidity of the financial instruments;
- (d) the circumstances under which the extension period could be prolonged according to asset type and liquidity of the financial instruments, in accordance with the conditions referred to in point (a) of paragraph 4 taking into account the criteria for assessing liquidity under point (17) of Article 2(1) of Regulation (EU) No 600/2014;
- (e) type of operations and their specific timeframes referred to in point (b) of paragraph 4 that renders buy-in ineffective;
- (f) a methodology for the calculation of the cash compensation referred to in paragraph 7;
- (g) the conditions under which a participant is deemed consistently and systematically to fail to deliver the financial instruments as referred to in paragraph 9; and
- (h) the necessary settlement information referred to in the second subparagraph of paragraph 10.

Article 9



ESMA may, in close cooperation with the members of the ESCB, develop draft regulatory technical standards further specifying the content of such reporting.

ESMA shall develop draft implementing technical standards to establish standard forms, templates and procedures for the reporting and transmission of information referred to in paragraph 1.

Article 12

ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards specifying the conditions under which the Union currencies referred to in point (b) of paragraph 1 are considered to be the most relevant, and efficient practical arrangements for the consultation of the relevant authorities referred to in point (b) and (c) of that paragraph.

Article 17

ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the information that the applicant CSD is to provide to the competent authority in the application for authorisation.

ESMA shall, in close cooperation with the members of the ESCB, develop draft implementing technical standards to establish standard forms, templates and procedures for the application for authorisation.

Article 18

ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the criteria to be taken into account by the competent authorities to approve the participation of CSDs in legal persons other than those providing the services listed in Sections A and B of the Annex. Such criteria may include whether the services provided by that legal person are complementary to the services provided by a CSD, and the extent of the CSD's exposure to liabilities arising from such participation.

Article 22

ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the following:

- (a) the information that the CSD is to provide to the competent authority for the purposes of the review and evaluation referred to in paragraph 1;
- (b) the information that the competent authority is to supply to the relevant authorities, as set out in paragraph 7;
- (c) the information that the competent authorities referred to in paragraph 8 are to supply one another.



ESMA shall, in close cooperation with the members of the ESCB, develop draft implementing technical standards to determine standard forms, templates and procedures for the provision of information referred to in the first subparagraph of paragraph 10.

Article 24

ESMA shall, in close cooperation with the members of the ESCB, develop draft implementing technical standards to establish standard forms, templates and procedures for the cooperation referred to in paragraphs 1, 3 and 5.

Article 25

ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the information that the applicant CSD is to provide to ESMA in its application for recognition under paragraph 6.

Article 26

ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards specifying at the CSD level and at the group level as referred to in paragraph 7:

- (a) the monitoring tools for the risks of the CSDs referred to in paragraph 1;
- (b) the responsibilities of the key personnel in respect of the risks of the CSDs referred to in paragraph 1;
- (c) the potential conflicts of interest referred to in paragraph 3;
- (d) the audit methods referred to in paragraph 6; and
- (e) the circumstances in which it would be appropriate, taking into account potential conflicts of interest between the members of the user committee and the CSD, to share audit findings with the user committee in accordance with paragraph 6.

Article 29

ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the details of the records referred to in paragraph 1 to be retained for the purpose of monitoring the compliance of CSDs with the provisions of this Regulation.

ESMA shall, in close cooperation with the members of the ESCB, develop draft implementing technical standards to establish the format of the records referred to in paragraph 1 to be retained for the purpose of monitoring the compliance of CSDs with the provisions of this Regulation.

Article 33



ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the risks to be taken into account by CSDs when carrying out a comprehensive risk assessment, and by competent authorities when assessing the reasons for refusal in accordance with paragraph 3 and the elements of the procedure referred to in paragraph 3.

ESMA shall, in close cooperation with the members of the ESCB, develop draft implementing technical standards to establish standard forms and templates for the procedure referred to in paragraph 3.

Article 37

ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the reconciliation measures a CSD is to take under paragraphs 1, 2 and 3.

Article 45

ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the operational risks referred to in paragraphs 1 and 6 and the methods to test, to address or to minimise those risks, including the business continuity policies and disaster recovery plans referred to in paragraphs 3 and 4 and the methods of assessment thereof.

Article 46

ESMA shall, in close cooperation with EBA and the members of the ESCB, develop draft regulatory technical standards specifying the financial instruments that can be considered to be highly liquid with minimal market and credit risk as referred to in paragraph 3, the appropriate timeframe for access to assets referred to in paragraph 2 and the concentration limits as referred to in paragraph 5. Such draft regulatory technical standards shall, where appropriate, be aligned to the regulatory technical standards adopted in accordance with Article 47(8) of Regulation (EU) No 648/2012.

Article 48

ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the conditions provided for in paragraph 3 under which each type of link arrangement provides for adequate protection of the linked CSDs and of their participants, in particular where a CSD intends to participate in the securities settlement system operated by another CSD, the monitoring and managing of additional risks referred to in paragraph 5 arising from the use of intermediaries, the reconciliation methods referred to in paragraph 6, the cases where DVP settlement through CSD links is practical and feasible as provided for in paragraph 7 and the methods of assessment thereof.

Article 49

ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the risks to be taken into account by CSDs when carrying out a comprehensive risk assessment, and competent authorities assessing the reasons for refusal in accordance with paragraphs 3 and 4, and the elements of the procedure referred to in paragraph 4.



ESMA shall, in close cooperation with the members of the ESCB, develop draft implementing technical standards to establish standard forms and templates for the procedure referred to in paragraph 4.

Article 52

ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the risks to be taken into account by CSDs when carrying out a comprehensive risk assessment, and by competent authorities when assessing the reasons for refusal in accordance with paragraph 2, and the elements of the procedure referred to in paragraph 2.

ESMA shall, in close cooperation with the members of the ESCB, develop draft implementing technical standards to establish standard forms and templates for the procedures referred to in paragraphs 1 and 2.

Article 53

ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the risks to be taken into account by CSDs when carrying out a comprehensive risk assessment, and by competent authorities when assessing the reasons for refusal in accordance with paragraph 3, and the elements of the procedure referred to in paragraph 3.

ESMA shall, in close cooperation with the members of the ESCB, develop draft implementing technical standards to establish standard forms and templates for the procedure referred to in paragraphs 2 and 3.

Article 55

ESMA shall, in close cooperation with the members of the ESCB and EBA, develop draft regulatory technical standards to specify the information that the CSD is to provide to the competent authority for the purpose of obtaining the relevant authorisations to provide the banking-type services ancillary to settlement.

ESMA shall, in close cooperation with the members of the ESCB and EBA, develop draft implementing technical standards to establish standard forms, templates and procedures for the consultation of the authorities referred to in paragraph 4 prior to granting authorisation.

9 Annexes – Draft Technical Standards

ANNEX I – DRAFT RTS ON SETTLEMENT DISCIPLINE

COMMISSION DELEGATED REGULATION (EU) No .../2015

supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council on improving securities settlement in the European Union and on central securities depositories (CSDs) with regard to regulatory technical standards on settlement discipline

of []

Text with EEA relevance

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July on improving securities settlement in the European Union and on central securities depositories (CSDs)⁶, and in particular Article 6 (5) and Article 7 (15) thereof,

Whereas:

- (1) **[INVESTMENT FIRM MEASURES]** Investment firms should ensure that they have all the necessary settlement details as much as possible on the business day in which the transaction takes place. In order to achieve this, if the investment firms do not already have the necessary settlement information, they should communicate with their clients in order to obtain the respective information, which should include standardized data useful for the settlement process.

⁶ OJ L 257, 28.8.2014, p. 1

- (2) As market-wide achievement of straight through processing (STP) is essential both for maintaining high settlement rates as volumes increase and for ensuring timely settlement of cross-border trades, the initiatives aiming to achieve STP should be encouraged, and direct and indirect market participants should achieve the degree of internal automation necessary to take full advantage of STP solutions. In this respect, investment firms should offer their professional clients the possibility to send confirmations and allocation details electronically, by the use of international open communication procedures and standards for messaging and reference data. At the same time, CSDs should facilitate STP and, when processing settlement instructions, CSDs should make use of processes designed to work on an automated basis by default.
- (3) **[CSD MEASURES]** CSDs should have sound and efficient system functionalities, policies and procedures that enable them to facilitate and incentivise settlement on the intended settlement date (ISD). However, in order to ensure that the system functionalities that a CSD should offer to reduce settlement failures are proportionate to the CSD's actual settlement fails rate, certain system functionalities should not be compulsory if the value of settlement instructions settled by a CSD does not exceed a predefined threshold, and if the settlement fails rate for the securities settlement system operated by the CSD is very low.
- (4) In order to encourage and incentivise timely settlement by participants in the securities settlement systems operated by CSDs, CSDs should give participants real-time access to the information regarding the intended settlement date and the status of their settlement instructions in the securities settlement system that the CSD operates.
- (5) In order to promote settlement early on the ISD, matching at CSD level should be compulsory, unless the settlement instructions are already matched or is not necessary in exceptional situations. CSDs should also offer matching possibilities continuously throughout the day.
- (6) In order to facilitate settlement and to ensure consistency across securities settlement systems, CSDs should require that their participants use a minimum list of mandatory matching fields for the matching of settlement instructions.
- (7) CSDs should offer their participants real-time gross settlement (RTGS) settlement throughout each business day or at least several daily possibilities to settle, in order to complete final settlement intraday.
- (8) **[MONITORING]** To facilitate the monitoring of settlement fails, CSDs should use a single, harmonised methodology (including contents and frequency) to report settlement fails to the competent authorities and relevant authorities.
- (9) In order to allow competent authorities to perform their functions, they should have access, upon request, to more detailed additional information on settlement fails or on a more frequent basis. If competent authorities receive more detailed or more frequent

information on settlement fails, they should share it with the relevant authorities without undue delay.

- (10) CSDs should set up a working flow with the participants with the highest rates of settlement fails, as well as, if feasible, with relevant CCPs and trading venues, in order to identify the main reasons for settlement fails and to establish measures to improve settlement efficiency.
- (11) In order to enable ESMA to assess the settlement efficiency for domestic and cross-border operations for each Member State, as well as any potential systemic risks, the competent authorities should submit to ESMA the same information on settlement fails that they receive from the CSDs.
- (12) To ensure a consistent application of requirements for CSDs, it is necessary to set out detailed provisions with respect to the identification of all transactions that remain unsettled after the intended settlement date, to facilitate the implementation of the buy-in process where applicable, and to enable the application of the penalty mechanisms established by CSDs, including the calculation, collection and redistribution of cash penalties.
- (13) To ensure a consistent and transparent approach across the EU and to allow comparability between CSDs, they should use a single template for disclosing settlement fails data to the general public.
- (14) **[PENALTIES]** This Regulation sets the processes for the collection and redistribution of cash penalties and should be read in conjunction with the delegated act specifying the parameters for the calculation of the level of the cash penalties. In order to ensure the articulation between both, this regulation indicates how the calculation should be applied.
- (15) As the CSDs are operating gross settlement systems, the penalty mechanism should apply to each failed settlement instruction that is matched as required. This approach would incentivise each participant to take action in order to cure the fail. In order to get an appropriate deterrent effect, the amount of the penalty should effectively be charged and collected on a regular basis and not less than on a monthly basis. As the participant may act as settlement agent, it should get sufficiently granular details regarding the penalty calculation in order to recharge the relevant amount to its underlying clients.
- (16) As the cash penalty should not constitute a source of revenue for the CSD, the collection of the payment should be made in a separate account of the CSD, used only for this purpose. For the same reason, the penalties collected should not be used to finance the implementation, maintenance and operation of the penalty mechanism.
- (17) The fail of a settlement instruction may result in the fail of subsequent settlement instructions, the redistribution of the full amount collected should mitigate the negative effect of the penalty on the participant standing in the middle of a chain of settlement fails and at the same time incentivise that participant or its underlying

clients to take action in order to prevent or cure the fail as it would then be entitled to keep the benefit of the redistribution.

- (18) For practical reasons and in order to limit the number of cash transfers, the CSD should net the amount to be received by a participant with the amount due to be paid by that same participant. This practical approach should be combined with the provision of sufficient details on the calculation of the amounts to be received by the participants so that it could transfer the amount to its underlying clients.
- (19) The risk profile of the CSD should not be changed as a result of operating the penalty mechanism. The CSD should therefore not have credit risk resulting from the failure of participants to pay the amount of the penalty due. In order to achieve that result while keeping the practicalities of a netting approach, the CSD should be entitled to claim payment of the amount to the participant that benefited from the netting of amounts that were not received by the CSD.
- (20) As the penalty mechanism should apply to all failed transactions including to cleared transactions but should not apply to failing participants that are CCPs, the CSD should not charge the failing participant when the receiving participant is a CCP. Instead it should provide to the CCP the necessary information for it to charge the clearing member and redistribute the collected amount to the clearing member that suffered from the subsequent settlement fail on the same financial instruments. As that CSD may not be subject to that regulation and would therefore not provide the calculation to the CCP, the CSD subject to this regulation involved in the settlement of the transaction where the CCP is the receiving participant should also provide to the CCP the calculation of the penalties that it would have redistributed. This calculation should allow the CCP to collect and redistribute the penalty from and to its clearing members.
- (21) **[BUY-IN]** In order to support an integrated market for securities settlement, the buy-in process should be harmonised and should include some common requirements. Given the importance to incentivise timely actions to cure settlement fails, it is important to notify them when the extension period is ending and when the time for delivering the buy-in instruments is coming to an end.
- (22) When a settlement instruction is not eligible for partial settlement, it may fail for the entire instruction, even if part of the financial instruments is available for delivery in the account of the delivering participant. As the purpose of the buy-in is to cure the settlement fails, the opt-out from partial delivery should be dis-activated on ISD and buy-in should be performed for the lacking financial instruments only. This process should not apply to settlement instructions that are set on hold by a participant as this may indicate that the financial instruments in the account do not belong to the client for which the instruction is entered. For the same reason, the financial instruments received in the buy-in process should be delivered to the receiving participant even if they only allow settlement of a part of the instruction.
- (23) In order to limit the period of uncertainty resulting from deferral of the buy-in, it should only be used once and have a limited timeframe.

- (24) The buy-in process should provide for a way to cure the settlement fails without jeopardising the trading venue or CSD risk profile. As a result, the CSD or the trading venue should not perform the buy-in as counterparty and should only instruct a buy-in agent.
- (25) As a transaction may be part of a chain of further transactions, the settlement of instructions may depend from each other. The settlement of one instruction may allow the settlement of several instructions down the chain. In order to avoid that a buy-in be performed for each failed instruction when it would not be necessary, the CSD should allow its participants, directly or through its clients, to establish the relations between the transactions on the same financial instruments when the failed settlement instruction have the same date of expiry of the execution period, and inform accordingly the CSD or the trading venue of the related settlement instructions.
- (26) In some circumstances a financial instrument may not be available any more on the market, for instance when a financial instrument has redeemed or was converted. In these situations a buy-in would not be possible. Therefore, the process should be accelerated so that cash compensation could be paid without waiting for the end of the buy-in period, thus limiting the period of uncertainty.
- (27) The timeframe necessary to deliver a financial instrument when the extension period has elapsed depends on the liquidity of the relevant market or the complexity of the applicable settlement process. These criteria should be used to set the categories for the prolongation of the extension period.
- (28) Curing the fail is the aim of both the extension period and the buy-in process. During both periods the constraints to achieve that outcome are similar i.e. liquidity of the relevant markets and complexity of the settlement process. The same approach as the one used to set the timeframe for the delivery of the financial instruments should therefore be used in order to assess whether the extension period should be prolonged.
- (29) As an operation composed of several transactions entails the delivery of some financial instruments that have to be returned after a period of time, only the timeframe of the first transaction of the operation is relevant for the effectiveness of the buy-in. The return transaction closes the operation and can be considered as a straight sell.
- (30) As the settlement efficiency of a CSD depends on the nature of the financial instruments settling in that CSD, the threshold above which a participant would be deemed to fail consistently and systematically, over a calendar year, should be set by reference to the settlement efficiency of the relevant market.
- (31) The buy-in process should be provided by the CSDs, the trading venues and the CCPs. However, the trading venue and the CCP do not have the same information as a CSD which is operating the settlement system. As a result, the CSD should provide to the trading venues and the CCPs the information necessary for them to apply or monitor application of their procedures.

- (32) **[FINAL]** As the rules on penalty mechanism and buy-in process should be implemented by CSDs, trading venues and CCPs that use different models, it is important to ensure that such rules are implemented and applied in a consistent manner regardless of the model used. Therefore, in order to prevent potential regulatory arbitrage regarding the application of the requirements related to the penalty mechanism or buy-in process, it is necessary to prevent circumvention of the related rules. In this regard, for the consistent application of the buy-in regime the original intended settlement date should not be impacted by subsequent operational cancellations and re-submissions resulting from the way particular models operate. Regarding the penalty mechanism, the penalty should be calculated as from the first day of the settlement fail on the intended settlement date until when the settlement fail is effectively remedied.
- (33) In order to clearly identify a limited number of concepts stemming from Regulation (EU) No 909/2014, as well as to specify the technical terms necessary for developing these technical standards, a number of terms should be defined.
- (34) In view of the global nature of financial markets, this Regulation takes into account the Principles for Financial Market Infrastructures issued by the Committee on Payment and Settlement Systems and the International Organization of Securities Commissions (CPSS-IOSCO Principles) which serve as a global benchmark for regulatory requirements for central securities depositories (CSDs).
- (35) This Regulation also takes into account the Recommendations for Securities Settlement Systems issued by the Committee on Payment and Settlement Systems and the International Organization of Securities Commissions, covering trade confirmation, settlement cycle, and securities lending.
- (36) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the European Commission.
- (37) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council (7), the European Securities and Markets Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010. In developing the draft regulatory technical standards on which this Regulation is based, ESMA has worked in close cooperation with the members of the European System of Central Banks.
- (38) Given that the measures to address settlement fails related to buy-in and penalties may require significant IT system changes, sufficient time should be allowed for the application of the relevant measures. For the appropriate, effective and efficient application of the settlement discipline regime, the settlement discipline processes and

⁷ OJ.....

procedures that a CSD needs to put in place should be carefully assessed before they are applied. Therefore, an appropriate time lag should be envisaged between the date of publication and the entry into force of this Regulation. This time lag should take into account the time that CSDs will need to put in place their systems following the publication of this Regulation and the time for competent authorities to assess them. This would ensure that the CSDs meet the necessary requirements and would also avoid potentially burdensome and costly changes, affecting also their participants, if the proposed measures have to be implemented prior to authorisation.

HAS ADOPTED THIS REGULATION⁸:

CHAPTER I

GENERAL

Article 1

Definitions

For the purposes of this Regulation the following definitions apply:

- (a) ‘settlement instruction’ means a transfer order as defined in point (i) of Article 2 of Directive 98/26/EC.
- (b) ‘settlement restriction’ means the blocking, reservation or earmarking of securities that, as a result, are not available for settlement, or the blocking or reservation of cash that, as a result, is not available for settlement.
- (c) ‘exchange-traded fund (ETF)’ means a fund as defined in point 46 of Article 4(1) of Directive 2014/65/CE.
- (d) ‘professional client’ means a professional client as defined in point (10) of Article 4(1) of Directive 2014/65/EU.
- (e) ‘retail client’ means a retail client as defined in point (11) of Article 4(1) of Directive 2014/65/EU.

CHAPTER II

MEASURES TO PREVENT SETTLEMENT FAILS

(Article 6(5) of Regulation (EU) No 909/2014)

Article 2

Measures to be taken by investment firms to limit the number of settlement fails in accordance with Article 6(2) of Regulation (EU) No 909/2014

1. Investment firms shall in their agreements with professional clients, enter an obligation for these clients to send the investment firm written allocations of securities or cash to the transactions, as well as a written confirmation of acceptance or rejection of the terms of the transaction, unless the professional client holds the relevant securities and cash at the investment firm.

The written acceptance of the terms of the transaction shall be sent as soon as possible after receipt of the confirmation of execution of orders by the investment firm to the professional client, and within the timeframes set in paragraph 2. The written acceptance of the terms of the transaction may be included in the allocation.

Investment firms shall ensure that their professional clients send an allocation for each account to be credited or debited, and each allocation shall at least specify the following:

- (a) transaction type (covering at least the types of transactions specified in point f) of Article 4(2));
- (b) ISIN;
- (c) deliver/receive;
- (d) quantity (for equities) or nominal amount (for fixed income securities);
- (e) trade date;
- (f) trade price;

- (g) currency;
- (h) intended settlement date;
- (i) total cash to be delivered or received;
- (j) identifier of the entity that maintains the securities;
- (k) securities account name/number and/or cash account name/number;
- (l) any beneficiary account names/numbers of the buyer/seller.

For orders where the investment firm has received the necessary settlement information in advance of the transaction, the investment firm and the professional client may agree in writing that confirmations and allocations as specified under subparagraphs 1-3 are not to be sent.

2. The allocations and confirmations under paragraph 1 shall reach the investment firm, in the time zone of the investment firm:

- (a) on the business day in which the transaction takes place; or,
- (b) at the latest, by 11 am on the business day following the business day in which the transaction takes place, in the case of time zone differences greater than 2 hours or in the case of orders executed after 4 pm in the time zone of the investment firm.

The investment firm shall confirm the allocation within 2 hours of receipt of the allocation. If the allocation reaches the investment firm later than 1 hour before the investment firm's close of business, the investment firm shall confirm the allocation within 1 hour after the start of business the next business day.

3. Investment firms shall offer their professional clients the possibility to send confirmations and allocation details under paragraphs 1 and 2 electronically, by the use of international open communication procedures and standards for messaging and reference data. The investment firms may use third party systems for confirmation and allocation.
4. Investment firms shall, in their agreements with retail clients, enter into an obligation for these clients to ensure that the investment firm has all the relevant settlement

details, at the latest, by 11 am on the business day after the transaction takes place, in the time zone of the investment firm, unless the client holds the relevant securities and cash at the investment firm.

Article 3

Details of the CSD procedures facilitating settlement and details of the measures to be established by CSDs to encourage and incentivise the timely settlement of transactions

1. A CSD shall process settlement instructions on an automated basis.

A CSD shall report any types of manual intervention to the competent authority without any delay, covering at least:

- (a) with regard to a received settlement instruction, the action of delaying and/or modifying the feed to the securities settlement system, including any modification of the received settlement instruction outside of the existing automated procedures ;
- (b) with regard to the processing in the settlement engine, any kind of intervention outside of the automated processes, including the management of IT incidents;

If the competent authority considers that the type of manual intervention is not appropriate for the smooth functioning of the securities settlement system, the CSD shall not to use such type of manual intervention in the future.

2. A CSD shall match settlement instructions prior to settlement, based on the instructions sent by participants, except in the following circumstances:
 - (a) the settlement instructions received by the CSD are already matched by trading venues or other entities such as CCPs;
 - (b) FoP instructions which consist of transfers of financial instruments between different accounts opened in the name of the same participant.

CSDs shall require that CCPs send already matched settlement instructions into the securities settlement system operated by a CSD, unless letter b) of subparagraph 1 applies.

The matching of settlement instructions by CSDs shall be fully automated and shall occur continuously throughout each business day.

A CSD shall set an appropriate tolerance level in the settlement amounts, representing the maximum difference between the settlement amounts in the two corresponding settlement instructions that would still allow matching. The tolerance level must be between 0 and 25 EUR (or equivalent values for other currencies calculated based on the official exchange rates) per settlement instruction.

A CSD may have in place different tolerance levels, including for different types of settlement instructions or financial instruments.

3. A CSD shall require its participants to use at least the following mandatory matching fields for the matching of settlement instructions:
 - (a) instruction type (covering at least the types of instructions specified in point h) of Article 4(2));
 - (b) intended settlement date;
 - (c) trade date;
 - (d) transaction type (covering at least the types of transactions specified in point f) of Article 4(2));
 - (e) currency (not applicable in the case of FoP settlement instructions);
 - (f) settlement amount (not applicable in the case of FoP settlement instructions);
 - (g) quantity (for equities) or nominal amount (for fixed income securities);
 - (h) deliver/receive;
 - (i) ISIN;
 - (j) identifier of the participant delivering the financial instruments and/or the cash, according to the CSD rules;
 - (k) identifier of the participant receiving the financial instruments and/or the cash, according to the CSD rules;
 - (l) identifier of the CSD of the participant's counterpart.

4. A CSD shall offer its participants a bilateral cancellation facility that enables them to bilaterally revoke settlement instructions that form part of the same transaction.

5. A CSD shall offer its participants a hold and release mechanism, composed of a hold mechanism by which pending settlement instructions may be blocked by the instructing participant from settlement and a release mechanism by which pending settlement instructions that have been blocked by the instructing participant are released by it for settlement processing.

6. Without prejudice to the application of Directive 98/26/EC, the penalty mechanism referred to in Article 7(2) of Regulation (EU) No 909/2014, the right to bilaterally cancel the transaction, as well as to the buy-in requirements referred to in Article 7 of Regulation (EU) No 909/2014, a CSD shall recycle failed settlement instructions until they are either settled or bilaterally cancelled.

7. A CSD shall offer its participants the possibility to partially settle their settlement instructions, as well as the possibility to opt-out from partial settlement.

8. A CSD shall inform its participants about pending settlement instructions of counterparties at least within 1 hour after the first unsuccessful attempt to match the instructions and 1 hour from the beginning of the intended settlement date.

9. A CSD shall enable its participants to have real-time access to the information regarding the intended settlement date and the status of their settlement instructions in the securities settlement system that the CSD operates, including per intended settlement date, covering at least the following:

- (a) matched settlement instructions that are not settled;
- (b) settlement instructions that are not matched;
- (c) settlement instructions on hold;
- (d) partially settled settlement instructions, with respect to both the settled part and the unsettled part;
- (e) failed settlement instructions, including information on:
 - (i) initiation of buy-in;
 - (ii) extension period;

- (iii) deferral period;
 - (iv) buy-in period;
 - (v) outcome of buy-in process;
 - (vi) payment of cash compensation or settlement of the buy-in transaction;
 - (vii) penalties referred to in Article 7(2) of Regulation (EU) No 909/2014;
- (f) cancelled settlement instructions;
- (g) settled settlement instructions.

10. A CSD shall offer its participants real-time gross settlement (RTGS) throughout each business day or at least three settlement batches per day. The three settlement batches shall be evenly spread across the business day according to market needs.

11. The requirements under paragraphs 5 to 7 shall not apply if the following conditions apply:

- (a) the value of settlement fails for the securities settlement system operated by a CSD does not exceed 2,5 billion EUR per year; and
- (b) the settlement fails rate for the securities settlement system operated by the CSD is below 0.5 per cent.

12. The percentage referred to in point (b) of paragraph 11 shall be calculated based on both:

- (c) the number of settlement instructions (number of settlement fails/number of settlement instructions entered into the securities settlement system during the relevant period);
- (d) the value (EUR) of settlement instructions (value of settlement fails/value of settlement instructions entered into the securities settlement system during the relevant period).

13. A CSD shall assess the conditions referred to in paragraph 11 on a quarterly basis, and shall inform the competent authority of the results in accordance with points 28, 29 and 30 of Annex I. If the settlement fails rate is above 0.5% during 2 quarters in a row or if the value of settlement fails for the securities settlement system operated by a CSD exceeds 2,5 billion EUR per year, the CSD shall implement the requirements under paragraphs 5 to 7 within 3 months.

CHAPTER III

MEASURES TO ADDRESS SETTLEMENT FAILS

SECTION 1

Monitoring settlement fails

(Article (7)(15)(a) of Regulation (EU) No 909/2014)

Article 4

Details of the system monitoring settlement fails

1. A system monitoring settlement fails shall enable a CSD to identify and to keep a record of information about the intended settlement date and the status of settlement instructions entered into the securities settlement system that it operates, covering at least the following including per intended settlement date:
 - (a) matched settlement instructions that are not settled;
 - (b) settlement instructions that are not matched;
 - (c) settlement instructions on hold;
 - (d) partially settled settlement instructions, including the settled part and the missing part of either securities or cash;
 - (e) failed settlement instructions, including information on:
 - (i) initiation of buy-in;
 - (ii) extension period;
 - (iii) deferral period;
 - (iv) buy-in period;
 - (v) outcome of buy-in process;

- (vi) payment of cash compensation or settlement of the buy-in transaction;
 - (vii) penalties referred to in Article 7(2) of Regulation (EU) No 909/2014.
- (f) recycled settlement instructions;
 - (g) cancelled settlement instructions;
 - (h) settled settlement instructions.
2. A system monitoring settlement fails shall allow a CSD to identify:
- (a) all the settlement fails per intended settlement date, including the length of such settlement fails based on the number of business days in which a transaction fails to be settled after its intended settlement date.
 - (b) whether the settlement fail is due to a partial or total lack of securities or due to a lack of cash, and the missing amount of securities or cash.
 - (c) any settlement restrictions.
 - (d) at least the following types of asset classes:
 - (i) transferable securities referred to in point (a) of Article 4(1)(44) of Directive 2014/65/EU;
 - (ii) transferable securities referred to in point (b) of Article 4(1)(44) of Directive 2014/65/EU;
 - (iii) exchange-traded funds (ETFs);
 - (iv) units in collective investment undertakings, other than ETFs;
 - (v) money-market instruments;
 - (vi) emission allowances.
 - (e) at least the following types of transactions:
 - (i) trades (purchase or sale of securities) executed on a trading venue;
 - (ii) over-the-counter (OTC) trades (purchase or sale securities);
 - (iii) transactions related to collateral management, securities lending/borrowing, repurchase transactions;
 - (iv) corporate actions and custody related operations;
 - (v) CCP cleared transactions, other than those mentioned under points (i)-(iv).
 - (f) intra-CSD settlement instructions, and cross-CSD settlement instructions, as follows:

- (i) intra-CSD settlement instructions whereby the delivering and the receiving parties are participants in the same securities settlement system;
 - (ii) cross-CSD settlement instructions whereby the delivering and the receiving parties are participants in two different securities settlement systems.
- (g) at least the following types of settlement instructions:
- (i) free of payment (FOP) settlement instructions that consist of deliver free of payment (DFP) and receive free of payment (RFP) settlement instructions;
 - (ii) delivery versus payment (DVP) and receive versus Payment (RVP) settlement instructions.
3. A CSD shall set up a working flow with the top ten participants with the highest rates of settlement fails, as well as, if applicable, with relevant CCPs and trading venues, in order to identify the main reasons for settlement fails and to establish measures to improve settlement efficiency.

Article 5

Reports on settlement fails to public authorities

1. At least on a monthly basis, within 5 working days from the end of each month, a CSD shall report to the competent authority and relevant authorities the general information and the data on settlement fails concerning each securities settlement system that it operates, in accordance with Annex I to this Regulation.
2. A competent authority may require a CSD to report more detailed or additional information on settlement fails and on a more frequent basis.
3. At least on an annual basis, within 10 working days from the end of each year, a CSD shall report to the competent authority and relevant authorities the measures implemented or planned by the CSD and its participants to improve the settlement efficiency of each security settlement system that it operates.

A CSD shall monitor regularly the adequacy of the measures referred to in the first subparagraph and it shall share upon request any relevant findings with the competent authority and relevant authorities.

4. A competent authority shall share with ESMA the information received in accordance with paragraph 1 within 5 working days from the day when it receives the respective information from a CSD.

In addition, without undue delay, the competent authority shall share with ESMA any information received in accordance with paragraph 2, relevant for the assessment of systemic risk.

5. The information referred to in this Article shall be transmitted in a machine readable format.

Article 6

Reports on settlement fails to be made public

1. A CSD shall make available to the public free of charge at least the information set out in Annex II to this Regulation for each securities settlement system that it operates.
2. The information specified under paragraph 1 shall be published on the website of a CSD. The information shall be available at least in a language customary in the sphere of international finance, and shall be machine readable.

SECTION 2

Cash Penalties

(Article 7(15)(b) of Regulation (EU) No 909/2014)

Article 7

The collection of cash penalties

1. The CSD shall calculate penalties for each settlement instruction that fails to settle, on the intended settlement date including for settlement instructions that are on hold. Only matched settlement instructions in accordance with Article 3(2) that fail to settle on the intended settlement date, shall be subject to penalties.
2. The penalty shall be calculated or applied on the failed settlement instructions at the moment of the cut of time for DVP settlement instructions and at the end of the settlement day for FoP settlement instructions.

3. Where instructions are entered into the settlement system after the intended settlement date, the penalty shall apply backwards as from the intended settlement date.
4. The CSD shall charge and collect the net amount to be paid by each failing participant at least on a monthly basis. It shall provide, at that time, the details of the calculation of the penalties per account and for each failed settlement instruction.
5. The CSD shall collect the payment of penalties in a dedicated cash account.
6. In case of interoperable links and CSDs that use a common settlement infrastructure, including in the circumstances referred to in paragraph 5 of Article 30 of Regulation (EU) No 909/2014, the procedures for cash penalties shall be jointly managed by the involved CSDs. The arrangement between the involved CSDs or the framework referred to in Article 30(5) of Regulation (EU) No 909/2014 shall establish the modalities for the collection and distribution of cash penalties in accordance with the provisions of Regulation (EU) No 909/2014 and this Regulation.

Article 8

The redistribution of cash penalties

1. The CSD shall redistribute the amount of the collected penalties to the receiving participant that suffered from the fail.
2. The CSD shall redistribute the net amount to be received by each participant at least on a monthly basis, shortly after receiving payment of the penalty charged. It shall provide, at that time, the details for the calculation of the penalties per account and for each failed settlement instruction.

Article 9

Application of the penalty mechanism when a CCP is involved as a participant

1. When a CCP is involved in a failing settlement instruction either as a failing participant or as a receiving participant, the CSD shall not charge or redistribute the related penalty.

2. The CSD where the CCP is involved as a delivering participant shall provide to the CCP the calculation of the penalty to be charged for the receipt settlement instruction submitted by the CCP to the CSD that failed to settle. The CSD where the CCP is involved as a receiving participant shall provide to the CCP, the calculation of the penalty that it would have redistributed if the CCP would have been submitted to the penalty mechanism.
3. The CCP shall request payment of the penalty to the failing clearing member that caused that settlement fail.
4. The CCP shall redistribute the amount of the penalty collected to the clearing member that suffered from the CCP failure to deliver the same financial instrument under the subsequent settlement instruction.
5. The CCP shall report monthly to the CSD regarding the collection and distribution of the penalties it performed.

Article 10

The cost of the penalty mechanism

1. The CSD shall not use the penalties collected to cover all or part of the costs related to the penalty mechanism.
2. Any cost of the CSD related to the penalty mechanism that is charged to participants shall be charged separately from the penalties and be clearly disclosed.

SECTION 3

Buy-in

(Article 7(15)(c) to (h) of Regulation (EU) No 909/2014)

Article 11

Details of operation of the appropriate buy-in process

1. The buy-in process shall be set in the contractual documentation applicable to each participant of the CSD, CCP and trading venue.
2. The buy-in shall be executed in a manner to avoid unnecessary costs for the failing participant and shall not imply any unnecessary risk taking by the CSD, CCP or trading venue.
3. The CSD, CCP, trading venue or the receiving participant shall appoint a buy-in agent or execute the buy-in by auction. The buy-in agent shall not have any conflict of interest in the execution of the buy-in. The CSD and the trading venue shall allow the participant to provide the identification of its failing client or underlying client for which the buy-in shall be executed. Securities shall be delivered to the receiving participant and the related settlement instruction shall be deemed executed.
4. The CSD, CCP, or trading venue, as applicable in accordance with Article 7(10) of Regulation(EU) No 909/2014, shall send a notice to both the failing and the receiving participants:
 - (a) at the end of the business day when the extension period elapse informing them that the buy-in will be initiated the following business day;
 - (b) on the last business day of the buy-in period at the latest, informing them of the results of the buy-in or that the buy-in is not possible.
5. Except when the settlement instruction is on hold in which case the buy-in shall be performed for the full instruction, the buy-in shall only relate to the financial

instruments that are not available in the failing participant's account with the CSD. The CSD shall reserve the relevant financial instruments available in the failing participant's account for the settlement of that instruction.

6. The partialling functionality offered by the CSD, referred to under Article 3 (7), shall be applied on the last day of the extension period when the financial instruments are available in the account of the delivering participant irrespective of any opt out elected by the receiving participant.
7. Where the buy-in is partially successful, the receiving participant shall accept the bought-in securities. The settlement instruction shall be deemed executed for the delivered part. For the residual amount of financial instruments, the receiving participant shall choose to defer the buy-in or to receive the cash compensation. The receiving participant can defer the buy-in only once for a period equal to the timeframe established under Article 9.
8. Where the buy-in fails, the receiving participant shall choose to defer the buy-in or to receive the cash compensation by the end of the business day following the receipt of the notice sent by the CSD, CCP, or trading venue. In the absence of response within that timeframe, the cash compensation shall be paid.
9. Where the buy-in is not possible, the following steps shall be taken:
 - (a) the buy-in agent shall inform the receiving participant and the CSD, the trading venue or the CCP as relevant. In case of buy-in auction, the CCP shall inform the clearing members;
 - (b) the receiving participant shall receive the cash compensation; and
 - (c) the related settlement instruction shall be cancelled.

The buy-in is deemed not to be possible in situations that include the redemption of the relevant financial instruments.

10. For transactions not cleared by a CCP, the failing participants or the trading venue shall provide to the CSD, by the day preceding the expiration of the extension period, the details of the settlement instructions on the same financial instruments and with the same date of expiry of the execution period that are causing the failure to deliver. The

details shall contain the identification of the failing participants in the chain, the identification of the settlement instructions.

The CSD shall test consistency of this information with pending receipt settlement instructions in the account of the participant and process that information in order to limit the number of buy-ins to be executed.

Article 12

Timeframe to deliver the financial instruments

1. Shares or bonds, including those shares cleared by a CCP or those shares or bonds that are SME growth market instruments, shall be available for settlement and delivered to the receiving participant within:
 - (a) 4 business days after the end of the extension period where the bonds or shares are considered to have a liquid market, in accordance with point (a) of Article 2(1)(17) or point (b) of Article 2(1)(17), respectively, of Regulation (EU) No 600/2014;
 - (b) 7 business days after the end of the extension period where the bonds or shares are not considered to have a liquid market, in accordance with point (a) of Article 2(1)(17) or point (b) of Article 2(1)(17), respectively, of Regulation (EU) No 600/2014.
2. The depositary receipts, exchange-traded funds, certificates and other financial instruments that are not covered by paragraph 1 shall be available for settlement and delivered to the receiving participant within 7 business days after the end of the extension period.

Article 13

Extension period

1. The extension period for bonds and for shares, excluding those shares cleared by a CCP or those bonds and shares that are SME growth market instruments, shall:
 - (a) not be prolonged where the bonds or shares are considered to have a liquid market in accordance with point (a) of Article 2(1)(17) or point (b) of Article 2(1)(17), respectively, of Regulation (EU) No 600/2014;
 - (b) be prolonged where the bonds or shares are not considered to have a liquid market, in accordance with point (a) of Article 2(1)(17) or point (b) of Article 2(1)(17), respectively, of Regulation (EU) No 600/2014.
2. The extension period for the financial instruments other than those referred to in paragraph 1 and that are not traded on SME growth market shall be prolonged.
3. The extension period under paragraph 1 or 2 is prolonged by 3 days and the buy-in process shall be initiated after the end of the 7th business days following the intended settlement date.

Article 14

Type of operations and their specific timeframes

that render buy-in ineffective

1. The following operations shall be deemed an operation composed of several transactions:
 - (a) Operations whereby a first counterparty sells financial instruments against cash to another counterparty with the commitment of that counterparty to sell the same quantity of those financial instruments to the first counterparty for a price that is determined or determinable;
 - (b) Operations whereby a first counterparty lends financial instruments, against collateral or not, to another counterparty with the commitment of that counterparty to return the same quantity of those financial instruments to the first counterparty, against the collateral when it has received it.

2. Where an operation is composed of several transactions, the buy-in shall be ineffective when the intended settlement date of the second transaction of the operation is set before or on the date when the delivery of the financial instruments following the buy-in process for the first leg of the operation would be expected to take place.
3. Paragraph 2 shall not apply where no intended settlement date is set for the second transaction of the operation or where the fail relates to the second transaction of the operation.

Article 15

Calculation of the cash compensation

The cash compensation shall be determined as follows:

- (a) Where the participants pre-agreed the price to settle the cash compensation, the difference between the pre-agreed price and the price set for the failed transaction shall determine the cash compensation;
- (b) Where the participants have not pre-agreed a price, the cash compensation shall be determined by the difference between the price determined by the buy-in agent by reference to the closing price of the relevant trading venue on the day before the payment of the cash compensation and the price set for the failed transaction.
- (c) Where under point (b) the reference price is not available, the buy-in agent shall determine the price by reference to market prices available across different trading venues or brokers.
- (d) Where under point (a) to (c) the price of the settlement instruction is equal or higher than the price determined by the buy-in agent or the pre-agreed price, the cash compensation shall be null.

Article 16

Conditions under which a participant is deemed to consistently and systematically fail to deliver the financial instruments

1. A participant shall be deemed to consistently and systematically fail to deliver the financial instruments when its settlement efficiency rate is 10% lower than the settlement efficiency rate determined for the securities settlement system over a number of days that exceeds 10% of the number of days when the participant is active in the securities settlement system, over a 12 months period.
2. In calculating the percentage referred to in paragraph 1, both the value and the volume of settlement fails shall be considered. Where either the percentage in volume or in value terms is lower than the one indicated in paragraph 1, the participant shall be deemed to consistently and systematically fail to deliver the financial instruments.

Article 17

Settlement information for CCPs and trading venues

1. The CSD shall provide to each of the relevant CCP and trading venue the information that relates to the status of the failed settlement of the transactions included in the list of instructions that the CCP or the trading venue sent for settlement to the CSD. The information shall include:
 - (a) The transaction reference of the CCP or the trading venue;
 - (b) The settlement reference of the CSD;
 - (c) The identification of the participants;
 - (d) The number and identification of the financial instruments missing for the settlement to be performed.
 - (e) updated at each of the following steps:

- (i) intended settlement date;
 - (ii) end of extension period;
 - (iii) end of buy-in period
 - (iv) end of deferral period;
 - (v) payment of cash compensation or settlement or cancellation of the settlement instruction;
 - (f) The number and identification of the financial instruments missing for the settlement to be performed.
2. Where a transaction is concluded on a trading venue and the trading venue does not transfer the transactions to a CCP for clearing or to a CSD for settlement, the participant shall indicate in its settlement instruction the details and reference of the trading venue. In the absence of any indication, the transaction will be deemed an OTC transaction subject to the buy-in rules of the CSD.

CHAPTER V

FINAL PROVISIONS

Article 19

Final provisions

A buy-in process or a penalty mechanism shall be deemed to have been designed to circumvent the application of:

- (a) Section 2 of Chapter III of this Regulation when the penalty is not applied as of the first day of the settlement fail on the intended settlement date and as long as the settlement fail is not effectively remedied;
- (b) Section 3 of Chapter III of this Regulation when the timeframe for the execution of the buy-in process, including the extension period and the time for delivering the relevant financial instruments, are not calculated as from the day of the original settlement fail on the intended settlement date, until the date when the settlement fail is effectively remedied.



Article 20

Entry into force and application

This Regulation shall enter into force 18 months following the day 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.

Done at Brussels,

For the Commission

The President

ANNEX I

SETTLEMENT FAILS REPORTS TO PUBLIC AUTHORITIES

I. A) GENERAL INFORMATION (FROM CSD TO COMPETENT AUTHORITY/RELEVANT AUTHORITY)

No.	Details to be reported	Format
1.	Country code for the jurisdiction in which the CSD is established	ISO 3166 2 character country code
2.	Securities settlement system operated by the CSD	Free text
3.	Reporting timestamp (CSD to competent authority/relevant authority)	ISO 8601 date in the UTC time format YYYY-MM-DDThh:mm:ssZ
4.	Reporting period (beginning and end dates of the period covered by the report)	ISO 8601 date in the format YYYY-MM-DD-YYYY-MM-DD
5.	CSD Identifier	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumerical character code
6.	Corporate name of the CSD	Free text
7.	Contact person for the CSD (name and contact details of the person assuming the	Free text

	responsibility of the report: name, function, phone number, email address)					
8.	Rate of failed settlement instructions based on volume (number of settlement fails/number of settlement instructions during the period covered by the report) (covering both settlement fails for lack of securities and lack of cash)	Up to 5 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.				
9.	Rate of failed settlement instructions based on value (EUR) (value of settlement fails/value of settlement instructions during the period covered by the report) (covering both lack of securities and lack of cash)	Up to 5 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.				
10.	Top 10 participants with the highest rates of settlement fails during the period covered by the report (based on number of settlement instructions)	<p>For each participant identified by LEI</p> <table border="1"> <tr> <td>Participant LEI</td> <td>ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code</td> </tr> <tr> <td>Total number of settlement instructions per participant</td> <td>Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character</td> </tr> </table>	Participant LEI	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code	Total number of settlement instructions per participant	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character
Participant LEI	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code					
Total number of settlement instructions per participant	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character					

		Number of failed settlement instructions per participant	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character
		Percentage of failed settlement instructions	Up to 5 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character
11.	Top 10 participants with the highest rates of settlement fails during the period covered by the report (based on value (EUR) of settlement instructions)	For each participant identified by LEI:	
		Participant LEI	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code
		Total value (EUR) of settlement instructions per participant	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character
		Value (EUR) of failed settlement instructions per participant	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character
		Percentage of failed settlement instructions	Up to 5 numerical characters including decimals. At least one character before and one character after the decimal mark shall be

			populated. The decimal mark is not counted as a numerical character
12.	Average duration of settlement fails as number of days (difference between actual settlement date and intended settlement date)	2 digits	
13.	Main reasons for settlement fails	Free text	
14.	Rate of failed settlement instructions per currency in which the settlement instructions are denominated, based on number (number of settlement fails/number of settlement instructions per currency, during the period covered by the report)	ISO 4217 Currency Code, 3 alphabetical digits Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.	
15.	Rate of failed settlement instructions per currency in which the settlement instructions are denominated, based on value (value of settlement fails/value of settlement instructions per currency, during the period covered by the report)	ISO 4217 Currency Code, 3 alphabetical digits Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.	
16.	Total number of failed settlement instructions (covering both settlement fails for lack of securities and lack of cash)	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.	

17.	Total value (EUR) of failed settlement instructions (covering both lack of securities and lack of cash)	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
18.	<p>a) Top 20 ISINs that are the object of settlement fails, based on the number of failed settlement instructions;</p> <p>b) Top 20 ISINs that are the object of settlement fails, based on the value (EUR) of failed settlement instructions.</p>	Free text
19.	Total number of penalties referred to in Article 7(2) of Regulation (EU) No 909/2014, imposed by the CSD	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
20.	Total value (EUR) of penalties referred to in Article 7(2) of Regulation (EU) No 909/2014, imposed by the CSD	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
21.	Total number of buy-in processes initiated	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
22.	Total value (EUR) of buy-	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark

	in processes initiated	shall be populated. The decimal mark is not counted as a numerical character.
23.	Total number of successful buy-in processes initiated (that resulted in settled transactions)	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
24.	Total value (EUR) of successful buy-in processes initiated (that resulted in settled transactions)	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
25.	Total number of cash compensations paid	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
26.	Total value (EUR) of cash compensations paid	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
27.	If applicable, measures to improve settlement efficiency	Free text
28.	If applicable, results of the quarterly assessment under point b) of Article 3(11), based on the number of settlement fails	Up to 5 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
29.	If applicable, results of the quarterly assessment under point b) of Article 3(11), based on the value (EUR) of settlement fails	Up to 5 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.

30.	The value (EUR) of settlement fails/ year	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
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I. B) ADDITIONAL INFORMATION (FROM COMPETENT AUTHORITY TO ESMA)

No.	Details to be reported	Format
1.	Reporting timestamp (date and time of reporting by competent authority to ESMA)	ISO 8601 date in the UTC time format YYYY-MM-DDThh:mm:ssZ
2	Competent authority of CSD	Free text
3.	Contact person for the competent authority of CSD (name and contact details for the competent authority of the CSD: main liaison, name, function, phone number, email address)	Free text



II. SETTLEMENT FAILS DATA

Settlement date	Type of asset class	Type of transaction	Internal vs. Cross-system	Type of instruction	Failure to deliver securities						Failure to deliver cash									
					Fails %		Volume (number of instructions)		Value (€ equivalent)		Fails %		Volume (number of instructions)		Value (€ equivalent)					
					% Fail based on volume	% Fail based on value	<u>Volume of failed</u>	<u>Total volume</u>	Value of failed	Total value	% Fail based on volume	% Fail based on value	Volume of failed	Total volume	<u>Value of failed</u>	<u>Total value</u>				
	Transferable securities referred to in point (a) of Article 4(1)(44) of Directive 2014/65/EU	Trades (purchase or sale of securities) executed on a trading venue	Intra-CSD	DvP/RvP																
				FoP																
			Cross-CSD	DvP/RvP																
				FoP																
		OTC trades (purchase or sale of securities)	Intra-CSD	DvP/RvP																
				FoP																
			Cross-CSD	DvP/RvP																
				FoP																
		Collateral management	Intra-CSD	DvP/RvP																

		operations, securities lending/borrowing, repurchase transactions		FoP													
				Cross -CSD	DvP/R vP FoP												
		Corporate actions and custody related operations	Intra- CSD	DvP/R vP													
					FoP												
				Cross -CSD	DvP/R vP												
						FoP											
		CCP cleared transactions, other than those mentioned above	Intra- CSD	DvP/R vP													
						FoP											
				Cross -CSD	DvP/R vP												
						FoP											
		Others (please specify)	Intra- CSD	DvP/R vP													
						FoP											
				Cross -CSD	DvP/R vP												
						FoP											
	Transfer	Trades	Intra-	DvP/R													

<p>able securities referred to in point (b) of Article 4(1)(44) of Directive 2014/65/EU</p>	<p>(purchase or sale of securities) executed on a trading venue</p>	CSD	vP																	
			FoP																	
		Cross-CSD	DvP/R vP																	
			FoP																	
	<p>OTC trades (purchase or sale of securities)</p>	Intra-CSD	DvP/R vP																	
			FoP																	
		Cross-CSD	DvP/R vP																	
			FoP																	
	<p>Collateral management operations, securities lending/borrowing, repurchase transactions</p>	Intra-CSD	DvP/R vP																	
			FoP																	
		Cross-CSD	DvP/R vP																	
			FoP																	
<p>Corporate actions and custody related operations</p>	Intra-CSD	DvP/R vP																		
		FoP																		
	Cross-CSD	DvP/R vP																		
		FoP																		

		CCP cleared transactions, other than those mentioned above	Intra-CSD	DvP/R vP												
				FoP												
		Others (please specify)	Intra-CSD	DvP/R vP												
				FoP												
	ETFs	Trades (purchase or sale of securities) executed on a trading venue	Intra-CSD	DvP/R vP												
				FoP												
		OTC trades (purchase or sale of securities)	Intra-CSD	DvP/R vP												
				FoP												
			Cross-CSD	DvP/R vP												
				FoP												

		Collateral management operations, securities lending/borrowing, repurchase transactions	Intra-CSD	DvP/R vP																
				FoP																
			Cross-CSD	DvP/R vP																
				FoP																
			Corporate actions and custody related operations	Intra-CSD																DvP/R vP
																				FoP
		Cross-CSD		DvP/R vP																
				FoP																
		CCP cleared transactions, other than those mentioned above		Intra-CSD																DvP/R vP
																				FoP
			Cross-CSD	DvP/R vP																
				FoP																
Others (please specify)	Intra-CSD		DvP/R vP																	
			FoP																	
	Cross-CSD	DvP/R vP																		
		FoP																		

				FoP													
Units in collective investment undertakings, other than ETFs	Trades (purchase or sale of securities) executed on a trading venue	Intra-CSD	DvP/R vP														
			FoP														
		Cross-CSD	DvP/R vP														
			FoP														
	OTC trades (purchase or sale of securities)	Intra-CSD	DvP/R vP														
			FoP														
		Cross-CSD	DvP/R vP														
			FoP														
	Collateral management operations, securities lending/borrowing, repurchase transactions	Intra-CSD	DvP/R vP														
			FoP														
		Cross-CSD	DvP/R vP														
			FoP														
Corporate actions and custody related	Intra-CSD	DvP/R vP															
		FoP															
	Cross	DvP/R															

		operations	-CSD	vP													
				FoP													
		CCP cleared transactions, other than those mentioned above	Intra-CSD	DvP/R													
				vP													
			Cross-CSD	DvP/R													
				vP													
		Others (please specify)	Intra-CSD	DvP/R													
				vP													
			Cross-CSD	DvP/R													
				vP													
Money-market instruments	Trades (purchase or sale of securities) executed on a trading venue	Intra-CSD	DvP/R														
			vP														
		Cross-CSD	DvP/R														
			vP														
		OTC trades (purchase or	Intra-CSD	DvP/R													
				vP													

		sale of securities)		FoP														
			Cross-CSD		DvP/R vP													
		Collateral management operations, securities lending/borrowing, repurchase transactions	Intra-CSD	DvP/R vP														
				FoP														
		Corporate actions and custody related operations	Cross-CSD	DvP/R vP														
				FoP														
		CCP cleared transactions, other than those mentioned above	Intra-CSD	DvP/R vP														
				FoP														
		Others	Cross-CSD	DvP/R vP														
				FoP														
		Others	Intra-	DvP/R														

		(please specify)	CSD	vP														
				FoP														
			Cross-CSD	DvP/R vP														
				FoP														
Emission allowances	Trades (purchase or sale of securities) executed on a trading venue	Intra-CSD		DvP/R vP														
				FoP														
		Cross-CSD		DvP/R vP														
				FoP														
		OTC trades (purchase or sale of securities)	Intra-CSD		DvP/R vP													
					FoP													
	Cross-CSD			DvP/R vP														
				FoP														
	Collateral management operations, securities lending/borr	Intra-CSD		DvP/R vP														
				FoP														
		Cross-CSD		DvP/R vP														

		owing, repurchase transactions		FoP													
		Corporate actions and custody related operations	Intra-CSD	DvP/R	vP												
				FoP													
			Cross-CSD	DvP/R	vP												
				FoP													
			CCP cleared transactions, other than those mentioned above	Intra-CSD	DvP/R												vP
					FoP												
		Cross-CSD		DvP/R	vP												
				FoP													
		Others (please specify)	Intra-CSD	DvP/R	vP												
				FoP													
			Cross-CSD	DvP/R	vP												
				FoP													
Others	Trades (purchase or sale of)	Intra-CSD	DvP/R	vP													
			FoP														

		securities) executed on a trading venue	Cross -CSD	DvP/R vP FoP														
		OTC trades (purchase or sale of securities)	Intra- CSD	DvP/R vP														
					FoP													
		Collateral management operations, securities lending/borr owing, repurchase transactions	Cross -CSD	DvP/R vP														
						FoP												
		Corporate actions and custody related operations	Intra- CSD	DvP/R vP														
						FoP												
		CCP cleared	Intra-	DvP/R														

		transactions, other than those mentioned above	CSD	vP												
				FoP												
		Others (please specify)	Cross -CSD	DvP/R vP												
				FoP												
		Others (please specify)	Intra- CSD	DvP/R vP												
				FoP												
		Others (please specify)	Cross -CSD	DvP/R vP												
				FoP												

ANNEX II

REPORTS ON SETTLEMENT FAILS TO BE MADE PUBLIC

No.	Details to be published	Format
1.	Reporting period	ISO 8601 date in the format YYYY-MM-DD-YYYY-MM-DD
2.	CSD identifier	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code
3.	Securities settlement system operated by the CSD	Free text
Data on failure to deliver securities		
4.	% Fails based on number of settlement instructions	Up to 5 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
5.	% Fails based on value of settlement instructions	Up to 5 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
6.	Number of failed settlement instructions	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
7.	Total number of settlement instructions	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
8.	Value (EUR) of failed settlement instructions	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
9.	Total value (EUR) of settlement instructions	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.

Data on failure to deliver cash		
10.	% Fails based on number of settlement instructions	Up to 5 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
11.	% Fails based on value (EUR) of settlement instructions	Up to 5 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
12.	Number of failed settlement instructions	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
13.	Total number of settlement instructions	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
14.	Value (EUR) of failed settlement instructions	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
15.	Total value (EUR) of settlement instructions	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
Data covering both settlement fails for lack of securities and lack of cash		
16.	Total volume of failed settlement instructions (covering both settlement fails for lack of securities and lack of cash)	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
17.	Total value (EUR) of failed settlement instructions (covering both lack of securities and lack of cash)	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
18.	Measures to improve settlement efficiency	Free text

COMMISSION DELEGATED REGULATION (EU) No .../2015

of [date]

supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 with regard to regulatory technical standards on the authorisation, review and evaluation, and recognition of central securities depositories (CSDs), and the authorisation to provide banking-type ancillary services

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard the opinion of the European Central Bank,

Having regard to Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories (CSDs)⁹, and in particular Articles 12(3), 17(9), 22(10), 25(12), and 55(7) thereof,

Whereas:

- (1) **[Art. 17]** An applicant CSD should provide information on the structure of its internal controls and the independence of its governing bodies, in order to enable the competent authority to assess whether the corporate governance structure ensures the independence of the CSD and whether that structure and its reporting lines as well as the mechanisms adopted for managing possible conflicts of interest are adequate.
- (2) For the purpose of enabling the competent authority to assess the good reputation, as well as the experience and skills of the applicant CSD's senior management and members of the management body, an applicant CSD should provide the relevant information to perform such an assessment.
- (3) Information on branches is necessary in order to enable the competent authority to clearly identify the CSD organisational structure and evaluate any potential risk for the CSD due to the activity of branches.

⁹ OJ L 257, 28.8.2014, p. 1

- (4) Information on the entities within the same group of a CSD, including on any subsidiary, is necessary in order to enable the competent authority to clearly identify any potential interdependencies between those entities and the applicant CSD.
- (5) The applicant CSD should provide information to the competent authority to demonstrate that it has the necessary financial resources at its disposal and adequate business continuity arrangements for the performance of its functions on an on-going basis.
- (6) In order to have a complete overview of the services that the applicant CSD intends to provide, it is important for the competent authority to be provided with information on ancillary services of the applicant CSD, or other business lines that it intends to offer in addition to the information on the core activities.
- (7) In order for the competent authority to assess the continuity and orderly function of an applicant CSD's technological systems, that applicant CSD should provide the competent authority with descriptions of those relevant technological systems and how they are managed, including in case these systems are outsourced.
- (8) The fees associated with the services provided by CSDs are important information which should form part of the application for authorisation of a CSD in order to enable the competent authorities to verify whether they are proportionate, non-discriminatory and unbundled.
- (9) In order to secure non-discriminatory access to the notary, central maintenance and securities settlement services within the financial market, issuers, other CSDs and other market infrastructures should be granted access to the CSD in accordance with the provisions of the Regulation (EU) No 909/2014. An applicant CSD should therefore provide the competent authority with information about its access policies and procedures.
- (10) In order to carry out its authorisation duties effectively, the competent authority should receive all information from applicant CSDs, related third parties, including third parties to whom applicant CSDs have outsourced operational functions and activities.
- (11) For the purpose of ensuring the general transparency of governance rules of the applicant CSD, the competent authority should be provided with documents confirming that the applicant CSD has adopted necessary arrangements for a non-discriminatory establishment of an independent user committee for each securities settlement system.
- (12) For the purpose of securing the orderly function of core infrastructure services within the financial market, the applicant CSD should provide the competent authority with all necessary information to demonstrate that it has adequate policies and procedures for ensuring reliable record-keeping systems as well as effective mechanisms for CSD services, including in particular the measures for preventing and addressing settlements fails, and the rules concerning the integrity of the issue, the protection of securities of participants and those of their clients, settlement finality, participant default and portability.
- (13) The risk management models associated with the services provided by an applicant CSD are a necessary item in its application for authorisation so as to enable the competent authority to evaluate the reliability and integrity of the adopted procedures and help market participants make an informed choice.
- (14) In order to verify the safety of the applicant CSD's link arrangements, assess the equivalence of rules applied in the linked systems and evaluate the risks stemming from

such links, the competent authority should receive from the applicant CSD relevant information for such an analysis, together with the CSD assessment of the link arrangements.

- (15) **[Art. 22]** Following the experience of the financial crisis, authorities should focus on ongoing rather than ex-post supervision. Therefore, it is necessary to ensure that for each review and evaluation under Regulation (EU) No 909/2014, the competent authority has sufficient access to information on a continuous basis. In order to determine the scope of information to be delivered for each review and evaluation, the provisions of this Regulation should follow the requirements with which a CSD has to comply under the authorisation process under Article 17 of Regulation (EU) No 909/2014. This includes material changes to elements already submitted during the authorisation process, information relating to periodic events and statistical data.
- (16) In order to promote an effective bilateral and multilateral exchange of information between competent authorities, the results of the review and evaluation procedure should be shared with other competent authorities where this information is likely to facilitate their tasks, without prejudice to confidentiality and data protection requirements and in addition to any cooperation provided in Regulation (EU) No 909/2014. An additional exchange of information among competent authorities and relevant authorities or authorities in charge of markets in financial instruments should be organised allowing for a sharing of the findings of the competent authority in the course of the review and evaluation exercise.
- (17) Taking into account the possible burden of gathering and processing a vast amount of information related to the operation of a CSD, and in order to avoid duplications, only relevant modified documents should be provided in the context of the review and evaluation. These documents should be delivered in a manner that enables the competent authority to identify all the relevant changes made to the arrangements, strategies, processes and mechanisms implemented by the CSD since authorisation or since the completion of the last review and evaluation.
- (18) Another category of information that is useful for the competent authority to have in order to be able to perform the review and evaluation refers to events that by nature occur on a periodic basis and which are related to the operation of the CSD and the provision of services.
- (19) In order for the competent authority to carry out a comprehensive risk evaluation of a CSD, it will need to request statistical data related to the scope of the CSD's business activities to evaluate the risks related to CSDs operation and to the smooth operation of securities markets. In addition, statistical data would enable the competent authority to monitor the size and importance of securities transactions and settlements within the financial markets as well as to assess the on-going and potential impact of a given CSD on the securities market as a whole.
- (20) In order for the competent authority to evaluate the risks to which the CSD is, or might be, exposed or which it creates for the smooth functioning of the securities markets, it is also key that the competent authority can request further information related to specific risks and activities. Therefore, the competent authority should be able to define and request any additional information which it considers necessary for each review and evaluation, on its own initiative or after having duly considered a request submitted to it by another authority.
- (21) **[Art. 25]** It is important to ensure that third country CSDs that intend to provide services referred to in the Annex of Regulation (EU) No 909/2014 do not disrupt the

orderly functioning of Union markets. For this reason, it is essential to ensure that these CSDs are not in a position to lower their risk management requirements below Union standards, which could lead to regulatory arbitrage. The information to be provided to ESMA concerning the recognition of a third country CSD should enable ESMA to assess whether that the CSD is subject to a legal and supervisory framework effectively equivalent to the one provided in this Regulation (EU) No 909/2014 and Commission Delegated Regulations, if they are effectively authorised, supervised and subject to oversight in their country of establishment and cooperation arrangements have been established between ESMA, the competent authorities and relevant authorities of CSDs.

- (22) To ensure an adequate level of investor protection, in the recognition of third country CSDs ESMA may require additional information to the one strictly necessary to assess that conditions established in Regulation (EU) No 909/2014 are fulfilled.
- (23) The ongoing assessment of the full compliance of a third country CSD with the prudential requirements of such third country is the duty of the third country competent authority. The information to be provided to ESMA by the applicant third country CSD should not have the objective of replicating the assessment of the third country competent authority, but ensuring that the CSD is subject to effective supervision and enforcement in that third country, thus guaranteeing a high degree of investor protection. To assist in that process, an assurance letter by the third country competent authority should be included by the applicant CSD in its application file certifying that the applicant is duly authorised, supervised and compliant.
- (24) To enable the third country applicants to assist in the recognition process, they should submit a self-assessment of their compliance with all recognition requirements.
- (25) To allow ESMA to perform a complete assessment, the information provided by the applicant third country CSD should be complemented by that information necessary to assess the effectiveness of the ongoing supervision, enforcement powers and actions taken by the third country competent authority. Such information should be provided under the cooperation arrangement established in accordance with Regulation (EU) No 909/2014. Such a cooperation arrangement should ensure that ESMA is informed in a timely manner of any supervisory or enforcement action against the CSD applying for recognition and any change of the conditions under which authorisation was granted to the relevant CSD and on any relevant update of the information originally provided by the CSD under the recognition process.
- (26) [**Art. 12**] In order to ensure that the list of the relevant authorities is regularly updated, the CSD should calculate on an annual basis the most relevant Union currencies as referred to in Regulation (EU) No 909/2014.
- (27) [**Art. 55**] A CSD wishing to provide banking-type ancillary services should be authorised to do so under Regulation (EU) No 909/2014. For that purpose, the CSD should submit an application to the competent authority containing a number of elements. Entities already authorised as CSDs are not required to re-submit any elements that were already part of the application process for being authorised as a CSD under Regulation (EU) 909/2014.
- (28) [**FINAL**] In view of the global nature of financial markets, this Regulation takes into account the Principles for Financial Market Infrastructures issued by the Committee on Payment and Settlement Systems and the International Organization of Securities Commissions (CPSS-IOSCO Principles) which serve as a global benchmark for regulatory requirements for CSDs.

- (29) In order to clearly identify a limited number of concepts stemming from Regulation (EU) No 909/2014, as well as to specify the technical terms necessary for developing these technical standards, a number of terms should be defined.
- (30) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.
- (31) ESMA has consulted, where relevant, the European Banking Authority (EBA), and the members of the ESCB before submitting the draft technical standards on which this Regulation is based. In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)¹⁰, ESMA has conducted open public consultations on such draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010.

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL

Article 1

Definitions

For the purposes of this Regulation, the following definition shall apply:

‘review period’ means the period after the obtaining of the authorisation by a CSD referred to in Article 17 (1) of Regulation (EU) No 909/2014 or, if the competent authority has finalised at least one review and evaluation after granting authorisation to a CSD, the period after the completion of the last review and evaluation.

CHAPTER II

CSD AUTHORISATION

(Article 17 of Regulation No 909/2014)

SECTION 1

General information on the applicant CSD

¹⁰ OJ L 331, 15.12.2010, p. 84.

Article 2

Identification and legal status of a CSD

1. An application for authorisation of a CSD shall identify the applicant and the activities that it intends to carry out.
2. The application for authorisation of a CSD shall in particular contain the following information:
 - (a) the corporate name of the applicant CSD, its legal status and legal address in the Union;
 - (b) the articles of incorporation and, where relevant, other statutory documentation;
 - (c) an excerpt from the relevant commercial or court register, or other forms of certified evidence of the place of incorporation and scope of business activity of the applicant CSD that shall be valid at the date of the application;
 - (d) the identification of the securities settlement system(s) that the applicant CSD operates or intends to operate;
 - (e) a copy of the decision of the management body regarding the application and the minutes from the meeting in which the management body approved the application file and its submission;
 - (f) contact details of the person responsible for the application;
 - (g) the chart showing the ownership links between the parent undertaking, subsidiaries and any other associated entities or branches; the undertakings shown in the chart shall be identified by their full name, legal status, legal address, and tax numbers or company registration numbers;
 - (h) the scope of business activities of CSD's subsidiaries and other legal persons in which the applicant CSD has a participation, including information on the level of participation;
 - (i) a list containing the name of each person or entity who directly or indirectly holds 5 % or more of the applicant CSD's capital or of its voting rights or whose holding makes it possible to exercise a significant influence over the applicant CSD's management;
 - (j) a list of any undertakings in which the applicant CSD holds 5 % or more of the capital or voting rights or over whose management they exercise a significant influence;
 - (k) the list of core services listed in Section A of the Annex to Regulation (EU) No 909/2014 that the applicant CSD is providing or intends to provide;
 - (l) the list of ancillary services in accordance with Section B of the Annex to Regulation (EU) No 909/2014 that the applicant CSD is providing or intends to provide, including

those services permitted under, but not explicitly specified under Section B of the Annex to Regulation (EU) No 909/2014;

- (m) where applicable, the list of any services and activities that the CSD is providing or intends to provide under Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments¹¹;
 - (n) of the list of any outsourced services to a third party under Article 30 of Regulation (EU) No 909/2014;
 - (o) the currency or currencies it processes, or intends to process;
 - (p) information on any pending judicial, administrative, arbitration or any other litigation proceedings where the applicant CSD may be a party which may cause significant financial or reputational costs.
3. If the applicant CSD intends to provide services as indicated in Article 23(2) of Regulation (EU) No 909/2014 in any other Member State than the Member State of its incorporation, the application for authorisation shall contain also the following information:
- (a) the Member State(s) in which the CSD intends to operate;
 - (b) a programme of operations stating in particular the services which it provides, or intends to provide;
 - (c) the currency or currencies it processes, or intends to process;
 - (d) in case of a branch, the organisational structure of the branch and the names of those responsible for the management of the branch;
 - (e) whenever relevant, an assessment of the measures the applicant CSD intends to take to allow its users' to comply with the national laws referred to in Article 49(1) of Regulation (EU) No 909/2014.

Article 3

Policies and procedures required under this Regulation

1. Where an applicant CSD is required to provide information regarding its policies or procedures under this Regulation, it shall ensure that the policies or procedures contain or are accompanied by each of the following items:
- (a) an indication of the persons responsible for the approval and maintenance of the policies and procedures;

¹¹ OJ [...]

- (b) a description of how compliance with the policies and procedures will be ensured and monitored, and the person responsible for compliance in that regard;
- (c) a description of the measures to adopt in the event of a breach of policies and procedures.

2. An application for authorisation shall contain the procedure for reporting to the competent authority any material breach of policies or procedures of a CSD, in particular when such infringement may result in a breach of the conditions for initial authorisation, as well as in any infringement of Regulation (EU) No 909/2014 in accordance with Article 65 of Regulation (EU) No 909/2014.

Article 4

Information for groups

1. Where an applicant CSD is part of a group of undertakings including in particular other CSDs and credit institutions referred to in Title IV of Regulation (EU) No 909/2014, the application for authorisation shall contain the following items:
 - (a) policies and procedures specifying how the organisational requirements apply to the group and to the different entities of the group, from the perspective of the interaction with the applicant CSD;
 - (b) information on the composition of the senior management, management body and shareholders of the parent undertaking or group of undertakings;
 - (c) services as well as key individuals other than senior management that are shared by the group.
2. Where the applicant CSD has a parent undertaking, the application for authorisation shall additionally:
 - (a) identify the legal address of its parent undertaking;
 - (b) indicate whether the parent undertaking is authorised or registered and subject to supervision, and when this is the case, state any relevant reference number and the name of the competent authority or authorities.
3. Where the applicant CSD offers, or plans to offer, through an undertaking within its group, or through an undertaking with which the applicant CSD has an agreement, ancillary services permitted under section B of the Annex to Regulation (EU) No 909/2014, the application for authorisation as CSD shall contain a description of the respective ancillary services.
4. Where the applicant CSD has an agreement with an undertaking within the group relating to the offering of trading or post-trading services, the application shall contain a description and a copy of such agreement.

SECTION 2

Financial resources for the provision of services by the applicant CSD

Article 5

Financial reports, business plans, recovery plans and resolution plans

1. An application for authorisation of a CSD shall contain the following financial and business information about the applicant CSD:

- (a) a complete set of financial statements, prepared in conformity with Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards¹², for the preceding three years;
- (b) financial reports including the statutory audit report on the annual and consolidated financial statements, within the meaning of Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts¹³, for the preceding three years,
- (c) if the applicant CSD is audited by an external auditor, the name and the national registration number of the external auditor;
- (d) a business plan, including a financial plan and an estimated budget, contemplating different business scenarios for the CSD services, over a minimum of three years reference period.

2. Where historical financial information referred to in paragraph 1 is not available, an application for authorisation of a CSD shall contain the following information about the applicant CSD:

- (a) the pro-forma statement demonstrating proper resources and expected business status in six months after authorisation is granted;
- (b) an interim financial report where the financial statements are not yet available for the requested period of time;
- (c) a statement of financial position, such as a balance sheet, income statement, changes in equity and of cash flows and notes comprising a summary of accounting policies and other explanatory notes;
- (d) if applicable, audited annual financial statements of any parent undertaking for the three financial years preceding the date of the application;

¹² OJ [...]
¹³ OJ [...]

- (e) an indication of future plans for the establishment of subsidiaries and their location;
 - (f) a description of the business activities which the CSD plans to carry out, specifying the activities of any subsidiaries or branches.
4. The application shall also include all elements to demonstrate compliance with sections 3 (IT) and 4 (business continuity) of Regulation (EU) No [RTS on operational risk requirements].
 5. The application shall also include:
 - (a) an adequate recovery plan to ensure continuity of the CSD's critical operations including:
 - (i) a high-level summary that provides an overview of the plan and how it will be implemented;
 - (ii) the identification of the applicant CSD's critical services, stress scenarios and recovery triggers, as well as a substantive description of its recovery tools;
 - (iii) description of how the interests of all stakeholders who are likely to be affected by the recovery plan have been considered by the applicant CSD's management body when the plan was developed, as well as a description of how they will be considered when the plan is to be implemented;
 - (iv) assessment the legal enforceability of the recovery plan by the applicant CSD, taking into account any constraints potentially imposed by domestic or foreign laws or regulations;
 - (b) the resolution plan established and maintained for the CSD so as to ensure continuity of at least its core functions, having regard to the size, systemic importance, nature, scale and complexity of the activities of the CSD concerned.

SECTION 3

Organisational requirements

Article 6

Organisational chart

An application for authorisation of a CSD shall contain the organisational chart detailing the organisational structure of the applicant CSD. This chart shall include:

- (a) information about the identity of the person responsible for each significant role, including senior management, managers in charge of main operational roles, and persons who direct the activities of any branches, and definition of their roles;
- (b) number of dedicated staff members in each division and operational unit.

Article 7

Staffing policies and procedures

An application for authorisation of a CSD shall contain the following information concerning its policies and procedures related to staff:

- (a) a copy of the remuneration policy, providing information on both fixed and variable elements, for the senior management, the members of the management body, and the staff employed in the risk management and control functions of the CSD in accordance with Article 26(1) of Regulation (EU) No 909/2014;
- (b) the measures put in place by the applicant CSD to mitigate the risk of over-reliance on any individual person.

Article 8

Corporate governance

1. An application for authorisation of a CSD shall contain in accordance with Article 26 of Regulation (EU) No 909/2014 and the respective RTS:

- (a) the lines of responsibility within the CSD, its internal corporate governance policies and procedures, and the terms of reference which govern its senior management, its management body, including its independent and other non-executive members, and relevant committees;
- (b) the processes to identify, manage, monitor and report the risks to which the applicant CSD is or might be exposed.

2. The information referred to in paragraph 1 shall include a description of the selection process, appointment, performance evaluation and removal of senior management and members of the management body.

3. The applicant CSD shall provide a description of the method employed by the CSD to make its governance arrangements and the rules governing its activity available to the public in accordance with Article 26(4) of Regulation (EU) No 909/2014.

4. Where the applicant CSD adheres to a recognised corporate governance code of conduct, the application shall identify the code, include a copy of the code and provide an explanation for any situations where the CSD deviates from the code.

Article 9

Internal control mechanisms

1. An application for authorisation of a CSD shall contain an overview of the internal controls of the CSD in accordance with Article 26(5) of Regulation (EU) No 909/2014 and the

respective RTS. It shall also include information regarding its compliance arrangements of its internal audit function. The overview shall include the following:

- (a) the applicant CSD's internal control policies and procedures;
- (b) a description of the monitoring and evaluation tools for the adequacy and effectiveness of the applicant CSD's internal control systems;
- (c) a description of the control and safeguard tools for the CSD's information processing systems;
- (d) the internal bodies in charge of the evaluation of the findings;
- (e) the procedures for its employees to report potential violations internally through a specific channel.

2. An application for authorisation of a CSD shall contain the information with respect to applicant CSD's internal audit function, including:

- (a) an explanation of how its internal audit methodology is developed and applied taking into account the nature of the CSD's activities, complexities and risks;
- (b) a work plan for three years following the date of application;
- (c) a description of the roles and qualifications of each individual who is responsible for internal audit.

3. An application for authorisation of a CSD shall contain the information with respect to applicant CSD's compliance arrangements including:

- (a) a description of the roles and qualifications of each individual who is responsible for compliance and of any other staff involved in the compliance assessments, including how the independence of the compliance function from the rest of the business will be ensured;
- (b) the internal policies and procedures designed to ensure that the applicant CSD, including its managers and employees, will comply with all the provisions of Regulation (EU) No 909/2014, including a description of the role of the management body and senior management;
- (c) where available, the most recent internal report prepared by the persons responsible for compliance or any other staff involved in compliance assessments within the applicant CSD.

Article 10

Senior management, management body and shareholders

1. An application for authorisation of a CSD shall contain the following information in respect of each member of the senior management and each member of the management body, enabling the competent authority to assess the applicant CSD's compliance with Article 27(1) and (4) of Regulation (EU) No 909/2014:
 - (a) a copy of the curriculum vitae in order to enable the assessment on the adequate experience and knowledge to adequately perform their responsibilities;
 - (b) details regarding any criminal and administrative sanctions in connection with the provision of financial or data services or in relation to acts of fraud or embezzlement, notably via an official certificate if available within the relevant Member State;
 - (c) a self-declaration of good repute in relation to the provision of a financial or data service, where each member of the senior management and the management body shall state whether they:
 - i. have been convicted of any criminal or administrative offence in connection with the provision of financial or data services or in relation to acts of fraud or embezzlement;
 - ii. have been subject to an adverse decision in any proceedings of a disciplinary nature brought by a regulatory authority or a government body or agency or are the subject of any such proceedings which are not concluded;
 - iii. have been subject to an adverse judicial finding in civil proceedings before a court in connection with the provision of financial or data services, or for impropriety or fraud in the management of a business;
 - iv. have been member of the management body or senior management of an undertaking whose registration or authorisation was withdrawn by a regulatory body while this person was connected to the undertaking or within a year of the person ceasing to be connected to the undertaking;
 - v. have been refused the right to carry on activities which require registration or authorisation by a regulatory body;
 - vi. have been member of the management body or senior management of an undertaking which has gone into insolvency or liquidation while this person was connected to the undertaking or within a year of the person ceasing to be connected to the undertaking;
 - vii. have been member of the management body or senior management of an undertaking which was subject to an adverse decision or penalty by a regulatory body while this person was connected to the undertaking or within a year of the person ceasing to be connected to the undertaking;

- viii. have been otherwise fined, suspended, disqualified, or subject to any other sanction in connection with the provision of financial or data services, by a government, regulatory or professional body;
 - ix. have been disqualified from acting as a director, disqualified from acting in any managerial capacity, dismissed from employment or other appointment in an undertaking as a consequence of misconduct or malpractice;
 - x. a declaration of any potential conflicts of interests that the senior management and the members of the management body may have in performing their duties and how these conflicts are managed.
2. The application shall also include a declaration regarding the independent status of the member of the management body in accordance with Article 27(2) of Regulation (EU) No 909/2014.
3. The application shall also include:
- (a) a description of the roles and responsibilities of the CSD management body in accordance with Article 27(5) of Regulation (EU) No 909/2014.
 - (b) a description of a target for the representation of the underrepresented gender in the management body and a relevant policy as referred to in Article 27(4) of Regulation No 909/2014 as well as the method employed by the applicant CSD to make such target, policy and its implementation public.
4. The information referred to in the preceding paragraphs shall be accompanied by:
- (a) the description of the ownership structure of the applicant CSD referred to in point g) of Article 1(2) including a description of the identity and scale of interests of any parties in a position to exercise control over the operation of the CSD as referred to in Article 27(7)(a) of Regulation (EU) No 909/2014;
 - (b) a list of the shareholders and persons who are in a position to exercise, directly or indirectly, control over the management of the applicant CSD to satisfy the competent authority that the requirement set out in Article 27(6) of Regulation (EU) No909/2014 is met.

Article 11

Management of conflicts of interest

1. An application for authorisation of a CSD shall contain the following information on the policies and procedures put in place to identify and manage conflicts of interest by the applicant CSD to comply with Article 26(3) and (7) of Regulation (EU) No 909/2014 and with the respective RTS:

- (a) policies and procedures with respect to the identification, management and disclosure of conflicts of interest and a description of the process used to ensure that the relevant persons are aware of the policies and procedures;
 - (b) any other measures and controls put in place to ensure the requirements referred to in the point (a) on conflicts of interest management are met;
 - (c) resolution procedures whenever possible conflicts of interest occur;
 - (d) arrangements that the applicant CSD makes to structure itself and to allocate responsibility for decisions so that it can continue to take proper regulatory decisions notwithstanding any conflicts of interest, including:
 - i. the size and composition of the management body and relevant committees;
 - ii. the roles and responsibilities of key individuals, especially where they also have responsibilities in other organisations;
 - iii. the arrangements made to ensure that individuals who may have a permanent conflict of interest in certain circumstances are excluded from the process of taking decisions (or receiving information) about matters in which that conflict of interest would be relevant;
 - iv. an up-to-date register, at the time of the application, of existing material conflicts of interest in relation to any services provided by the applicant CSD and a description of how these are being managed.
2. Where the applicant CSD is part of a group, the register referred to in point (d) (ii) of paragraph 1 shall include any material conflicts of interest arising from other undertakings within the group and the arrangements made to manage these conflicts.

Article 12

Confidentiality

1. An application for authorisation of a CSD shall contain the internal policies and the procedures put in place for preventing any unauthorised use or disclosure, for commercial purposes, or any illegitimate purposes, of:
- (a) confidential information;
 - (b) information related to participants, clients or issuers;
 - (c) any other information, not permitted to be used for commercial purposes, that the applicant CSD may have stored in the performance of its duties.

2. An application for authorisation of a CSD shall include the internal procedures on the staff permissions ensuring secured access to data, specifying any restrictions on the use of data.

Article 13

User committee

An application for authorisation of a CSD shall contain the following documents or information for each user committee to comply with Article 28 of Regulation (EU) No 909/2014:

- (a) the mandate of the user committee;
- (b) its governance arrangements;
- (c) its operating procedures;
- (d) the eligibility criteria and appointment process for its members;
- (e) a list of proposed members and the indication of parties that they represent.

Article 14

Record keeping

An application for authorisation of a CSD shall contain a description of the CSD record-keeping systems, policies and procedures enabling it to comply with Article 29 of Regulation (EU) No 909/2014 and Regulation (EU) No... [RTS].

SECTION 4

Conduct of business rules

Article 15

Goals and objectives

An application for authorisation of a CSD shall contain a description of goals and objectives defined by the applicant CSD to comply with Article 32(1) of Regulation (EU) No 909/2014.

Article 16

Handling of complaints

An application for authorisation of a CSD shall contain the procedures established by the applicant CSD for the handling of complaints in a transparent manner to comply with Article 32(2) of Regulation (EU) No 909/2014.

Article 17

Requirements for participation

An application for authorisation of a CSD shall contain the following information regarding participation in securities settlement system(s) operated by the applicant CSD to comply with Article 33 of Regulation (EU) No 909/2014 and the Regulation (EU) No... [RTS]:

- (a) criteria for participation which allow fair and open access for all legal persons that intend to become a participant of the securities settlement system operated by the CSD;
- (b) the procedures for the application of disciplinary measures, including suspension and orderly exit of participants that no longer meet the criteria for participation.

Article 18

Transparency

1. An application for authorisation of a CSD shall contain relevant documents regarding pricing policy, including any existing discounts and rebates and conditions to benefit from such reductions for each core and ancillary services that are to be disclosed in accordance with Article 34 of Regulation (EU) No 909/2014.
2. The applicant CSD shall provide the competent authority with a description of methods used in order to make the information available for clients and prospective clients, including a copy of the fee structure and the evidence that the CSD services are unbundled.

Article 19

Communication procedures with participants and other market infrastructure

An application for authorisation of a CSD shall contain relevant documents regarding the use of international open communication procedures and standards for messaging and reference data in relation to its communication procedures with participants and other market infrastructures in accordance with Article 35 of Regulation (EU) No 909/2014.

SECTION 5

Requirements for CSD services

Article 20

Book-entry form

An application for authorisation of a CSD shall contain information that demonstrates that the applicant CSD is capable to comply with Article 3 of Regulation (EU) No 909/2014.

Article 21

Intended settlement dates and measures for preventing and addressing fails

An application for authorisation of a CSD shall contain the following information:

- (a) the rules and procedures that facilitate the settlements of transactions on the intended settlement date to in accordance with Article 6 of Regulation (EU) No 909/2014;
- (b) the details of mechanisms promoting early settlement on the intended settlement date and measures to encourage and incentivise the timely settlement of transactions by its participants in accordance with Article 6(2) and (3) of Regulation (EU) No 909/2014 and Regulation (EU) No... [RTS];
- (c) the details of the measures to address fails in accordance with Article 7 of Regulation (EU) No 909/2014 and Regulation (EU) No... [RTS].

Article 22

Integrity of the issue

An application for authorisation of a CSD shall contain the rules and procedures for ensuring the integrity of securities issues put in place by the applicant CSD in accordance with Article 37 of Regulation (EU) No 909/2014 and the Regulation (EU) No... [RTS].

Article 23

Protection of participants' and their clients' securities

1. An application for authorisation of a CSD shall contain the information on mechanisms established to ensure the protection of participants' and their clients' securities in accordance with Article 38 of Regulation (EU) No 909/2014, including:
 - (a) the rules and procedures to help reduce and manage the risks associated with the safekeeping of securities;
 - (b) the details of different levels of segregation offered by the applicant CSD, including a description of the main legal implications of the respective levels of segregation offered, information on the insolvency law applicable in the relevant jurisdictions and the costs associated.
2. The rules referred to in paragraph 1 shall clearly provide that the CSD shall not use for any purpose securities that do not belong to it, unless it has obtained the relevant

participants' prior express consent, including, if applicable, any necessary prior consent obtained by participants from their clients.

Article 24

Settlement finality

An application for authorisation of a CSD shall contain the rules on settlement finality put in place in accordance with Article 39 of Regulation (EU) No 909/2014.

Article 25

Cash settlement

An application for authorisation of a CSD shall contain the procedures for the settlement of the cash payments for each securities settlement system it operates in accordance with Article 40 of Regulation (EU) No 909/2014.

Article 26

Participant default rules and procedures

1. An application for authorisation of a CSD shall contain the effective and clearly defined rules and procedures put in place to manage the default of a participant in accordance with Article 41 of Regulation (EU) No 909/2014.
2. The applicant CSD shall provide the competent authority with information on the details and, where applicable, the results of the tests conducted in accordance with Article 41 (3) of Regulation (EU) No 909/2014.

Article 27

Portability

An application for authorisation of a CSD shall contain the procedure put in place by the applicant CSD in accordance with Article 20(5) of Regulation (EU) No 909/2014, ensuring the timely and orderly settlement and transfer of the assets of clients and participants to another CSD in the event of a withdrawal of authorisation of the applicant CSD.

SECTION 6

Prudential requirements

Article 28

Legal risks

1. An application for authorisation of a CSD shall contain the information enabling the competent authority to assess that the applicant CSD's rules, procedures, and contracts are clear and understandable and enforceable in all relevant jurisdictions, in accordance with Article 43(1) and (2) of Regulation (EU) No 909/2014.
2. Where the applicant CSD intends to conduct business in different jurisdictions, it shall provide the competent authority with information on procedures put in place to identify and mitigate the risks arising from potential conflicts of laws across jurisdictions, in accordance with Article 43(3) of Regulation (EU) No 909/2014. Legal opinions shall be provided as appropriate.

Article 29

General business risks

1. The applicant CSD shall provide the competent authority with a description of management and control systems as well as IT tools put in place in accordance with Article 44 of Regulation (EU) No 909/2014.
2. Where the applicant CSD has obtained a risk rating from a third entity, it shall provide it to the competent authority, along with any supporting information.

Article 30

Operational risks

1. An application for authorisation of a CSD shall contain information demonstrating that the applicant CSD is compliant with Article 45 of Regulation (EU) No 909/2014 and Regulation (EU) No... [RTS].
2. An application for authorisation of a CSD shall also contain the information on the outsourcing agreements referred to in Article 30 of Regulation (EU) No 909/2014, entered into by the applicant CSD, together with the methods employed to monitor the service level of the outsourced functions and a copy of the contracts governing such arrangements.

Article 31

Investment policy

An application for authorisation of a CSD shall include information demonstrating that:

- a) the applicant CSD holds its financial assets in accordance with Article 46(1), (2) and (5) of Regulation (EU) No 909/2014 and Regulation (EU) No... [RTS].
- b) the applicant CSD's investments are limited to financial assets referred to in Article 46(3) of Regulation (EU) No 909/2014 and in Regulation (EU) No... [RTS].

Article 32

Capital requirements

An application for authorisation of a CSD shall include:

- (a) the information demonstrating that the capital, including retained earnings and reserves of the applicant CSD, is maintained in accordance with Article 47 of Regulation (EU) No 909/2014 and the Regulation (EU) No... [RTS].
- (b) the plan referred to in Article 47(2) of Regulation (EU) No 909/2014, approved by the management body or an appropriate committee of the management body of the applicant CSD, for:
 - i. the raising of additional capital if its equity capital approaches or falls below the requirements;
 - ii. the achieving of an orderly wind down or reorganisation of its operations and services in case the CSD is unable to raise new capital.

SECTION 7

CSD Services

Article 33

CSD Services

An application for authorisation of a CSD shall include detailed descriptions and procedures to be applied in the case of services that the CSD provides or intends to provide covering the following:

- (a) the core services specified under Section A of the Annex Regulation (EU) No 909/2014 that the applicant CSD is providing or intends to provide;
- (b) the ancillary services specified under section B of the Annex to Regulation (EU) No 909/2014, if the applicant CSD is providing or intends to provide such services;

- (c) any other services permitted under, but not explicitly specified under Section B of the Annex to Regulation (EU) No 909/2014, that the applicant CSD is providing, or intends to provide.
- (d) any services and activities that the CSD is providing or intends to provide under Directive 2014/65/EU¹⁴.

Article 34

CSD Links

1. Where the applicant CSD has established or intends to establish a link, the application for authorisation shall contain the following information:
 - (a) procedures regarding the identification, assessment, monitoring and management of all potential sources of risk for the applicant CSD and for its participants arising from the link arrangement, including an assessment of the insolvency law applicable, and the appropriate measures put in place to mitigate them;
 - (b) other information necessary for assessing the compliance with the requirements provided in Article 48 of Regulation (EU) No 909/2014 and Regulation (EU) No... [RTS];
 - (c) a description of the links;
 - (d) expected or effective settlement volumes, in terms of number of settlement instructions and turnover;
 - (e) the CSD assessment of the link arrangement.
2. Without prejudice to paragraph 1, where the applicant CSD has established or intends to establish an interoperable link which is subject to authorisation in accordance with Article 19(1) (e) of Regulation (EU) No 909/2014, an application for authorisation of such a link shall also contain a detailed description of the existing or prospective link, together with the CSD assessment of the link arrangement.

SECTION 8

Access to CSDs

Article 35

Access rules

¹⁴ OJ [...]

An application for authorisation of a CSD shall contain the procedures put in place for dealing with requests for access:

- (a) from legal persons that intend to become participants to the CSD under Article 33 of Regulation (EU) No 909/2014 and Regulation (EU) No... [RTS];
- (b) from issuers under Article 49 of Regulation (EU) No 909/2014 and Regulation (EU) No... [RTS];
- (c) between CSDs under Article 52 of Regulation (EU) No 909/2014 and Regulation (EU) No... [RTS];
- (d) between the CSD and another market infrastructure under Article 53 of Regulation (EU) No 909/2014 and Regulation (EU) No... [RTS].

SECTION 9

Additional information

Article 36

Additional Information

The competent authority shall request the applicant CSD to provide further information or additional explanations if deemed necessary for assessing whether the applicant CSD has established or will have established, at the time of the authorisation, all the necessary arrangements to meet its obligations set out in Regulation (EU) No 909/2014 and Regulation (EU) No... [RTS].

Article 37

Material changes

Once authorised in accordance with Regulation (EU) No 909/2014, a CSD shall provide to the competent authority information about any material changes to the conditions under which the authorisation has been granted which have an impact on the provision of services by the CSD, before their implementation. The information shall be accompanied by a self-assessment performed by the CSD regarding the compliance of the proposed changes with the requirements under Regulation (EU) No 909/2014.

CHAPTER III

REVIEW AND EVALUATION

(Article 22 of Regulation No 909/2014)

Article 38

Access to data by the competent authority

1. For the purpose of the review and evaluation as referred to in Article 22(7) of Regulation (EU) No 909/2014, a CSD shall provide the information as defined in this chapter together with a self-assessment on the CSD's activities overall compliance with the provisions of Regulation (EU) No 909/2014 during the review period, and any other information as requested by the competent authority.
2. The information provided by the CSD shall allow the competent authority to gain a thorough knowledge about the CSD's arrangements, strategies, processes and mechanisms which demonstrate the CSD's compliance with Regulation (EU) No 909/2014 on a regular basis and upon specific request of the competent authority.

Article 39

Report on material changes introduced to the arrangements, strategies, processes and mechanisms implemented by a CSD

1. For the purpose of each review and evaluation, a CSD shall provide to the competent authority a report summarising material changes to the arrangements, strategies, processes and mechanisms which were introduced in the review period and notified to the competent authority in accordance with Article 37. The report shall include a summary of the self-assessments performed by the CSD in accordance with Article 37, regarding the compliance of the proposed changes with the requirements of Regulation (EU) No 909/2014.
2. The competent authority may request the CSD to provide further information or additional explanation if the information included in the report or self-assessment is insufficient.

Article 40

Documents submitted in the application for authorisation that have been materially modified

A CSD shall provide all documents submitted to the competent authority in the application for authorisation which have been modified in the review period.

Article 41

Information relating to periodic events

1. For each review and evaluation, the CSD shall provide to the competent authority:
 - (a) a complete set of the latest audited financial statements of the CSD, including those at consolidated level;
 - (b) a management accounts report containing the most recent and interim financial statements of the CSD;
 - (c) copies of the minutes from meetings of the management body that took place in the review period;
 - (d) any decision of the management body following the advice of the user committee, as well as any decision in which the management body has decided not to follow the advice of the user committee.
 - (e) information on any pending judicial, administrative, arbitration or any other litigation proceedings, particularly as regards tax and insolvency matters, that the CSD may be party to, and which may incur significant financial or reputational costs;
 - (f) information on any pending judicial, administrative, arbitration or any other litigation proceedings, irrespective of their type, that a member of the management body or a member of the senior management may be party to and that may have an adverse impact upon the CSD;
 - (g) a copy of the results of business continuity stress tests or similar exercises performed in the review period;
 - (h) information on any complaints received by the CSD in the review period, specifying the nature of the complaint, the handling of the complaint and date when the complaint was resolved;
 - (i) information on cases where the CSD denied access to its securities settlement system to a participant, another CSD, a CCP or a trading venue or refused to provide services to an issuer;
 - (j) information on any changes affecting any links of the CSD, including the mechanisms and procedures used for settlement;

- (k) information on any operational incidents that occurred in the review period and affected the smooth functioning of any core services provided;
 - (l) summary of types of manual intervention reported to the competent authority in accordance with Article 3(1) of Regulation (EU) No ... [RTS on settlement discipline];
 - (m) information on all cases of identified conflicts of interest that occurred in the review period, including the way in which they were managed;
 - (n) information on measures taken to address the identified technical incidents and conflicts of interest as well as the results thereof;
 - (o) information on internal controls and audits performed in the review period;
 - (p) information on any identified infringements of CSD's rules and obligations under Regulation (EU) No 909/2014, including in connection to Article 26(5) of Regulation (EU) No 909/2014;
 - (q) detailed information on disciplinary actions which the CSD imposed, including information indicating participants which were suspended pursuant to Article 7(9) of Regulation No 909/2014, specifying the suspension period and the reason for its application;
 - (r) business operations report concerning the review period;
 - (s) detailed business plan for services provided by the CSD covering at least a period of one year following the review and evaluation, including also a general business strategy over a minimum period of three years;
 - (t) information on any changes to the recovery plan, including the identification of the CSD's critical services, results of stress scenarios and recovery triggers, as well as the CSD recovery tools.
 - (u) information on any changes to the resolution plan established and maintained for the CSD so as to ensure continuity of at least its core functions, having regard to the size, systemic importance, nature, scale and complexity of the activities of the CSD concerned, and any relevant resolution plan established in accordance with Directive 2014/59/EU;
2. The competent authority may request that the occurrence of any of the events referred to in paragraph 1 shall be communicated to the competent authority without undue delay.
 3. The competent authority may request information regarding the reasonable expectation of future occurrence of events referred to in paragraph 1 and the mitigating measures being taken.

Statistical data to be delivered for each review and evaluation

1. For the purpose of the review and evaluation, the CSD shall provide the following statistical data to the competent authority covering the review period:
 - (a) a list of participants to each securities settlement system operated by the CSD, including information on their country of incorporation;
 - (b) a list of issuers and a list of securities issues maintained by the CSD, including information on the issuers' country of incorporation, highlighting those for whom the CSD provides notary services;
 - (c) nominal and market value of the securities maintained in each securities settlement system operated by the CSD in total and divided as follows:
 - (i) by asset class (as specified in point d) of Article 4(2) of Regulation (EU) No ... [RTS on settlement discipline]);
 - (ii) by country of incorporation of the participant;
 - (iii) by country of incorporation of the issuer;
 - (d) nominal and market value of the securities centrally maintained in each securities settlement system operated by the CSD, divided as follows:
 - (i) by asset class;
 - (ii) by country of incorporation of the participant;
 - (iii) by country of incorporation of the issuer.
 - (e) number, nominal value and market value of settlement instructions settled in each securities settlement system operated by the CSD in total and divided as follows:
 - (i) by asset class;
 - (ii) by country of the incorporation of the participant;
 - (iii) by country of incorporation of the issuer;
 - (iv) by settlement currency;
 - (v) by type of settlement instructions as specified under point g) of Article 4(2) of Regulation (EU) No.... [RTS on settlement discipline];
 - (vi) by the value of settlement in accordance with Article 40(1) of Regulation EU) No 909/2014, and the value settlement in accordance with Article 40(2) of Regulation EU) No 909/2014, in the case of DvP settlement instructions;
 - (f) number, nominal value and market value of buy-in transactions referred to in Article 7(3) and (4) of Regulation (EU) No 909/2014;
 - (g) if applicable, total nominal and market value of securities borrowing and lending operations processed within the securities lending mechanism operated by a CSD

when a CSD plays the role of an agent among participants of a securities settlement system, divided per asset class;

- (h) if applicable, total nominal and market value of settlement instructions settled via any link, as divided per each link;
 - (i) if applicable, value of guaranties and commitments related to securities lending and borrowing operations;
 - (j) if applicable, value of treasury activities involving foreign exchange and transferable securities related to managing participants' long balances, including categories of institutions.
2. Statistical data provided by a CSD shall refer to a period covering the calendar year, unless the competent authority defines reporting period otherwise.
 3. The CSD shall provide the values referred to in paragraph 1 in the currency in which the securities are denominated, settled or in which credit is extended. The competent authority may request the CSD to provide these values in the national currency or in Euro.
 4. For the purposes of statistical reporting by a CSD, the competent authority may determine algorithms or principles for data aggregation.

Article 43

Other information

1. A CSD shall submit a list of the documents to be provided to the competent authority including the following:
 - (a) information whether the document has been updated during the review period;
 - (b) unique reference number of the document;
 - (c) title of the document; and
 - (d) chapter, section or page of the document where changes have been introduced during the review period and/or any additional explanation in relation to the changes introduced during the review period.
2. If a CSD does not provide any of the required information, it shall communicate to the competent authority the reason why the information is not provided.
3. The competent authority may request any further information which it considers necessary for the review and evaluation.

Article 44

Determination of the scope of information

The information required for the review and evaluation process shall be provided to the competent authority, unless the competent authority informs the CSD before the end of the review period that a specific type of information is not needed.

Article 45

Information to be supplied to relevant authorities and, where applicable, to the authority referred to in Article 67 of Directive 2014/65/EU

1. The competent authority shall supply to the relevant authorities and, where applicable, to the authority referred to in Article 67 of Directive 2014/65/EU, the results of the review of material changes that the CSD introduced to its arrangements, strategies, processes and mechanisms. The information shall be accompanied by the report delivered by the CSD in accordance with Article 39(1) as well as by the documents provided in the application for authorisation which have been materially modified in the review period.
2. The competent authority shall provide to the relevant authorities and, where applicable, to the authority referred to in Article 67 of Directive 2014/65/EU, a report on its evaluation of the risks to which the CSD is, or might be, exposed or which it creates for the smooth functioning of securities markets.
3. If the review and evaluation resulted in any remedial actions or enforcement measures, the competent authority shall inform the relevant authorities and, where applicable, the authority referred to in Article 67 of Directive 2014/65/EU thereof.

Article 46

Exchange of information between competent authorities in accordance with Article 22(8) of Regulation (EU) No 909/2014

1. When receiving the requested data from the supervised CSD, the competent authority shall provide any relevant information to the other competent authorities referred to in points (a), (b) and (c) of Article 17(6) of Regulation (EU) No 909/2014.
2. This relevant information shall comprise all information delivered by the CSD to its competent authority referred to in points (a) to (h) of Article 41 of this Regulation, and

the results of the review and evaluation referred to in Article 22(1) of Regulation (EU) No 909/2014, including any remedial actions or enforcement measures, and any other information the competent authority will consider useful to facilitate the tasks of the receiving competent authority, unless the receiving competent authority has clearly objected to receiving a specific set of data.

CHAPTER IV

RECOGNITION

(Article 25(12) of Regulation (EU) No 909/2014)

Article 47

Content of the application

1. An application for recognition shall be submitted to ESMA in accordance with the form included in Annex I.
2. Without prejudice of the previous paragraph:
 - (a) an application for recognition shall be provided in an instrument which stores information in a durable medium as defined in Article 2(1)(m) of Directive 2009/65/EC of the European Parliament and of the Council¹⁵;
 - (b) the applicant shall give a unique reference number to each document; and
 - (c) the applicant shall provide a reason if the information is not submitted.
3. The application for recognition shall also include an assurance letter from the third country authority certifying that the applicant CSD is duly authorised, supervised and compliant in that third country.
4. The applicant CSD shall include a self-assessment by the applicant CSD regarding its compliance with the third country rules which are equivalent to Regulation No (EU) No 909/2014 and relevant Commission Delegated Regulations.

¹⁵ OJ L 302, 17.11.2009, p. 32.

CHAPTER V

CONDITIONS UNDER WHICH THE UNION CURRENCIES REFERRED TO IN ARTICLE 12(1)(b) ARE CONSIDERED TO BE AS THE MOST RELEVANT AND THE ARRANGEMENTS FOR CONSULTATION OF THE RELEVANT COMPETENT AUTHORITY

(Article 12(3) of Regulation (EU) No 909/2014)

Article 48

Determination of most relevant currencies

1. The most relevant Union currencies as referred to in Article 12(1)(b) of Regulation (EU) No 909/2014 shall be identified on the basis of the relative share of currency in the CSD's total value of securities settled on a delivery-versus-payment basis, calculated over a period of one year.
2. The most relevant Union currencies shall be the three currencies with the highest relative calculated in accordance with paragraph 1 provided that each individual share exceeds 5%.
3. The calculation of the relative share of the currencies shall be calculated on an annual basis.

Article 49

Practical arrangements for the consultation of the relevant authorities referred to in Article 12(1)(b) and (c) of Regulation (EU) No 909/2014

1. Where any of the most relevant currency as determined in accordance with Article 1 is the official currency of more than one Member State the relevant central banks issuing this currency shall designate one representative as relevant authority in the context of Article 12(1) (b) of Regulation (EU) No 909/2014.
2. Where the cash leg of a securities settlement system operated by the CSD is settled in a payment system that is owned and operated by more than one central bank, the relevant central banks shall determine one representative as relevant authority in the context of Article 12(1) (c) of Regulation (EU) No 909/2014.

CHAPTER VI

PROCEDURE FOR GRANTING AND REFUSING AUTHORISATION TO PROVIDE BANKING TYPE OF ANCILLARY SERVICES

(Article 55(7) of Regulation (EU) No 909/2014)

Article 50

Authorisation to provide banking-type ancillary services

1. A CSD shall ensure its application for the authorisation referred to in point (a) of Article 54(2) of Regulation (EU) No 909/2014 contains at least the following information, in addition to the information requested under Article 17 of Regulation (EU) 909/2014 and related delegated regulations, where the application under Article 54(2)(a) of Regulation (EU) 909/2014 is made at the same time as the application under Article 17 of Regulation (EU) 909/2014:
 - (a) a copy of the decision of its management body concerning the application for authorisation under Article 54(2)(a) of Regulation (EU) 909/2014 and the minutes from the meeting in which the management body approved the application file and its submission;
 - (b) contact details of the person responsible for the application for authorisation, if different from the one submitting the application under Article 17 of Regulation (EU) 909/2014;
 - (c) evidence of the existence of an authorisation referred to in point (a) of Article 54(3);
 - (d) evidence, that the CSD meets the prudential requirements referred to in Article 59(1), (3) and (4) and the supervisory requirements referred to in Article 60 of Regulation (EU) No 909/2014;
 - (e) evidence, which may include articles of incorporation, legal documentation, financial statements, audit, risk-committee reports, that the capital surcharge referred to in point (d) of Article 54(3) of Regulation (EU) No 909/2014 is imposed on the CSD;
 - (f) details concerning the recovery plan referred to in point (f) of Article 54(3) of Regulation (EU) No 909/2014;
 - (g) the resolution plan established in accordance with Directive 2014/59/EU; a programme of operations which as a minimum:
 - (i) sets out the banking-type ancillary services referred to in Section C of the Annex of Regulation (EU) No 909/2014 that the CSD intends to provide;
 - (ii) evidences how those services are directly related to core or ancillary services which the CSD is authorised to provide;
 - (iii) is structured following the list of banking-type ancillary services as set out in section C of Regulation (EU) No 909/2014;
 - (h) a formal written commitment that:
 - (i) the authorisation will only be used to provide the banking-type ancillary services referred to in Section C of the Annex of the Regulation (EU) No 909/2014 and not to carry out any other activities;
 - (ii) the CSD will comply with the reporting requirements referred to in point (e) of Article 54(3) of Regulation (EU) No 909/2014;
 - (iii) detailed information on arrangements which ensure that the provision of banking-type ancillary service applied for do not negatively affect the smooth provision of the core CSD services referred to in Section A of the Annex to Regulation (EU) No 909/2014, including in particular information concerning:

- a. the IT platform used for the settlement of the cash leg of securities transactions, including an analysis of the IT organisation and risks;
 - b. the operation and legal arrangements of the delivery versus payment (DVP) process and, in particular, the procedures used to address the credit risk stemming from the cash-leg of securities transactions;
 - c. the selection, monitoring and management of interconnections with any other third parties involved in the process of cash transfers;
 - d. the relevant arrangements with third parties involved in the cash transfer process, such as arrangements covering the outsourced functions and the existing interoperable links;
 - e. the details of any interactions between provision of core CSD services and banking-type ancillary services in the recovery plan;
 - f. the disclosure of possible conflicts of interests in the governance arrangements stemming from the banking-type ancillary services, and the measures taken to address them.
2. Where the application under point (a) of Article 54(2) of Regulation (EU) 909/2014 is made after the authorisation under Article 17 of Regulation (EU) 909/2014 was obtained, the CSD shall not resubmit any documents under Article 17 of Regulation (EU) 909/2014, although it shall identify any changes to the documentation supplied in the authorisation application referred to in Article 17(1) of Regulation (EU) No 909/2014, unless all updated documentation has already been provided in the context of review and evaluation exercise under Article 22 of Regulation (EU) No 909/2014.
3. An application for authorisation of a CSD referred to in point (b) of Article 54(2) of Regulation (EU) No 909/2014 shall contain at least the following information, in addition to the information requested under Article 17 of Regulation (EU) 909/2014 and related delegated regulations, where the application under Article 54(2)(b) of Regulation (EU) 909/2014 is made at the same time as the application under Article 17 of Regulation (EU) 909/2014:
 - (a) a copy of the decision of its management body concerning the application for authorisation and the minutes from the meeting in which the management body approved the application file and its submission;
 - (b) contact details of the person responsible for the application for authorisation, if different from the one submitting the application under Article 17 of Regulation (EU) 909/2014;
 - (c) evidence of the existence of an authorisation referred to in point (a) of Article 54(4) of Regulation (EU) No 909/2014;
 - (d) identification of any changes to the documentation supplied for obtaining the initial CSD authorisation unless all updated documentation has already been provided in the context of the review and evaluation exercise under Article 22 of Regulation (EU) No 909/2014;
 - (e) the corporate name of the credit institution to be designated in accordance with point (b) of Article 54(2) of Regulation (EU) No 909/2014, its legal status and legal address in the Union;

- (f) the articles of incorporation and, where relevant, other statutory documentation of the designated credit institution;
- (g) shareholder structure of the designated credit institution;
- (h) identification of common shareholders and any participations between the CSD and the designated credit institution;
- (i) evidence that the designated credit institution meets the prudential requirements referred to in Article 59(1), (3) and (4) and the supervisory requirements referred to in Article 60 of Regulation (EU) No 909/2014;
- (j) evidence which may include articles of incorporation, legal documentation, financial statements, audit, risk-committee reports, or other evidence, that the capital surcharge referred to in point (e) of Article 54(4) of Regulation (EU) No 909/2014 is imposed on the designated credit institution in addition to the requirements imposed according to Regulation (EU) No 575/2013;
- (k) evidence which may include articles of incorporation, legal documentation, financial statements, audit, risk-committee reports, or other evidence that the designated credit institution has submitted to its competent authority a recovery plan referred to in point (g) of Article 54(4) of Regulation (EU) No 909/2014;
- (l) a programme of operations setting out the banking-type ancillary services to be provided, where the CSD shall demonstrate how such services are directly related to any core or ancillary services which the applicant CSD provides. The programme of operations shall be structured following the list of banking-type ancillary services as set out in section C of the Annex to Regulation (EU) No 909/2014. The programme of operations shall include a formal written commitment by the designated credit institution that:
 - (i) the credit institution shall not itself carry out any of the core CSD services referred to in Section A of the Annex to Regulation (EU) No 909/2014;
 - (ii) the authorisation referred to in point (b) of Article 54(2) of Regulation (EU) No 909/2014 shall be used only to provide the banking-type ancillary services and not to carry out any other activities;
 - (iii) the credit institution will fulfil the reporting requirements referred to in point (f) of Article 54(4) of Regulation (EU) No 909/2014;
- (m) detailed information concerning the structural organisation of the relations between the CSD and the designated credit institution, including in particular information concerning:
 - (i) the IT platform used for the settlement of the cash leg of securities transactions, including the analysis of the IT organisation and risks;
 - (ii) the applicable rules and procedures on settlement finality and any other relevant evidence that demonstrates compliance with the requirements laid down in Article 39 of Regulation (EU) No 909/2014;
 - (iii) the operation and the legal arrangements of the DVP process, including the procedures used to address the credit risk stemming from the cash-leg of a securities transaction;

- (iv) the selection, monitoring and management of the interconnections with any other third parties involved in the process of cash transfers;
 - (v) the service level agreement establishing the details of functions to be outsourced by the CSD to the designated credit institution or from the designated credit institution to the CSD and any evidence that demonstrates compliance with the outsourcing requirements set out in Article 31 of Regulation (EU) No 909/2014;
 - (vi) the details of any interactions between the provision of core CSD services and the banking-type ancillary services in the recovery plan;
 - (vii) the disclosure of possible conflicts of interests in the governance arrangements stemming from the banking-type ancillary services, and the measures taken to address them;
 - (viii) other relevant arrangements with third parties, such as the arrangements covering the relevant outsourced functions and the existing interoperable links;
 - (ix) evidence that demonstrates that the credit institution has the necessary contractual and operational readiness to ensure that it can have prompt access to the securities collateral located in the CSD and related to the provision of intraday credit and, as the case may be, short term credit.
4. Where the CSD applies for authorisation to designate more than one credit institution to provide banking-type ancillary services, it shall ensure that its application contains:
 - (a) the information in paragraph 2 for each of the designated credit institutions; and
 - (b) a description of the role of each designated credit institution and the connections between them.
 5. Where the application under point (b) of Article 54(2) of Regulation (EU) 909/2014 is made after the authorisation under Article 17 of Regulation (EU) 909/2014 was obtained, the CSD shall not resubmit any documents under Article 17 of Regulation (EU) 909/2014. It shall, however, identify and submit any changes to the documentation supplied in the application for authorisation referred to in Article 17(1) of Regulation (EU) No 909/2014, unless all updated documentation has already been provided in the context of the review and evaluation exercise under Article 22 of Regulation (EU) No 909/2014.

Article 51

Standard forms and templates for the application

1. An applicant CSD shall provide an application for the authorisation referred to in points (a) and (b) of Article 54(2) of Regulation (EU) No 909/2014 in the format in Section A of Annex II.
2. An applicant CSD shall submit its application on an instrument which stores information in a durable medium that ensures access to that information for future

reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored.

3. An applicant CSD shall provide a unique reference number to each document that it submits as part of the application, shall ensure that the information it submits clearly identifies to which specific requirement of this Regulation it refers and in which document that information is provided.
4. An applicant CSD shall provide its competent authority with a list of all the documents provided in its application accompanied by their reference number in the format of the template in Section B of Annex II.
5. Information shall be submitted in the language indicated by the competent authority. The competent authority may request the CSD to submit the same information in more than one language.

Article 52

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.

Done at Brussels,

For the Commission

The President

ANNEX I

DETAILS TO BE INCLUDED IN THE APPLICATION FOR CSD RECOGNITION BY ESMA

(Article 25(12) of Regulation (EU) No 909/2014)

GENERAL INFORMATION

Date of application	
Full name of the legal entity	
Legal address	
Name of the person assuming the responsibility of the application	
Contact details of the person assuming the responsibility of the application	
Name of other person(s) responsible for the CSD compliance	
Contact details of the person(s) responsible for the CSD compliance	
Identities of the shareholders or members with qualifying holdings	
Identification of the group structure, including any subsidiary and parent company	
List of the Member States in which the third-country CSD intends to provide services	
Information regarding core services listed in Section A of the Annex to Regulation (EC) 909/2014 that the third-country CSD intends to provide in the Union	
Information regarding ancillary services listed under section B of the Annex to Regulation (EC) 909/2014, if the third-country CSD intends to provide such services in the Member State(s)	
Any other services permitted under, but not explicitly listed in Section B of the Annex to Regulation (EC) 909/2014, if the third-country CSD intends to provide such services in the	

Member State(s)	
Currency or currencies it processes or intends to process	
Assessment of the measures the third-country CSD intends to take to allow its users to comply with any specific national laws of the Member State(s) in which the third-country CSD intends to provide CSD services	
Rules and procedures that facilitate the settlement of transactions in financial instruments on the intended settlement date	
CSD's financial resources, form and methods in which they are maintained and arrangements to secure them	
Evidence that rules and procedures are fully compliant with the requirements applicable in the third country, including prudential, organisational, business continuity, disaster recovery and conduct of business aspects	
Details of any outsourcing arrangements	
Rules governing the finality of transfers of securities and cash	
Information regarding participation in the securities settlement system operated by the third-country CSD, including the criteria for participation and the procedures for the suspension and orderly exit of participants that no longer meet the criteria	
Rules and procedures for ensuring the integrity of the securities issues	
Information on mechanisms established to ensure the protection of participants' and their clients' securities	
Information on links (if the third-country CSD has established or intends to establish links) and on how the related risks are monitored and managed	
Information on rules and procedures put in place	

to manage the default of a participant	
Recovery plan and resolution plan	
Investment policy of the CSD	
Information on procedures ensuring the timely and orderly settlement and transfer of the assets of clients and participants to another CSD	
Information on pending judicial, administrative, arbitration or any other litigation proceedings, which may incur significant financial and reputational costs, which the third-country CSD may be a party to	
Information regarding the handling of any conflicts of interest	
Details to be published on the ESMA website in accordance with Article 21(3) of Regulation (EU) No 909/2014, as regards Article 25 of that Regulation	

ANNEX II

**TEMPLATE FOR APPLICATION BY A CSD TO PROVIDE ITSELF OR TO
DESIGNATE A CREDIT INSTITUTION FOR PROVIDING BANKING-TYPE
ANCILLARY SERVICES**

A. GENERAL INFORMATION

The following information shall be provided when a CSD intends to apply for the authorisation referred to in point (a) of Article 54(2) of Regulation (EU) No. 909/2014, in addition to the information requested under Article 17 of Regulation (EU) 909/2014 and related delegated regulations, where the application under Article 54(2)(a) of Regulation (EU) 909/2014 is made at the same time as the application under Article 17 of Regulation (EU) 909/2014:

1	Date of application	...
2	Date on which the application was considered to be complete	...
3	Corporate name of the CSD	...
4	Legal address	...
5	Name of the person responsible for the application	...
6	Contact details of the person responsible for the application	...
7	Identification of the parent company of the applicant CSD, if any	...
8	Date of receipt of the authorisation referred to in point (a) of Article 54(3)	...
9	Date from which the CSD complies with the requirement referred to in point (d) of Article 54(3)	...

The following information shall be provided where a CSD intends to apply for an authorisation referred to in point (b) of Article 54(2) of Regulation (EC) No 909/2014, in addition to the information requested under Article 17 of Regulation (EU) 909/2014 and related delegated regulations, where the application under Article 54(2)(b) of Regulation (EU) 909/2014 is made at the same time as the application under Article 17 of Regulation (EU) 909/2014:

1	Corporate name of the entity designated to provide banking-type ancillary services	...
2	Legal address	...
3	Name of the person responsible for the application	...
4	Contact details of the person responsible for the application	...

5	Identification of the parent companies of the CSD and the designated credit institution(s), if any	...
6	Competent authority of the designated credit institution(s)	...
7	Date of receipt of the authorisation referred to in point (a) of Article 54(4)	...
8	Date from which the credit institution complies with the requirement referred to in point (e) of Article 54(4)	...

B. DOCUMENT REFERENCES

Where a CSD is applying to provide banking-type ancillary services:

The scope of information to be submitted in accordance with the specific requirement of the delegated act with regard to regulatory technical standards adopted pursuant to Article 55(7)	Unique reference number of the document	Title of the document	Chapter or section or page of the document where the information is provided or reason why the information is not provided
1) the corporate name of the applicant CSD, its legal status and legal address in the Union			
2) the articles of incorporation and, where relevant, other statutory documentation			
3) a copy of the decision of its management body concerning the application for authorisation and the minutes from the meeting in which the management body approved the application file and its submission			
4) contact details of the person responsible for the application for authorisation			
5) identification of any changes to the documentation supplied for obtaining the initial CSD authorisation, following the same table format as prescribed under Article 17 of Regulation (EU) No 909/2014, if the updated documentation has not already been provided in the context of the review and evaluation exercise under Article 22 of Regulation (EU) No 909/2014			

6) evidence of the existence of an authorisation referred to in point (a) of Article 54(3)			
7) evidence which may include articles of incorporation, legal documentation, financial statements, audit, risk-committee reports, or other evidence that the CSD meets the prudential requirements referred to in Article 59(1), (3) and (4) and supervisory requirements referred to in Article 60 of Regulation (EU) No 909/2014			
8) evidence which may include articles of incorporation, legal documentation, financial statements, audit, risk-committee reports, or other evidence that the capital surcharge referred to in point (d) of Article 54(3) of Regulation (EU) No 909/2014 is imposed on the CSD in addition to the requirements imposed according to Regulation (EU) No 575/2013			
9) details concerning the recovery plan referred to in point (f) of Article 54(3) of Regulation (EU) No 909/2014			
10) the resolution plan established in accordance with Directive 2014/59/EU			
11) a programme of operations setting out the banking-type ancillary services referred to in Section C of the Annex of Regulation (EU) No 909/2014 that the CSD intends to provide where the CSD demonstrates how such services are directly related to core or ancillary services that it provides			
12) detailed information on arrangements which ensure that the provision of banking-type ancillary service do not affect the provision of the core CSD services referred to in Section A of the Annex to Regulation (EU) No 909/2014, including in particular information concerning:			
(a) the IT platform used for the settlement of the cash leg of securities transactions, including an analysis of the IT organisation and risks;			
(b) the applicable rules and procedures on settlement finality and any other relevant evidence that demonstrates compliance with the requirements laid down in Article 39 of Regulation (EU) No 909/2014;			
(c) the operation and legal arrangements of the delivery versus payment (DVP) process and in particular, the procedures used to address the credit risk stemming from the cash-leg of			

securities transactions;			
(d) the selection, monitoring and management of interconnections with any other third parties involved in the process of cash transfers;			
(e) the relevant arrangements with third parties involved in the cash transfer process, such as the arrangements covering the outsourced functions and the existing interoperable links;			
(f) the details of any interactions between provision of core CSD services and banking-type ancillary services in the recovery plan;			
(g) the disclosure of possible conflicts of interests in the governance arrangements stemming from the banking-type ancillary services, and the measures taken to address them.			

Where a CSD is applying to designate a separate credit institution to provide banking-type ancillary services:

The scope of information to be submitted in accordance with the specific requirement of the delegated act with regard to regulatory technical standards adopted pursuant to Article 55(7)	Unique reference number of the document	Title of the document	Chapter or section or page of the document where the information is provided or reason why the information is not provided
1) the corporate name of the applicant CSD, its legal status and legal address in the Union			
2) the articles of incorporation and, where relevant, other statutory documentation			
3) a copy of the decision of its management body concerning the application for authorisation and the minutes from the meeting in which the management body approved the application file and its submission			
4) contact details of the person responsible for the application for authorisation			
5) identification of any changes to the documentation supplied for obtaining the authorisation referred to in Article 17(2) of Regulation (EU) No 909/2014, following the same table format, if the updated documentation has not already been provided in the course of the review and evaluation referred to in Article 22 of Regulation (EU) No 909/2014			
6) the corporate name of the credit institution to be designated in accordance with point (b) of Article 54(2) of Regulation (EU) No 909/2014, its legal status and legal address in the Union			
7) the articles of incorporation and, where relevant, other statutory documentation of the designated credit institution			
8) shareholder structure of the designated credit institution			

9)	identification of common shareholders and any participations between the CSD and the designated credit institution			
10)	evidence of the existence of an authorisation referred to in point (a) of Article 54(4) of Regulation (EU) No 909/2014			
11)	evidence which may include articles of incorporation, legal documentation, financial statements, audit, risk-committee reports, or other evidence, that the designated credit institution meets the prudential requirements referred to in Article 59(1), (3) and (4) and supervisory requirements referred to in Article 60			
13)	evidence which may include articles of incorporation, legal documentation, financial statements, audit, risk-committee reports, or other evidence, that the capital surcharge referred to in point (e) of Article 54(4) of Regulation (EU) No 909/2014 is imposed on the designated credit institution in addition to the requirements imposed according to Regulation (EU) No 575/2013			
14)	details concerning the recovery plan referred to in point (f) of Article 54(3) of Regulation (EU) No 909/2014			
15)	a programme of operations setting out the banking-type ancillary services referred to in Section C of the Annex of Regulation (EU) No 909/2014 that the CSD intends to provide, where the CSD shall demonstrate how such services are directly related to the core or ancillary services that it provides;			
16)	detailed information concerning the structural organisation of the relations between the CSD and the designated credit institution, including in particular information concerning:			
(a)	the IT platform used for the settlement of the cash leg of securities transactions, including the analysis of the IT organisation and risks			
(b)	the applicable rules and procedures on settlement finality and any other evidence that demonstrates compliance with the requirements laid down in Article 39) of Regulation (EU) No 909/2014			
(c)	the operation and the legal arrangements of the DVP process and in particular, the procedures used to address the credit risk stemming from			

	the cash-leg of a securities transaction			
(d)	the selection, monitoring and management of the interconnections with any other third parties involved in the process of cash transfers			
(e)	the service level agreement establishing the details of functions to be outsourced by the CSD to the designated credit institution and any evidence that demonstrates compliance with the outsourcing requirements as set out in Article 31 of Regulation (EU) No 909/2014			
(f)	the details of any interactions between the provision of core CSD services and banking-type ancillary services in the recovery plan			
(g)	the disclosure of possible conflicts of interests in the governance arrangements stemming from the banking-type ancillary services, and the measures taken to address them			
(h)	other relevant arrangements with third parties, such as the arrangements covering the relevant outsourced functions and the existing interoperable links			
(i)	evidence to demonstrate that the credit institution has the necessary contractual and operational readiness to ensure it can have prompt access to the securities collateral related to its short term credit provision located in the CSD			

COMMISSION DELEGATED REGULATION (EU) No .../2015

of [date]

supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 with regard to regulatory technical standards on CSD requirements

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard the opinion of the European Central Bank,

Having regard to Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories (CSDs)¹⁶, and in particular Articles 18(4), 26(8), 29(3), 37(4), 45(7), and 46(6) thereof,

Whereas:

- (1) **[ART. 18]** In order to ensure its safety, a CSD should not assume unlimited financial liabilities as a result of a participation in a legal person other than those providing the services listed in Sections A and B of the Annex of Regulation (EU) No 909/2014, and should fully capitalise the risks resulting from that participation. A CSD should have a clear strategic rationale for the participation, by taking into account the interests of the issuers with securities issued with the CSD; the one of the participants of the CSD and of their clients and should not merely focus on purely financial purposes.
- (2) In order to properly quantify and outline the risks stemming from a participation, a CSD should provide independent risk analyses, approved by an independent internal or external auditor, of the financial risks and liabilities of the CSD resulting from the participations.
- (3) **[ART. 26]** CSDs should have a clear organisational structure with well-defined, transparent and consistent lines of responsibilities and effective processes to identify, manage, monitor and report the risks to which it is or might be exposed. To establish a sound risk-management framework, a CSD should also take an integrated and

¹⁶ OJ L 257, 28.8.2014, p. 1

comprehensive view of all relevant risks, which include the risks it bears from and poses to any other entities, including its participants and, to the extent practicable, their clients, as well as linked CSDs and central counterparties, trading venues, payment systems, settlement banks, liquidity providers and investors.

- (4) To ensure that CSDs operate with the necessary level of human resources to meet all of their obligations they are accountable for the performance of their activities and to ensure that competent authorities have the relevant contact points within the CSDs they supervise, a CSD should have key dedicated staff.
- (5) To ensure adequate control on the activity performed by CSDs, independent audits on a CSD's operations, risk management processes, internal control mechanisms and accounts should be performed on at least every 1-3 years, with the individual frequencies for different elements based on a documented risk assessment. The independence of these audits should not require an external auditor, provided that the CSD properly demonstrates to the competent authority the independence of the internal auditor.
- (6) To help the management body discharge its risk-related responsibilities, a CSD should set up a risk committee, responsible for advising the CSD management body on the CSD's overall current and future risk tolerance and strategy. The risk committee should be chaired by a person with a recognised experience on risk management and that is independent of the CSD's executive management, and should be composed of a majority of non-executive members.
- (7) **[ART. 29]** Records kept by CSDs should be structured and allow for easy access to the data contained in the records by the authorities involved facilitating their supervisory work. A CSD should ensure that the data records that it keeps are accurate and up to date in order to serve as a reliable data source, including by providing a complete accounting of the securities it maintains.
- (8) To facilitate a consistent set of information reported and recorded under different requirements, records kept by CSDs should include at least all the details to be reported under the settlement discipline regime.
- (9) **[ART. 37]** The preservation of the rights of issuers and investors is essential for the orderly functioning of a securities market. Therefore, a CSD should employ appropriate rules, procedures, and controls to prevent the unauthorised creation or deletion of securities, and conduct at least daily reconciliation of the securities issues that it maintains.
- (10) A CSD should, in particular, maintain robust accounting practices and perform auditing to verify that its records are accurate, and that its reconciliation measures as well as the cooperation and information exchange measures in connection to reconciliation are adequate.
- (11) In order to effectively ensure the integrity of the issue, the reconciliation measures provided in Regulation (EU) No 909/2014 should apply to all CSDs regardless of whether or not they provide the notary service referred to in Regulation (EU) No 909/2014 in relation to the respective securities issue.
- (12) **[Art 45]** Operational risks are a major threat to the stability of CSDs and therefore of financial markets and the economy as a whole. These comprise the risks caused by

deficiencies in information systems, internal processes, and personnel's performance or disruptions caused by external events which result in the reduction, deterioration or breakdown of services provided by a CSD. In order to cope with operational risks, CSDs should identify all such risks and monitor their evolution, irrespective of their origin, that may include for instance participants themselves, providers of services to CSDs and other market infrastructures, even CSDs. These risks should be managed through a well-documented, robust framework with clearly assigned roles and responsibilities. This framework should include operational targets, tracing features, assessment mechanisms and be integrated in the enterprise risk management system. In this context, a CSD chief risk officer should also be responsible for the operational risk function. CSDs are expected to manage their risk internally - where internal controls are not sufficient or eliminating the risk is not a reasonable feasible option, a CSD may complement this risk mitigants and consider a financial coverage of those additional risks through insurance.

- (13) **[Art 46]** CSDs should not enter into investments that may affect their risk profile. Therefore, CSDs should not enter into derivatives unless they are required to hedge risk that they cannot reduce otherwise, most notably through foreign exchange (FX) derivatives to cover currency risks arising from multicurrency settlement. Additionally, and similarly to the requirements for central counterparties, there should be public reliable price data available on a regular basis and the derivatives maturity should match the period of time necessary to reduce the currency risk to which the CSD is exposed, and not for other purposes, notably realisation of profits. CSDs assets should be safe and protected and at the same time easily accessible and able to be quickly liquidated. A CSD should therefore ensure that its policies and procedures pertaining to prompt access to the CSD own assets are based at least on the nature, size, quality, maturity and location of these assets. A CSD should also ensure that prompt access to its assets is not negatively affected by outsourcing of custody or investment functions.
- (14) A CSD should be able to access its cash assets on the same day and able to liquidate any securities it holds under its own name on the business day following the day where a decision to liquidate the assets is taken, to avoid further increases in liquidity risk of the CSD.
- (15) To ensure a greater degree of protection to CSD assets from the default of the intermediary, a CSD that access another CSD via a link should maintain them in a segregated account with the linked CSD.
- (16) In order to ensure that a CSD invests its financial resources in highly liquid instruments with minimal market and credit risks and for these investments to be liquidated rapidly with minimal price effect, it should diversify its portfolio and establish appropriate concentration limits on the instruments and issuers in which to invest its resources.
- (17) **[FINAL]** In view of the global nature of financial markets, this Regulation takes into account the Principles for Financial Market Infrastructures issued by the Committee on Payment and Settlement Systems and the International Organization of Securities

Commissions (CPSS-IOSCO Principles) which serve as a global benchmark for regulatory requirements for central securities depositories (CSDs).

- (18) In order to clearly identify a limited number of concepts stemming from Regulation (EU) No 909/2014, as well as to specify the technical terms necessary for developing these technical standards, a number of terms should be defined.
- (19) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.
- (20) ESMA has consulted, where relevant, the members of the ESCB before submitting the draft technical standards on which this Regulation is based. In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)¹⁷, ESMA has conducted open public consultations on such draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010.

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL

Article 1

Definition

For the purposes of this Regulation, the following definitions shall apply:

- (a) ‘issuer CSD’ means a CSD which provides the core service referred to in point 1 of Section A of the Annex to Regulation (EU) No 909/2014 for a securities issue.
- (b) ‘securities issue’ means securities that are issued by the same issuer, that belong to the same type and class, and that have the same features and which are identified by the same ISIN.
- (c) ‘double-entry accounting’ means that for each credit entry made on a securities account maintained by the CSD, there is a corresponding debit entry on another securities account maintained by the CSD.

¹⁷ OJ L 331, 15.12.2010, p. 84.

- (d) ‘settlement instruction’ means a transfer order as defined in point (i) of Article 2 of Directive 98/26/EC.
- (e) ‘settlement restriction’ means the blocking, reservation or earmarking of securities that, as a result, are not available for settlement, or the blocking or reservation of cash that, as a result, is not available for settlement.

CHAPTER II

CONDITIONS FOR PARTICIPATIONS OF CSDS IN ENTITIES WHICH DO NOT PROVIDE SERVICES LISTED IN SECTIONS A AND B OF THE ANNEX TO REGULATION (EU) NO 909/2014

(Article 18(5) of Regulation No 909/2014)

Article 2

Criteria for the participations of a CSD

1. A CSD may have a new or keep an existing participation only in a legal person other than those providing the services listed in Sections A and B of the Annex of Regulation (EU) No 909/2014 if each of the following conditions is fulfilled:
 - (a) the CSD is not assuming unlimited financial liabilities as a result of a participation;
 - (b) the CSD fully capitalises, through financial resources that fulfil the criteria as set under Article 46 of Regulation (EU) No 909/2014, the risks resulting from any:
 - (i) guarantees given by the CSD to the legal person in which a CSD intends to participate;
 - (ii) contingent obligations undertaken by the CSD in favour of the legal person in which a CSD intends to participate; and
 - (iii) loss sharing agreements or recovery or resolution mechanism of the legal person in which a CSD intends to participate.
 - (c) the entity in which the CSD holds a participation is providing complementary services related to the core or ancillary services offered by the CSD, including, services offered by:
 - (i) central counterparties (CCPs) authorised or recognised under Regulation (EU) No 648/2012 (EMIR);
 - (ii) regulated markets and MTFs subject to Directive 2004/39/EC (MiFID); or

- (iii) trade repositories registered or recognised under Regulation (EU) No 648/2012 (EMIR).
- (d) the CSD provides the competent authority with an analysis, approved by an independent internal or external auditor, of the financial risks and liabilities of the CSD resulting from the participations, covering at least:
- (i) the strategic justification of the participation from the perspective of the CSD, by taking also into account the interests of the issuers and participants of the CSD and their clients; and
 - (ii) the risks resulting from participations that allow the CSDs to have control over the legal person, as defined in Article 2(1)(21) of Regulation (EU) No 909/2014.
- (e) when applicable, the CSD provides the competent authority with an analysis, approved by an independent auditor, that all risks of the participations are adequately managed, including evidence of the risks referred to under point b) and of the measures referred to under points (a) and (b) of this paragraph and of the additional capital required under Article 46(4) of Regulation (EU) No 909/2014 for the participations.

CHAPTER III

RISK MONITORING TOOLS

(Article 26 of Regulation (EU) No 909/2014)

Article 3

Governance arrangements

1. A CSD's governance arrangements shall foster the CSD's safety and efficiency and support financial stability and other relevant public interest considerations. The risk management policies, procedures, systems and controls of a CSD shall be part of a coherent and consistent governance framework that is reviewed and updated regularly by the management body.
2. The key components of the governance arrangements of the CSD that define its organisational structure as well as clearly specified and well-documented policies, procedures and processes by which the members of the management body and senior management operate shall include all the elements listed under Chapter II of Regulation (EU) No... [RTS on CSD authorisation and review and evaluation].
3. A CSD shall have adequate staff to meet all obligations arising from Regulation (EU) No 909/2014 and relevant delegated and implementing regulations. A CSD shall not

share staff with other group entities, unless under the terms of an outsourcing arrangement and on the basis of a written agreement.

4. A CSD shall establish lines of responsibility which are clear, consistent and well-documented. A CSD shall ensure that the functions of the chief risk officer, chief compliance officer and chief technology officer are carried out by different individuals, who shall be employees of the CSD or an entity within the same group. A single individual shall have the responsibility for each of these functions, without prejudice of the appropriate arrangements to mitigate over-reliance on individual employees. These individuals may undertake other duties outside the scope of the risk, compliance or technology functions provided that these do not have an operational or commercial nature and specific procedures are adopted in the governance arrangements to identify and manage any kind of conflict of interest that may arise.
5. Where a CSD maintains a two-tiered board system, the role and responsibilities of the board as established in Regulation (EU) No 909/2014 and relevant delegated and implementing regulations shall be allocated to the supervisory board and the management board as appropriate. A CSD that is part of a group shall take into account any implications of the group for its own governance arrangements including whether it has the necessary level of independence to meet its regulatory obligations as a distinct legal person and whether its independence could be compromised by the group structure or by any member of the management body also being a member of the management body of other entities of the same group.

Article 4

Risk management and internal control mechanisms

1. A CSD shall have a sound framework for the comprehensive management of all relevant risks to which it is or may be exposed. A CSD shall establish documented policies, procedures and systems that identify, measure, monitor and manage such risks. In establishing risk-management policies, procedures and systems, a CSD shall structure them in such a way as to ensure that participants and, where relevant, their clients properly manage and contain the risks they pose to the CSD.
2. A CSD shall take an integrated and comprehensive view of all relevant risks. These shall include the risks it bears from and poses to any other entities, including its participants and, to the extent practicable, their clients, as well as linked CSDs and central counterparties, trading venues, payment systems, settlement banks, liquidity providers and investors.
3. A CSD shall develop appropriate risk management tools to be in a position to manage and report on all relevant risks. These shall include the identification and management of system, market or other interdependencies.
4. The governance arrangements shall ensure that the members of the management body of a CSD assume final responsibility and accountability for managing the CSD's risks. The management body shall define, determine and document an appropriate level of risk tolerance, and risk bearing capacity for the CSD, for all services the CSD provides, incorporating securities settlement systems. The management body and senior management shall ensure that the CSD's policies, procedures and controls are consistent with the CSD's risk tolerance and risk bearing capacity and that they address how the CSD identifies, reports, monitors and manages risks. The CSD shall have specific risk targets and risk thresholds.
5. A CSD shall employ robust information and risk-control systems to provide the CSD and its participants and, where known by the CSD, their clients with the capacity to obtain timely information and to apply risk management policies and procedures appropriately.
6. A CSD shall ensure that the risk management function has the necessary authority, resources, expertise and access to all relevant information and that it is sufficiently independent from the other functions of the CSD. The CSD chief risk officer shall implement the risk management framework including the policies and procedures established by the management body.
7. A CSD shall have adequate internal control mechanisms to assist the management body in monitoring and assessing the adequacy and effectiveness of its risk management policies, procedures and systems. Such mechanisms shall include sound administrative

and accounting procedures, and a robust compliance function. In addition, a CSD shall have an adequate independent internal audit.

8. A CSD's financial statement shall be prepared on an annual basis and be audited by statutory auditors or audit firms within the meaning of Directive 2006/43/EC of the European Parliament and of the Council.
9. The rules, procedures and contractual arrangements of the CSD shall be recorded in writing or on a durable medium. These rules, procedures, and contractual arrangements and any accompanying material shall be accurate, up-to-date and readily available to the competent authority, participants, if affecting participants' rights and obligations and, where known by the CSD and where affecting clients' rights and obligations, their clients.

Article 5

Organisational structure

1. A CSD shall define the composition, role and responsibilities of the members of the management body and senior management and any relating committees. These arrangements shall be clearly specified and well-documented. The management body shall establish, at a minimum an audit committee, a remuneration committee and a risk committee. The management body shall assume at least the following responsibilities:
 - (a) establish well-documented policies, procedures and processes by which the management body and senior management shall operate;
 - (b) establish clear objectives and strategies for the CSD;
 - (c) effectively monitor senior management;
 - (d) establish adequate remuneration policies;
 - (e) ensure the set-up and the surveillance of the risk management function and the taking of material risk decisions;
 - (f) enable the independence and adequate resources of internal control functions;
 - (g) monitor outsourcing arrangements;
 - (h) monitor and ensure compliance with all provisions of Regulation (EU) No 909/2014 and relevant delegated and implementing regulations and all other regulatory and supervisory requirements;
 - (i) be accountable to shareholders or other owners, employees, participants and other relevant stakeholders.

2. Senior management shall have at least the following responsibilities:
 - (a) ensuring consistency of the activities of the CSD with the objectives and strategy of the CSD as determined by the management body;
 - (b) designing and establishing compliance and internal control procedures that promote the objectives of the CSD;
 - (c) subjecting the internal control procedures to regular review and testing;
 - (d) ensuring that sufficient resources are devoted to risk management and compliance;
 - (e) be actively involved in the risk control process.
3. Where the management body or its members delegate tasks to committees or sub-committees, it shall retain the approval of decisions that could have a significant impact on the risk profile of the CSD.
4. A CSD shall have clear and direct reporting lines between its members of the management body and senior management in order to ensure that the senior management is accountable for its performance. The reporting lines for risk management, compliance and internal control and audit shall be clear and separate from those for the other operations of the CSD. The chief risk officer, the chief compliance officer and the internal control and audit function shall each report directly to the management body.
5. A CSD shall establish a risk committee, that shall be responsible for advising the management body on the CSD's overall current and future risk tolerance and strategy. It shall be chaired by a person with a recognised experience on risk management and that is independent of the CSD's executive management. It shall be composed of a majority of non-executive members, where there are management body members sitting as members of the risk committee. It shall have a clear and public mandate and procedures and access to external expert advice where it may find fit.

Article 6

Conflicts of interest

1. Where a CSD is part of a larger group, it shall place particular emphasis on the clarity of its governance arrangements, including in relation to any conflicts of interest, including with respect to outsourcing arrangements. The written arrangements shall also take into account any circumstances, of which the CSD is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other undertakings of the same group. Where a CSD shares its

key functions, such as chief risk officer, chief compliance officer, chief technology officer and internal control and audit, with other entities of the group, the governance arrangements shall ensure that related conflicts of interest at group level are appropriately managed.

2. The arrangements referred to in Article 26 (3) of Regulation (EU) No 909/2014 shall include the following:
 - (a) circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of one or more participants or participant's clients;
 - (b) procedures to be followed and measures to be adopted in order to manage such conflict.
3. Such circumstances of potential conflicts of interest may include the following:
 - (a) where the CSD, any member of staff of the CSD, or any person directly or indirectly linked to them:
 - (i) has a personal interest in the use of the services, materials and equipment of the CSD for the purposes of another commercial activity;
 - (ii) holds a personal or financial interest in another entity that enters into contracts with the CSD;
 - (iii) holds a participation in another entity the services of which are used by the CSD;
 - (iv) has a personal interest in any entity to which the CSD outsources the operation of its service;
 - (v) has a personal interest in any entity providing consultancy services used by the CSD;
 - (vi) has a personal interest in a business that uses the service of the CSD;
 - (vii) is related to anyone who has a significant influence on any entity the services of which are used by the CSD or uses the services of the CSD;
 - (viii) sits on the board or committee of any entity the services of which are used by the CSD or that uses the services of the CSD;
 - (b) where the members of the management body or senior management of the CSD have an indirect conflict with other connected persons.

4. A CSD shall take all reasonable steps to prevent any misuse of the information held in its systems and shall prevent the use of that information for other business activities. A natural person who has an access to information recorded in a CSD or a legal person within the group that the CSD may be a part of shall not use information recorded in that CSD for any commercial purposes without the prior written consent of the participant to whom such confidential information refers to.

Article 7

Internal auditing

1. A CSD shall establish and maintain an internal audit function which is separate and independent from the other functions and activities of the CSD and which has the following tasks:
 - (a) to establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the CSD's systems, internal control mechanisms and governance arrangements;
 - (b) to issue recommendations based on the result of work carried out in accordance with point (a);
 - (c) to verify compliance with those recommendations;
 - (d) to report internal audit matters to the management body.
2. Where the CSD is part of a group the internal audit functions may be carried at group level provided that the function is separate and independent from other functions and activities, has a direct reporting line to the management body of the CSD and that such arrangement does not prevent the exercise of supervisory and oversight functions, including on site access to acquire any relevant information needed to fulfil those functions.
3. The internal audit function shall have the necessary authority, resources, expertise, and access to all relevant documents for the performance of its functions. It shall be sufficiently independent from the senior management and shall report directly to the management body.
4. Internal audit shall assess the effectiveness of the CSD's risk management processes and control mechanisms in a manner that is proportionate to the risks faced by the different business lines and independent of the business areas assessed. The internal audit function shall have the necessary access to information in order to review all of the CSD's activities and operations, processes and systems, including outsourced activities.
5. The internal audit function shall establish a comprehensive risk-based audit plan that shall be reviewed and reported to the competent authority at least on an annual basis.

The CSD shall ensure that special audits may be performed on an event-driven basis at short notice. Audit planning and review shall be approved by the management body.

6. Internal audit assessments shall include an on-going monitoring of the performance of the internal audit activity and periodic reviews performed through self-assessment or by other persons within the organisation with sufficient knowledge of internal audit practices. An external assessment of the internal audit function shall be conducted by a qualified and independent assessor from outside the CSD and its group structure at least once every five years.
7. A CSD's operations, risk management processes, internal control mechanisms and accounts shall be subject to independent audit. Independent audits shall be performed, at least every two years. The frequency shall be based on a documented risk assessment.
8. A CSD shall share audit findings with the user committee as provided for under Article 28 of Regulation (EU) No 909/2014, where:
 - (a) such findings relate to the mandate of the user committee, in particular on key arrangements that impact the users of the CSD, including the criteria for accepting issuers or participants to their respective securities settlement systems;
 - (b) findings may impact the level of provision of services by a CSD, including ensuring business continuity.

Members of the user committee that are settlement internalisers shall not be provided with information that could place them in a competitive advantage or that otherwise may constitute a conflict of interests with the CSD.

CHAPTER IV

RECORD-KEEPING

(Article 29(3))

Article 8

General Requirements

1. A CSD shall maintain full and accurate records of all its activities. Such records shall be readily accessible, including for business continuity purposes, and shall include the records specified in this Regulation.
2. The records kept by a CSD shall take into account the individual services provided by a given CSD in accordance with Regulation (EU) No 909/2014.

3. A CSD shall keep records in a durable medium that allows information to be provided to the authorities referred to in Article 29(2) of Regulation (EU) No 909/2014, and in such a form and manner that the following conditions are met:
 - (a) each key stage of the processing by the CSD may be reconstituted;
 - (b) the original content of a record before any corrections or other amendments may be recorded, traced and retrieved;
 - (c) measures to prevent unauthorised alteration of records are in place;
 - (d) measures are in place to ensure the security and confidentiality of the data recorded;
 - (e) a mechanism for identifying and correcting errors is incorporated in the record keeping system;
 - (f) the timely recovery of the records in the case of a system failure is ensured within the record keeping system.
3. The records and information shall be provided to the authorities referred to in Article 29(2) of Regulation (EU) No 909/2014 within a reasonable timeframe specified by respective authorities.
4. Where the records processed by a CSD contain personal data within the scope of Directive 95/46/EC or Regulation (EC) No 45/2001, a CSD shall have regard to its obligations under Directive 95/46/EC and Regulation (EC) No 45/2001 when processing such data.
5. Where a CSD keeps records outside the Union, it shall ensure that the authorities referred to in Article 29(2) of Regulation (EU) No 909/2014 are able to access the records to the same extent and within the same timeframe as if they were kept within the Union.
6. A CSD shall name the relevant persons who can explain the content of its records to the authorities referred to in Article 29(2) of Regulation (EU) No 909/2014, within the timeframe required for the provision of the relevant records in accordance with paragraph 3.
7. All records required to be kept by a CSD under this Regulation shall be open to inspection by the competent authority.
8. A CSD shall provide the competent authority with a direct data feed to transactions, settlement instructions, and position records, when requested by the competent authority, provided that the CSD is given sufficient time to implement the necessary facility to respond to such a request.

Article 9

Transaction/Settlement Instruction (Flow) Records

1. A CSD shall keep records of all transactions, settlement instructions and settlement restriction orders it processes, and shall ensure that its records include all information necessary to conduct a comprehensive and accurate reconstruction of each operation.
2. In relation to every settlement instruction and settlement restriction order received, a CSD shall, immediately upon receiving the relevant information, make and keep updated a record of at least the following details, where applicable:
 - (a) settlement instruction type (covering at least the settlement instruction types specified in point g) of Article 4(2) of Regulation (EU) No.... [RTS on settlement discipline]);
 - (b) deliver/receive;
 - (c) transaction type (covering at least the transaction types specified in point e) of Article 4(2) of Regulation (EU) No.... [RTS on settlement discipline]);
 - (d) unique instruction reference of the participant;
 - (e) trade date;
 - (f) intended settlement date;
 - (g) settlement timestamp;
 - (h) timestamp of moment of entry of the settlement instruction into the securities settlement system;
 - (i) timestamp of moment of irrevocability of the settlement instruction;
 - (j) matching timestamp, where applicable;
 - (k) securities account identifier;
 - (l) cash account identifier;
 - (m) settlement bank identifier;
 - (n) participant's identifier;
 - (o) identifier of the participant's counterpart;
 - (p) identifier of the participant's client, where known to the CSD;
 - (q) identifier of the client of the participant's counterpart, where known to the CSD;
 - (r) securities identifier;

- (s) settlement currency;
- (t) settlement cash amount;
- (u) quantity or nominal amount of securities;
- (v) status type (in accordance with Article 4(1) of Regulation (EU) No... [RTS on settlement discipline]);
- (w) where a buy-in process is initiated for a transaction, the following details:
 - (i) length of extension period;
 - (ii) where applicable, length of the deferral period;
 - (iii) length of the buy-in period;
 - (iv) if the buy-in is successful or not;
 - (v) other relevant information in accordance with Regulation (EU) No... [RTS on settlement discipline]

Article 10

Position (Stock) Records

1. A CSD shall keep records of positions corresponding to all the securities accounts it maintains. Separate records shall be held for each account kept in accordance with Article 38 of Regulation (EU) No 909/2014.
2. In connection to the core services referred to in Section A of the Annex to Regulation (EU) No 909/2014, a CSD shall keep records of at least the following details, where applicable:
 - (a) identifiers of issuers for which the CSD provides the core service referred to in point 1 of Section A of the Annex to Regulation (EU) No 909/2014;
 - (b) securities issues for which the CSD provides the core service referred to in point 1 of Section A of the Annex to of Regulation (EU) No 909/2014;
 - (c) identifier of each securities issue maintained by the CSD;
 - (d) identifier of the issuer CSD (for each securities issue maintained by the CSD);

- (e) country of issue (law under which the securities maintained by the CSD are constituted) for each securities issue maintained by the CSD;
 - (f) country of incorporation of the issuers of each securities issue maintained by the CSD;
 - (g) issuers' securities accounts identifiers;
 - (h) issuers' cash accounts identifiers;
 - (i) identifiers of settlement banks used by each issuer;
 - (j) participants' identifiers;
 - (k) participants' country of incorporation;
 - (l) participants' accounts identifiers;
 - (m) participants' cash accounts identifiers;
 - (n) identifiers of settlement banks used by each participant;
 - (o) country of incorporation of settlement banks used by each participant.
3. At the end of each business day a CSD shall make a record in relation to each position including the following details, to the extent they are relevant for the position:
- (a) identifiers of participants and of other account holders;
 - (b) type of securities accounts (i.e. if it is an own account, omnibus account, individual account, other);
 - (c) securities accounts end of day balances covering number of securities (for each ISIN),
 - (d) for each securities account and ISIN under point c), number of securities subject to settlement restrictions, type of restriction and, if relevant, the identity of the beneficiary of the restriction at the end of day;
 - (e) end of day balances of the cash accounts provided by the CSD (for each currency).
4. A CSD shall keep records of settlement fails, as well as of the measures adopted by the CSD and its participants to improve settlement efficiency, in accordance with Regulation (EU) No.... [RTS on settlement discipline].

Article 11

Ancillary Services Records

1. A CSD shall keep at least the types of records specified under the Annex, depending on each of the ancillary services provided by a CSD in accordance with Section B and C of the Annex to Regulation (EU) No 909/2014.
2. If a CSD provides ancillary services other than those explicitly mentioned under Section B or C of the Annex to Regulation (EU) No 909/2014, it shall keep adequate records related to these services.

Article 12

Business Records

1. A CSD shall maintain adequate and orderly records of activities related to its business and internal organisation.
2. The records referred to in paragraph 1 shall be made each time a material change in the relevant documents occurs and shall include at least:
 - (a) the organisational charts for the management body, senior management and relevant committees, operational units and all other relevant units or divisions;
 - (b) the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and the amounts of those holdings;
 - (c) CSD participations in other legal entities;
 - (d) the documents attesting the policies, procedures and processes required under the relevant organisational requirements;
 - (e) the minutes of management body meetings and, if applicable, of meetings of senior management committees and other committees;
 - (f) the minutes of meetings of the user committee;
 - (g) the minutes of consultation groups with participants and clients, if any;
 - (h) internal and external audit reports, risk management reports, compliance reports, including management responses;
 - (i) all outsourcing contracts;
 - (j) business continuity policy and disaster recovery plan;
 - (k) records reflecting all assets and liabilities and capital accounts as required under Article 47 of Regulation (EU) No 909/2014;

- (l) complaints received, with information on the complainant's name and address; the date the complaint was received; the name of all persons identified in the complaint; a description of the nature of the complaint; the disposition of the complaint, and the date the complaint was resolved;
- (m) records of any interruption of services or dysfunction, including a detailed report on the timing, effects and remedial actions;
- (n) records of the results of the back and stress tests performed by the CSDs providing banking type of ancillary services;
- (o) written communications with the competent authority, ESMA and relevant authorities;
- (p) legal opinions received in accordance with the relevant provisions on organisational requirements in accordance with Regulation (EU) No....[RTS];
- (q) where applicable, documentation regarding link arrangements in accordance with Regulation (EU) No....[RTS];
- (r) the relevant documents describing the development of new business initiatives;
- (s) tariffs and fees applied to the different services, including any discount or rebate, as well as, if applicable, penalties per participant.

Article 13

Additional records

1. A CSD shall keep at least the types of records specified under this Regulation, depending on the individual services provided by a given CSD in accordance with the Regulation (EU) No 909/2014.
2. The minimum records required under the previous paragraph are without prejudice to any further requests by the competent authority, also granting reasonable time for the CSD to implement such additional record-keeping requirements.

CHAPTER V

RECONCILIATION MEASURES

(Article 37 (4) of Regulation No 909/2014)

Article 14

General reconciliation measures

1. A CSD shall perform the verification measures referred to in Article 37(1) of Regulation (EU) No 909/2014 for each securities issue maintained by the CSD.

The CSD shall also compare the previous end-of-day balance with all the settlements made during the day and the current end-of-day balance for each securities issue maintained by the CSD.

2. A CSD shall use double-entry accounting.
3. The audits referred to in Article 26(6) of Regulation No 909/2014 shall ensure that the records of a CSD are accurate, and that its reconciliation measures and the measures concerning cooperation and exchanges of information with third parties related to reconciliation are adequate.
4. Where the reconciliation process concerns securities subject to immobilisation, a CSD shall put in place adequate measures to protect the physical securities from theft, fraud, and destruction. Such measures shall at least include the use of vaults whose design and location ensure a high level of protection against floods, earthquakes, fire and other disasters.

Independent audit controls of the vaults, including physical inspections, shall be performed at least annually. The CSD shall share the results of the audit controls with the competent authority.

Article 15

Reconciliation measures for corporate actions that would change the balance of securities accounts maintained by the CSD

1. A CSD shall not initiate the processing of a corporate action that would change the balance of securities accounts maintained by the CSD until the reconciliation measures specified under Article 14 and, where applicable, under points a) and b) of Article 16(1) are completed at the end of settlement on the respective business day.

2. When a corporate action has been processed, a CSD shall perform an additional reconciliation ensuring that all securities accounts maintained by the CSD are updated correctly.

Article 16

Other entities involved in the reconciliation process

1. Where other entities are involved in the reconciliation process for a certain securities issue within the meaning of Article 37(2) of Regulation (EU) No 909/2014, the measures to be taken by the CSD and those other entities to ensure the integrity of the issue shall include at least:
 - (a) A daily reconciliation of the total balance recorded on the securities accounts maintained by the CSD with the corresponding records of securities maintained by the relevant entity.
 - (b) An end of day reconciliation of the balance of each securities account maintained by the CSD where the securities have been transferred during a given business day, with the balance of the corresponding record of securities maintained by the relevant entity where the securities have been transferred during that business day.
 - (c) At least on a weekly basis, a full reconciliation of all balances in a securities issue with all balances on the corresponding record of securities maintained by the relevant entity.

The competent authority may require the CSD to implement other cooperation and information exchange measures in addition to those specified under the first subparagraph.

2. CSDs shall review their cooperation and information exchange measures with other entities at least annually. This review can be conducted in parallel with a review of the CSD link arrangements.

Any material change to the cooperation and information exchange measures shall be approved by the competent authority prior to its implementation.

3. When CSDs establish CSD links, CSDs shall comply with the additional requirements provided in Article 6 of Regulation (EU) No ... [RTS on access and links].
4. The participants of a CSD shall reconcile their records with the information received from the CSD on a daily basis.
5. The participants and other holders of securities accounts maintained by a CSD shall be entitled to receive at least the following information specified for each securities account and for each securities issue on a daily basis:

- (a) The aggregated balance of a securities account at the beginning of the respective business day;
- (b) The individual transfers of securities in or from a securities account during the respective business day;
- (c) The aggregated balance of a securities account at the end of the respective business day.

Where applicable, a CSD shall require the account operators to provide the information referred to in the first subparagraph to the holders of securities accounts maintained by the CSD.

6. Upon request by the CSD, its participants and other holders of accounts in the CSD, as well as account operators, shall provide the CSD with information that it deems necessary to ensure the integrity of the issue, in particular to solve any reconciliation problems.

Article 17

Problems related to reconciliation

1. A CSD shall analyse any problems resulting from the reconciliation process and try to solve them before the beginning of settlement on the following business day.
2. Where the reconciliation process reveals an undue creation or deletion of securities, the CSD shall suspend the securities issue for settlement until the undue creation or deletion of securities has been remedied.

In the event of suspension of the settlement referred to in the first subparagraph, the CSD shall inform without undue delay its participants and its competent authority and relevant authorities.

3. The CSD shall take all the necessary measures to remedy the undue creation or deletion of securities as soon as possible and shall inform its competent authority and relevant authorities with regard to the measures taken.
4. The CSD shall resume settlement as soon as the undue creation or deletion of securities has been remedied.

The CSD shall inform its participants and its competent authority and relevant authorities as soon as the undue creation or deletion of securities has been remedied.

CHAPTER VI

OPERATIONAL RISK

(Article 45(7) of Regulation No 909/2014)

SECTION 1

Identifying sources of operational risk

Article 18

Specification of operational risks

1. The operational risks referred to in Article 45(1) of Regulation (EU) No 909/2014 comprise the risks caused by deficiencies in information systems, internal processes, and personnel's performance or disruptions caused by external events which result in the reduction, deterioration or breakdown of services provided by a CSD.
2. A CSD shall identify all potential single points of failure in its operations and assess the evolving nature of the operational risk it faces on an ongoing basis, including pandemics and cyber-attacks.

Article 19

Operational risks that may be posed by key participants

1. A CSD shall identify key participants based on their transaction volumes and values, services provided to the CSD and other interdependent systems, including tiered participation arrangements and, more generally, the potential impact on other participants and the CSD's system as a whole in the event of a significant operational problem, on an ongoing basis.
2. A CSD shall have clear and transparent criteria, methodologies and standards for key participants to ensure their minimum operational requirements are met.
3. A CSD shall identify, monitor, and manage the risks it faces from key participants, on an on-going basis.

Article 20

Operational risks that may be posed by utilities and service providers

1. A CSD shall identify utilities providers and service providers based on its dependency on them.
2. A CSD shall take appropriate actions to manage the dependencies referred to in paragraph 1 through adequate contractual and organisational arrangements as well as specific provisions in its business continuity policy and disaster recovery plan, even before any relationships are made operational with such providers.

3. A CSD shall ensure that its contractual arrangements with any providers identified under paragraph 1 require the CSD's approval before the critical service provider can itself outsource material elements of the service provided to the CSD, and that in the event of such arrangement, the level of service and its resilience is not impacted, as well as full access to the necessary information is preserved.
4. The outsourcing CSD shall establish clear lines of communication with the providers referred to in paragraph 1 to facilitate the flow of information in both ordinary and exceptional circumstances.
5. A CSD shall inform its competent authority about any dependencies on utilities and service providers and take measures to ensure that authorities may obtain information about the performance of such providers, either directly or through the CSD.

Article 21

Operational risks that may be posed by other CSDs or other market infrastructures

1. A CSD shall ensure that its systems and communication arrangements with other CSDs or other financial market infrastructures are reliable and secure and designed in order to minimise operational risk.
2. A CSD shall ensure that any arrangements that it enters into with other CSDs or a financial market infrastructure ensures that:
 - (a) there are appropriate arrangements for that infrastructure to disclose to the CSD any critical service provider on which it relies;
 - (b) the governance arrangements and change management processes in the other CSD or other financial market infrastructure do not inhibit the smooth functioning of the CSD, including on its risk-management arrangements or non-discriminatory access conditions.

SECTION 2

Methods to address and minimise operational risks

Article 22

Risk management system and framework

1. A CSD shall have in place a well-documented, robust framework for the management operational risk with clearly assigned roles and responsibilities. A CSD shall have appropriate IT systems, policies, procedures and controls to identify, measure, monitor, report on and mitigate its operational risk.
2. The management body and the senior management of a CSD shall own, implement and monitor such a risk management framework for operational risks, identify CSD's

exposures to operational risk and shall track relevant operational risk data, including any cases where material data was lost.

3. The CSD shall define and document clear and feasible operational reliability objectives, including operational performance objectives and committed service-level targets, and have policies and procedures in place to achieve them.
4. A CSD shall ensure that its operational performance objectives and service-level targets referred to in the previous paragraph include both qualitative and quantitative measures of operational performance and explicitly state the performance standards the CSD intends to meet.
5. A CSD shall monitor and assess regularly whether the system is meeting its established objectives and service-level targets.
6. The CSD shall have rules and procedures that ensure that the system's performance is reported regularly to senior management, members of the management body and relevant committees of the management body, participants and competent authority.
7. A CSD shall periodically review its operational objectives to incorporate new technological and business development.
8. A CSD's operational risk management framework shall include measures such as change-management and project-management processes where necessary to mitigate operational risk arising from modifications to operations, policies, procedures and controls.
9. A CSD shall analyse its potential vulnerabilities and implement appropriate defence mechanisms.
10. A CSD's operational risk management framework shall include a comprehensive physical and information security framework for managing the risks the CSD faces from attacks, including cyber-attacks, intrusions and natural disasters in order to protect information from unauthorised access or disclosure, ensure data accuracy and integrity, and to maintain availability to the CSD's services.
11. A CSD shall put in place appropriate human resources procedures to employ, train, and retain qualified personnel, and to mitigate the effects of personnel turnover or key-personnel reliance.

Article 23

Integration of and compliance with the operational and enterprise risk management system

1. A CSD shall ensure that its operational risk management system is closely integrated into its day-to-day risk management processes and that the output of it is integrated into the process of monitoring and controlling the CSD's operational risk profile.
2. A CSD shall have in place regular reporting of operational risk exposures and loss experience to the senior management and procedures for taking appropriate corrective action.

3. A CSD shall have in place procedures for ensuring compliance with the documented operational risk management system, including internal rules on the treatment of non-compliance.
4. A CSD shall have comprehensive and well-documented procedures to record, monitor and resolve all operational incidents, including:
 - (a) a system to classify the incidents which takes into account their materiality;
 - (b) reporting of material incidents to the senior management, the management body and the competent authority;
 - (c) a “post-incident” review after any material disruption, to identify the causes and any required improvements to be made to the normal operations or business continuity policies and plans. Such review shall include, where relevant, the CSD’s participants. This review, and information on intended improvements, shall be communicated to the competent authority and relevant authorities without undue delay.

Article 24

Risk management function

1. A CSD shall have a risk management function for operational risk, in accordance with Article 26(1) of Regulation (EU) No 909/2014. This function shall be performed by or under the responsibility of the chief risk officer referred to in Article 3 of this Regulation.
2. The CSD shall ensure that the operational risk function has sufficient authority, resources and access to the management body and senior management to ensure that its operations are consistent with the risk-management framework set by the management body, which has final responsibility and accountability for managing the CSD’s risks.
3. The risk management function shall be responsible for developing strategies, policies and procedures to identify, measure, monitor and report on operational risk and for developing procedures to control operational risk, including any necessary adjustments, and shall ensure that they are implemented and used.

Article 25

Audit and Testing

1. A CSD’s operational risk management framework and systems shall be subject to independent audits. Independent audits shall be performed, at least every two years. The frequency shall be based on a documented risk assessment.
2. The audits referred to in the previous paragraph shall include both the relevant activities of the internal business units and those of the operational risk management function.
3. A CSD shall regularly evaluate and, where necessary, adjust the system for the management of operational risk.

4. A CSD shall test and review arrangements with participants, operational policies and operational procedures periodically and, in any case, whenever significant changes occur to the system or after major incidents.
5. A CSD shall ensure that data flows and processes associated with the operational risk management system are accessible to the independent auditors without delay.

Article 26

Mitigation of operational risk

1. A CSD shall mitigate its operational risk at least through the following:
 - (a) internal control systems, which are embedded in a CSD's day-to-day business; and
 - (b) business continuity policy.
2. A CSD may complement the above controls by financially covering the remaining risk through insurance in those exceptional circumstances where:
 - (a) internal controls do not adequately address risk; and
 - (b) eliminating the risk is not a feasible option.

SECTION 3

IT systems

Article 27

IT tools

1. A CSD shall ensure that its IT architecture is well-documented and that the systems are designed to deal with the CSD's operational needs and the risks the CSD faces. The CSD systems shall be resilient, including in stressed market conditions and be scalable, if necessary, to process additional information, to handle increasing stress volumes and to achieve its service level objectives.
2. The CSD shall have procedures for capacity planning as well as at least a redundant capacity to allow the system to process all remaining transactions before the end of the day even in circumstances where a major disruption occurs.
3. The CSD shall provide for procedures for the introduction of new technology.
4. A CSD shall base its information technology systems on internationally recognised technical standards and industry best practices.
5. Data shall be protected from loss and leakage, unauthorised access, and other processing risks, such as negligence, fraud, poor administration, and inadequate record keeping.
6. A CSD's information security framework shall outline the mechanisms the CSD has in place to detect and prevent cyber-attacks. It shall also detail the CSD's cyber-attack response plan.

7. The CSD shall subject its systems to stringent testing, simulating stressed conditions, before first-time use, after making significant changes and after a major disruption has occurred. Participants, interconnected financial market infrastructures and other interested parties shall be involved as appropriate in the design and conduct of these tests.
8. The information security framework shall include, at a minimum, the following:
 - (a) access controls to the system;
 - (b) adequate safeguards against intrusions and data misuse;
 - (c) specific devices to preserve data authenticity and integrity, including cryptographic techniques;
 - (d) reliable networks and procedures for accurate and prompt data transmission without major disruptions; and
 - (e) audit trails.
9. Without prejudice to Article 30(5) of Regulation (EU) No 909/2014, when outsourcing its IT system or parts of it to another entity or to a third-party service provider, the CSD shall:
 - (a) ensure that supervisory and oversight functions, including on site access to acquire any relevant information needed for the competent authority and relevant authority under Article 12 of Regulation (EU) No 909/2014, is always possible;
 - (b) adopt the necessary systems and controls to manage the risks it faces;
 - (c) retain the necessary expertise and resources for evaluating the quality of the services provided, the organisational and capital adequacy of the service provider, for supervising the outsourced services effectively and for managing the risks associated with the outsourcing on an ongoing basis;
 - (d) have direct access to the relevant information of the outsourced services;
 - (e) ensure that the service provider meets the standards set down by the relevant data protection legislation which would apply if the service providers were established in the Union by indicating those standards in its contract with the service providers and ensuring that those standards are maintained;
 - (f) define and document provided services and acceptable service levels including the service provision standards that apply and specific and feasible service level targets to which the service provider commits to;
 - (g) inform the competent authority before any IT systems related to processing of core services are outsourced, including an analysis of alternative service providers when a CSD outsources IT-systems related to core service processing.
10. The CSD shall have robust arrangements for the selection and substitution of such entities or third-party service providers, CSD's timely access to all necessary information, and proper controls and monitoring tools.
11. The IT systems and the information security framework shall be reviewed, at a minimum, on an annual basis. They shall be subject to independent audit assessments and the results of these assessments shall be reported to the management body and shall be made available to the competent authority.

SECTION 4

Business Continuity

Article 28

Strategy and policy

1. A CSD shall have a business continuity policy and an associated business continuity and disaster recovery plan, all approved by the management body and subject to independent reviews which are reported to the management body.
2. A CSD shall ensure that the business continuity policy:
 - (a) identifies all critical business functions and related systems;
 - (b) includes the CSD's strategy and objectives to ensure the continuity of those functions and systems;
 - (c) takes into account external links and interdependencies within the financial infrastructure, including trading venues and central counterparties, other securities settlement and payment systems, participants, as well as outsourced functions or services;
 - (d) contains clearly defined and documented arrangements for use in the event of a business continuity emergency, wide scale or major disruption which are designed to ensure a minimum service level of critical functions;
 - (e) identifies the maximum acceptable time for which critical functions and systems may be out of use. The CSD's backup systems shall commence processing as soon as possible with a maximum recovery time for the CSD's critical functions of two hours.
3. A CSD shall ensure that settlement is completed by the end of day and that the status of all transactions and positions at the time of disruption shall be identified with certainty in a timely manner.

Article 29

Business impact analysis

1. A CSD shall conduct a business impact analysis to identify the critical business functions for which a minimum service level shall be maintained. The criticality of these functions to other institutions and functions in financial infrastructure shall be part of the analysis.

2. During the business impact analysis the CSD shall:
 - (a) prepare a list with all the processes and activities that contribute to the delivery of the different services;
 - (b) identify and create an inventory of all the components of the system that support the processes and activities identified in point (a) as well as their respective interdependencies;
 - (c) identify and document qualitative and quantitative impacts to each process and how those impacts change over time in case of disruption;
 - (d) define and document the minimum service levels considered acceptable and adequate;
 - (e) identify and document the minimum resource requirements in personnel and skills, work space and technology to perform each critical function at the minimum acceptable level.

2. A CSD shall use scenario based risk analysis to identify how various scenarios affect the continuity of its critical functions.

3. A CSD shall ensure that its business impact analysis and scenario analysis:
 - (a) is kept up to date;
 - (b) is reviewed at least on annual basis as well as following a material incident or significant operational changes; and
 - (c) takes into account all relevant developments, including market and technology developments.

Article 30

Business Continuity and Disaster Recovery plans

1. A CSD shall have in place arrangements to ensure the continuity of its critical functions based on disaster scenarios, including natural disasters, pandemic situations, physical attacks, intrusions, and cyber-attacks, that address at least:
 - (a) the availability of adequate human resources;
 - (b) the availability of the minimum resource requirements;
 - (c) the maximum downtime of critical functions, that shall not be above the maximum recovery time for the CSD's critical functions of two hours; and
 - (d) the fail over and recovery to a secondary processing site.

2. The requirement under point c) of paragraph 1 shall not apply in the case of cyber-attacks.

In the case of a cyber-attack, a CSD shall assess the nature of the problem and shall determine an appropriate recovery time for the CSD's critical functions in order to minimise the damage caused by the adversarial actions.

The CSD's critical functions shall be resumed within maximum 12 hours, unless this would jeopardize the integrity of the securities issues or the confidentiality of the data maintained by the CSD.

3. The CSD shall have business continuity and disaster recovery plans which identify the recovery point and recovery time objectives for critical functions and determine for each of them the most suitable recovery strategies. In determining the recovery times for each function the CSD shall take into account the potential overall impact on the market efficiency. As a minimum, such arrangements shall ensure that in extreme scenarios critical functions are completed in line with the recovery time and that agreed service levels are met.
4. A CSD shall maintain at a minimum a secondary processing site with sufficient resources, capabilities, functionalities and staffing arrangements adequate to the CSD's operational needs and the risks the CSD faces in order to allow the secondary processing site to take over operations if needed, including compliance with at least the following conditions:
 - (a) the secondary site shall provide the level of critical services necessary to perform the functions consistent with the recovery time objective;
 - (b) the secondary processing site shall be located at a geographical distance from the primary site that is sufficient to have a distinct risk profile, so that it shall in principle not be affected by an event that affects the primary site; and
 - (c) a CSD shall maintain or have immediate access to a second business site, at least, to allow staff to ensure continuity of the service if the main location of business is not available.
5. A CSD shall develop and maintain detailed procedures and plans with respect to:
 - (a) the identification, logging and reporting of all disruptive events;
 - (b) incident and emergency response;
 - (c) assessment of damages, escalation criteria and plan activation procedures;
 - (d) crisis management and communications including appropriate contact points to ensure reliable and up to date information is transmitted to relevant stakeholders and the competent authority;
 - (e) activation and transition to all alternative operational and business sites; and
 - (f) technology recovery, secondary processing site activation and failover.

Article 31

Testing and monitoring

A CSD shall test and monitor its business continuity policy, business continuity and disaster recovery plans and the relevant arrangements at regular intervals, at least annually, and after significant modifications or changes to the systems or related functions to ensure that they achieve the stated objectives. The CSD shall plan and document these tests, which shall involve at least:

- (a) scenarios of large scale disasters;
- (b) switchovers between primary site and secondary processing site; and
- (c) the participation of participants, external providers and relevant institutions with which interdependencies have been identified in the business continuity policy.

Article 32

Maintenance

1. A CSD shall regularly review and update its business continuity policy, business continuity and disaster recovery plans to include all critical functions and the most suitable recovery strategy for those functions.
2. In updating the business continuity policy, business continuity and disaster recovery plans, a CSD shall take into consideration the outcome of the tests and recommendations of independent reviews and other reviews of the competent authority.
3. CSDs shall review their business continuity policy, business continuity and disaster recovery plans after every significant disruption, to identify the causes, and any required improvement to the CSD' operations, business continuity policy, business continuity and disaster recovery plans.

Article 33

Duty to notify

A CSD shall promptly notify the competent authority of the results of any tests performed in the context of this chapter.

CHAPTER VII

INVESTMENT POLICY

(Article 46(6) of Regulation No 909/2014)

Article 34

Highly liquid instruments with minimal market and credit risk

1. Financial instruments can be considered highly liquid financial instruments, bearing minimal credit and market risk under Article 46 of Regulation (EU) No 909/2014 if they are debt instruments meeting each of the following conditions:
 - (a) they are issued or explicitly guaranteed by:
 - (i) a government;
 - (ii) a central bank;
 - (iii) a multilateral development bank as listed under Article 117 of Regulation (EU) No 575/2013;
 - (iv) the European Financial Stability Facility or the European Stability Mechanism;
 - (b) the CSD can demonstrate to the competent authority that they have low credit and market risk based upon an internal assessment by the CSD - in performing such an assessment the CSD shall employ a defined and objective methodology that shall not fully rely on external opinions and that takes into consideration the risk arising from the establishment of the issuer in a particular country;
 - (c) the average time-to-maturity of the CSD's portfolio does not exceed two years;
 - (d) they are denominated in a currency the risks of which the CSD can demonstrate with a high level of confidence that it is able to manage, including a currency in which transactions are settle in the securities settlement system operated by the CSD;
 - (e) they are freely transferable and without any regulatory constraint or third party claims that impair liquidation;
 - (f) they have an active outright sale or repurchase agreement market, with a diverse group of buyers and sellers, including in stressed conditions and to which the CSD has reliable access;

- (g) reliable price data on these instruments are publicly available on a regular basis.
2. Derivative contracts can also be considered highly liquid financial investments, bearing minimal credit and market risk if they are entered into for the purpose of hedging currency risk arising from the settlement in more than one currency in the securities settlement system operated by the CSD.
 3. Where derivative contracts are used in accordance with paragraph 2, their use shall be limited to derivative contracts in respect of which reliable price data is published on a regular basis and to the period of time necessary to reduce the currency risk to which the CSD is exposed, and not for other purposes, notably realisation of profits.
 4. The CSD's policy for the use of derivative contracts shall be approved by the management body after having consulted the user committee.

Article 35

Appropriate timeframe for access to assets

1. A CSD shall be able to demonstrate at any point in time to the competent authority that its policies and procedures pertaining to prompt access to its assets, are based at least on the nature, size, quality, maturity and location of these assets.
2. A CSD shall ensure that prompt access to its assets is also safeguarded in case the execution of its investment policy or the custody of its assets is outsourced to one or more third parties, notably through contractual arrangements with the relevant third party or parties.
3. A CSD that holds cash assets shall be able to have immediate and unconditional access to those cash assets and take all appropriate measures for that purpose.
4. Where a CSD holds its cash assets other than with a central bank, it shall ensure that the deposit is in a currency the risks of which the CSD can demonstrate with a high level of confidence that it is able to manage, including a currency in which the CSD settle transactions.
5. Where a CSD holds the securities with an authorised credit institution, it shall hold them in an individually segregated account in the books of a CSD and be capable of accessing and liquidating them on the business day following the day where a decision to liquidate the assets is taken.

Article 36

Portfolio diversification

1. A CSD shall establish and implement policies and procedures to ensure that the financial instruments in which its financial resources are invested remain sufficiently diversified.

2. A CSD shall determine concentration limits and monitor the concentration of its financial resources at the level of:
 - (a) individual financial instruments;
 - (b) types of financial instruments;
 - (c) individual issuers;
 - (d) types of issuers;
3. When considering types of issuers a CSD shall take into account the following:
 - (a) geographic distribution;
 - (b) interdependencies and multiple relationships that an entity may have with a CSD;
and
 - (c) the level of credit risk, if any.
4. The policies and the procedures shall determine the risk mitigation measures to be applied when the concentration limits are exceeded.
5. When determining the concentration limit for a CSD's exposure to an individual issuer, a CSD shall aggregate and treat as a single risk, the exposure to all financial instruments issued by, or explicitly guaranteed by the issuer.
6. A CSD shall monitor on a regular basis the adequacy of its concentration limit policies and procedures and review its concentration limit policy and procedure at least annually and whenever a material change occurs that affects the risk exposure of the CSD.
7. If the CSD breaches a concentration limit set out in its policies and procedures, it shall inform the competent authority immediately. The CSD shall rectify the breach as soon as possible.

Article 37

Concentration limits to individual entities

1. A CSD shall establish and implement policies and procedures to ensure that the individual authorised credit institutions or authorised CSD with which it holds its financial assets remain sufficiently diversified.

2. A CSD shall determine concentration limits and monitor the concentration of its financial resources at the level of:
 - (a) credit institutions with which it maintains cash;
 - (b) CSDs with which it maintains financial instruments, either directly or via an intermediary.
3. When considering the entities referred to in paragraph 2, a CSD shall take into account the following:
 - (a) their geographic distribution;
 - (b) interdependencies and multiple relationships that those entity or entities of the same group may have with a CSD; and
 - (c) the level of credit risk, if any.
4. The policies and the procedures shall determine the risk mitigation measures to be applied when the concentration limits are exceeded.
5. A CSD shall monitor on a regular basis the adequacy of its concentration limit policies and procedures and review its concentration limit policy and procedure at least annually and whenever a material change occurs that affects the risk exposure of the CSD.
6. If a CSD breaches a concentration limit set out in its policies and procedures, it shall inform the competent authority immediately and rectify it as soon as possible.

Article 38

Entry into force and application

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

ANNEX

ANCILLARY SERVICES RECORDS

No.	Ancillary Services under Regulation (EU) No 909/2014	Types of records
A. Non-banking-type ancillary services of CSDs that do not entail credit or liquidity risks		
1	Organising a securities lending mechanism, as agent among participants of a securities settlement system	<ul style="list-style-type: none"> a) Identification of delivering/receiving parties, b) Details regarding each securities lending/borrowing operation, including volume and value of securities, ISIN, c) Purpose of each securities lending/borrowing operations, d) Types of collateral, e) Collateral valuation.
2	Providing collateral management services, as agent for participants in a securities settlement system	<ul style="list-style-type: none"> a) Identification of delivering/receiving parties, b) Details regarding each operation, including volume and value of securities, ISIN, c) Types of collateral, d) Purpose of collateral use, e) Collateral valuation.
3	Settlement matching, instruction routing, trade confirmation, trade verification	<ul style="list-style-type: none"> a) Identification of the entities for which the CSD provides the services, b) Types of operations, c) Details regarding each operation, including volume and value of securities, ISIN.
4	Services related to shareholders' registers	<ul style="list-style-type: none"> a) Identification of the entities for which the CSD provides the services, b) Types of services, c) Details regarding each operation, including volume

		and value of securities, ISIN.
5	Supporting the processing of corporate actions, including tax, general meetings and information services	<ul style="list-style-type: none"> a) Identification of the entities for which the CSD provides the services, b) Types of services, c) Details regarding each operation, including volume and value of securities/cash, beneficiaries of the operation, ISIN.
6	New issue services, including allocation and management of ISIN codes and similar codes	<ul style="list-style-type: none"> a) Identification of the entities for which the CSD provides the services, b) Types of services, c) Details regarding each operation, including ISIN.
7	Instruction routing and processing, fee collection and processing and related reporting	<ul style="list-style-type: none"> a) Identification of the entities for which the CSD provides the services, b) Types of services, c) Details regarding each operation, including volume and value of securities/cash, beneficiaries of the operation, ISIN, purpose of the operation.
8	Establishing CSD links, providing, maintaining or operating securities accounts in relation to the settlement service, collateral management, other ancillary services	<ul style="list-style-type: none"> a) Details regarding the CSD links, including identification of CSDs, b) Types of services, c) Relevant information under Articles 3 and 4 of the present Regulation.
9	Providing general collateral management services as agent	<ul style="list-style-type: none"> a) Identification of delivering/receiving parties, b) Details regarding each operation, including volume and value of securities, ISIN, c) Types of collateral, d) Purpose of collateral use, a) Collateral valuation.
10	Providing regulatory reporting	<ul style="list-style-type: none"> a) Identification of the entities for which the CSD provides the reporting,

		<ul style="list-style-type: none"> b) Types of services. c) Details regarding the data provided, including the legal basis and the purpose.
11	Providing information, data and statistics to market/census bureaus or other governmental or inter-governmental entities	<ul style="list-style-type: none"> a) Identification of the entities for which the CSD provides the services, b) Types of services. c) Details regarding the data provided, including the legal basis and the purpose.
12	Providing IT services	<ul style="list-style-type: none"> a) Identification of the entities for which the CSD provides the services, b) Types of services. a) Details regarding the IT services.
B. Banking-type services directly related to core or ancillary services listed in Sections A and B of the Annex to Regulation (EU) No 909/2014		
13	Providing cash accounts to, and accepting deposits from, participants in a securities settlement system and holders of securities accounts, within the meaning of point 1 of Annex I of Directive 2013/36/EU	<ul style="list-style-type: none"> a) Identification of the entities for which the CSD provides the services, b) Cash accounts details, c) Currency, d) Deposits amounts.
14	Providing cash credit for reimbursement no later than the following business day, cash lending to pre-finance corporate actions and lending securities to holders of securities accounts, within the meaning of point 2 of Annex I to Directive 2013/36/EU	<ul style="list-style-type: none"> a) Identification of the entities for which the CSD provides the services, b) Types of services c) Details regarding each operation, including volume and value of securities/cash, ISIN, d) Types of collateral, e) Collateral valuation, f) Purpose of operations, g) Information about any incidents in relation to such services and remediating actions including follow-up.
15	Payment services involving processing of cash and	<ul style="list-style-type: none"> a) Identification of the entities for which the CSD

	foreign exchange transactions, within the meaning of point 4 of Annex I to Directive 2013/36/EU	provides the services, b) Types of services, c) Details regarding each operation, including volume of cash, and purpose of operation.
16	Guarantees and commitments related to securities lending and borrowing, within the meaning of point 6 of Annex I to Directive 2013/36/EU	a) Identification of the entities for which the CSD provides the services, b) Types of services, c) Details regarding each operation, including volume and value of securities/cash, and purpose of operation.
17	Treasury activities involving foreign exchange and transferable securities related to managing participants' long balances, within the meaning of points 7(b) and (e) of Annex I to Directive 2013/36/EU	a) Identification of the entities for which the CSD provides the services, b) Types of services, c) Details regarding each operation, including volume and value of securities/cash, and purpose of operation.

**COMMISSION DELEGATED REGULATION (EU) No .../2015
supplementing Regulation (EU) No 909/2014 of the European Parliament and of the
Council of 23 July 2014 with regard to regulatory technical standards concerning
requirements for CSD links, access of participants to central securities depositories
(CSDs), access of issuers to CSDs, access between CSDs, and access between a CSD and
another market infrastructure**

of []

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories (CSDs)¹⁸, and in particular Article 33(5), Article 48(10), Article 49(5), Article 52(3), and Article 53(4) thereof,

Whereas:

- (21) **[ACCESS]** Central securities depositories (CSDs) should provide fair and open access to their services, with due regard to risks to financial stability and the orderliness of the market. They should control the risks arising from their participants and other users by setting risk-related criteria for the provision of their services. CSDs should ensure that their users, such as participants, any other CSDs, Central Counterparties (CCPs), trading venues or issuers that are granted access to their services meet the criteria and have the required operational capacity, financial resources, legal powers, and risk-management expertise in order to prevent the risks for CSDs and other users.
- (22) Access should be granted by applying transparent, objective and non-discriminatory criteria, and it should only be refused based on reasonable risk-related considerations. In the case of access between a CSD and another market infrastructure, access should only be refused where such access would affect the smooth and orderly functioning of the financial markets or cause systemic risk.
- (23) In order to ensure the safety and efficiency of its securities settlement system, a CSD should monitor compliance with its access requirements on an on-going basis and have clearly defined and publicly disclosed procedures for facilitating the suspension and orderly exit of a requesting party that breaches, or no longer meets, the access requirements.
- (24) **[CSD LINKS]** In order to ensure that the safety and the efficiency of the link arrangement, before establishing a CSD link, and on an ongoing basis once the link is established, a CSD should identify, monitor, and manage all potential sources of risk

¹⁸ OJ L 257, 28.8.2014, p. 1

arising from the link arrangement. A CSD link should have a well-founded legal basis, in all relevant jurisdictions, that supports its design and provides adequate protection to the CSDs involved in the link. Linked CSDs should measure, monitor, and manage the credit and liquidity risks arising from each other.

- (25) A requesting CSD that uses an indirect link or an intermediary to operate a link with a receiving CSD should measure, monitor, and manage the additional risks (including custody, credit, legal, and operational risks) arising from the use of the intermediary, in order to ensure the safety and the efficiency of the link arrangement.
- (26) In order to ensure the integrity of the issue for securities issues maintained in several CSDs, CSDs should apply specific reconciliation measures and coordinate their actions in the case of linked CSDs.
- (27) **[FINAL]** In view of the global nature of financial markets, this Regulation takes into account the Principles for Financial Market Infrastructures issued by the Committee on Payment and Settlement Systems and the International Organization of Securities Commissions (CPSS-IOSCO Principles) which serve as a global benchmark for regulatory requirements for central securities depositories (CSDs).
- (28) In order to clearly identify a limited number of concepts stemming from Regulation (EU) No 909/2014, as well as to specify the technical terms necessary for developing these technical standards, a number of terms should be defined.
- (29) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the European Commission.
- (30) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council¹⁹, in developing the draft regulatory technical standards on which this Regulation is based, ESMA has conducted open public consultations, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of that Regulation. In developing the draft regulatory technical standards on which this Regulation is based, ESMA has worked in close cooperation with the members of the European System of Central Banks.

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL

Article 1

Definitions

¹⁹ Regulation (EU) No 1095/2010 of 24 November 2010 of the European Parliament and of the Council establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

For the purposes of this Regulation the following definitions apply:

- (a) ‘receiving party’ means one of the following entities, as appropriate:
- (i) a receiving CSD as defined under point 5 of Article 2(1) of Regulation (EU) No 909/2014;
 - (ii) a CSD which receives the request of a participant, an issuer, a CCP or a trading venue to have access to its services;
 - (iii) a CCP which receives the request of a CSD to have access to its transaction feed;
 - (iv) a trading venue which receives the request of a CSD to have access to its transaction feed.
- (b) ‘requesting party’ means one of the following entities, as appropriate:
- (i) a requesting CSD as defined under point 6 of Article 2(1) of Regulation (EU) No 909/2014;
 - (ii) a participant, an issuer, a CCP or a trading venue which requests access to the securities settlement system operated by a CSD or to other services of a CSD;
 - (iii) a CSD which requests access to the trading feed of a CCP;
 - (iv) a CSD which requests access to the trading feed of a trading venue.
- (c) ‘issuer CSD’ means a CSD which provides the core service referred to in point 1 of Section A of the Annex to Regulation (EU) No 909/2014 for a securities issue.
- (d) ‘investor CSD’ means a CSD which has a link with an issuer CSD either directly or via an intermediary allowing its participants to hold securities in its securities settlement system which were issued through the issuer CSD.
- (e) ‘securities issue’ means securities that are issued by the same issuer, that belong to the same type and class, and that have the same features and which are identified by the same ISIN.

CHAPTER II

ACCESS TO A CSD

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

Article 2

Risks to be taken into account by CSDs and competent authorities

1. Where, in accordance with Article 33(3), Article 49(3), Article 52(2) or Article 53(3) of Regulation (EU) No 909/2014, a CSD carries out a comprehensive risk assessment following a request for access by a requesting participant, an issuer, a requesting CSD, a CCP or a trading venue, as well as when a competent authority assesses the reasons for refusal to provide services by the CSD, they shall take into account the following risks resulting from such a provision of services:
 - (a) the legal risks;
 - (b) the financial risks;
 - (c) the operational risks.

2. When assessing the legal risks following a request for access by a requesting participant, a CSD and its competent authority shall take into account at least the following criteria:
 - (a) The requesting party does not provide the information needed to assess its compliance with the legal requirements for participation in the securities settlement system operated by the CSD, or, as the case may, for the provision of services by the CSD, including the legal opinions or any relevant legal arrangements that demonstrate the ability of the requesting party to meet its obligations towards the CSD;
 - (b) In the case of a requesting party established in a third country, the requesting party is not subject to a regulatory and supervisory framework comparable to that of the home Member State of the CSD, and the rules of the CSD concerning settlement finality referred to in Article 39 of Regulation (EU) No 909/2014 are not enforceable in the jurisdiction of the requesting party;
 - (c) The requesting party does not provide the information, including the legal opinions or any relevant legal arrangements, needed to assess its ability to ensure, in accordance with the rules applicable in the home Member State of the CSD, the confidentiality of information provided through the securities settlement system.

3. When assessing the legal risks following an issuer's request for recording its securities in the CSD in accordance with Article 49(1) of Regulation (EU) No 909/2014, the CSD and its competent authority shall take into account at least the following criteria:
 - (a) The criterion specified under point (a) of paragraph 2;
 - (b) The issuer is not able to guarantee that the securities have been issued in a way enabling the CSD to ensure the integrity of the issue in accordance with Article 37 of Regulation (EU) No 909/2014.

4. When assessing the legal risks following a request for access by a requesting CSD, the receiving CSD and its competent authority shall take into account at least the criteria specified under points (a) to (c) of paragraph 2.

5. When assessing the legal risks following a request for access by a CCP or a trading venue, a CSD and its competent authority shall take into account at least the criteria specified under points (a) to (c) of paragraph 2.

6. When assessing the financial risks following a request for access by a requesting participant, a CSD and its competent authority shall take into account at least whether the requesting party holds sufficient financial resources to fulfil its obligations towards the CSD.
7. When assessing the financial risks following an issuer's request for recording its securities in the CSD in accordance with Article 49(1) of Regulation (EU) No 909/2014, a CSD and its competent authority shall take into account at least the criterion specified under paragraph 6.
8. When assessing the financial risks following a request for access by a requesting CSD, the receiving CSD and its competent authority shall take into account at least the following criteria:
 - (a) The criterion specified under paragraph 6;
 - (b) Whether the requesting CSD is not willing or is not able to pay the reasonable commercial fee referred to in Article 51(2) of Regulation (EU) No 909/2014.
9. When assessing the financial risks following a request for access by a CCP or a trading venue, a CSD and its competent authority shall take into account at least the following criteria:
 - (a) The criterion specified under paragraph 6;
 - (b) Whether the CCP or the trading venue is not willing or able to finance any customised component required to enable access in accordance with Article 53(1) of Regulation (EU) No 909/2014, to the extent that this is not a discriminatory access condition.
10. When assessing the operational risks following a request for access by a requesting participant, a CSD and its competent authority shall take into account at least the following criteria:
 - (a) The requesting party is not able to demonstrate that it has the operational capacity to participate in the CSD;
 - (b) The requesting party is not able to demonstrate that it can adhere to and comply with the existing risk management rules of the receiving CSD or it lacks expertise the necessary expertise in that regard;
 - (c) The requesting party has not put in place business continuity policies and disaster recovery plans;
 - (d) The granting of access requires the receiving CSD to undertake significant changes of its operations that would affect the risk management procedures or the smooth functioning of the securities settlement system operated by the receiving CSD;
 - (e) Access shall not create additional operational risks for the CSD, in particular access does not require the CSD to implement ongoing manual processing, increasing the risk of human error.

11. When assessing the operational risks following an issuer's request for recording its securities in the CSD in accordance with Article 49(1) of Regulation (EU) No 909/2014, a CSD and its competent authority shall take into account at least the following criteria:

- (a) The criteria specified under points (d) and (e) of paragraph 10;
- (b) If the securities settlement system operated by the CSD is not able to process the currencies requested by the issuer.

12. When assessing the operational risks following a request for access by a requesting CSD, a CCP or a trading venue, the receiving CSD and its competent authority shall take into account at least the criteria specified under points (b) to (e) of paragraph 10.

13. Where a CSD intends to refuse access to its securities settlement system or to other services, it shall justify such a refusal on the basis of reasons that shall be supported by adequate and detailed explanations that enables the requesting party and the competent authority to properly understand the risks resulting from the provision of services to the requesting party. The reasons for refusal shall be objective, demonstrable and non-discriminatory.

14. The requesting party shall comply on an on-going basis with the requirements concerning access. A CSD can withdraw access where the requesting party no longer complies with the relevant access requirements. The CSD shall justify in writing such a withdrawal of access, in accordance with Article 4.

CHAPTER III

PROCEDURE FOR REFUSAL OF ACCESS

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

Article 3

Procedure for refusal of access

1. A receiving party that refuses access to a requesting party shall provide in writing the reasons for such a refusal based on a comprehensive risk analysis.

2. 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, CCP or 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.

3. The competent authority referred to in paragraph 2 may request additional information from the requesting party.

The responses to the request for information referred to in the first subparagraph shall be sent to the competent authority within two weeks from the date of the receipt of the request.

In accordance with Article 53(3) of Regulation (EU) No 909/2014, within two working days from the date of the receipt of the complaint, the competent authority of the receiving party shall transmit the complaint referred to in paragraph 2 to the relevant authority of the receiving party referred to in point (a) of Article 12(1) of Regulation (EU) No. 909/2014.

4. The competent authority referred to in paragraph 2 shall consult the following authorities on its initial assessment of the complaint within two months from the date of the receipt of the complaint, as appropriate:

(a) the competent authority of the place of establishment of the requesting participant in accordance with Article 33(3) of Regulation (EU) No 909/2014;

(b) the competent authority of the place of establishment of the requesting issuer in accordance with Article 49(4) of Regulation (EU) No 909/2014;

(c) the competent authority of the requesting CSD and the authority responsible for the oversight of the securities settlement system operated by the requesting CSD in the Member State whose law applies to that securities settlement system in accordance with Article 52(2) of Regulation (EU) No 909/2014;

(d) the competent authority of the requesting CCP or trading venue and the authority responsible for the oversight of the securities settlement system operated by the CSD in the Member State whose law applies to that securities settlement system in accordance with Article 53(3) of Regulation (EU) No 909/2014.

5. The competent authority referred to in points (a) to (d) of paragraph 4 shall respond within one month from the date specified under paragraph 4. Where the competent authority referred to in points (a) to (d) of paragraph 4 does not provide an opinion within that deadline, it shall be deemed to have a positive opinion on the assessment provided.

6. The competent authority referred to in paragraph 2 shall confirm its final assessment to the competent authority referred to in points (a) to (d) of paragraph 4 within two weeks from the deadline provided in paragraph 5.

7. Where the competent authority referred to in points (a) to (d) of paragraph 4 disagrees with the assessment provided by the competent authority referred to in paragraph 2, any of them may refer the matter to ESMA within two weeks from the date of confirmation by the competent authority referred to in paragraph 2 of its final assessment of the complaint in accordance with paragraph 6.

8. When the matter has not been referred to ESMA, the competent authority referred to in paragraph 2 shall send a reasoned reply to the requesting party within two working days from the deadline provided in paragraph 7.

The competent authority referred to in paragraph 2 shall also inform the receiving party and the competent authority referred to in points (a) to (d) of paragraph 4 of the reasoned reply referred to in the first subparagraph.

9. In the event of a referral to ESMA, the competent authority referred to in paragraph 2 shall inform the requesting party and the receiving party of such a referral within two working days from the date where such a referral has been made.

Within six months from the receipt of a referral under paragraph 7, ESMA shall assist the authorities in reaching an agreement in accordance with the procedure set out in paragraphs 2 to 4 of Article 19 of Regulation (EU) No 1095/2010.

A reasoned reply shall be sent to the requesting party following the procedure specified under Article 19 of Regulation (EU) No 1095/2010. The other parties involved mentioned under paragraph 8 shall be notified accordingly.

10. Where the refusal by the receiving party to grant access to the requesting party is deemed to be unjustified, the competent authority referred to in paragraph 2 shall issue an order requiring that receiving party to grant access to the requesting party within three months from the date when the order enters into force.

The deadline referred to in subparagraph one shall be set at eight months in the case of customised links that require a significant development of IT tools, unless otherwise agreed by the requesting and receiving CSDs.

The competent authority referred to in paragraph 2 shall issue the order mentioned under the first subparagraph within 2 weeks from the deadline specified under paragraph 8, or within 2 weeks following the procedure specified under Article 19 of Regulation (EU) No 1095/2010.

The order shall include the reasons that allowed the competent authority referred to in paragraph 2 to conclude that the refusal by the receiving party to grant access is deemed to be unjustified.

The order shall be sent to ESMA, the competent authority referred to in points (a) to (d) of paragraph 4, the requesting party and the receiving party within 2 working days after the date when it enters into force.

11. The procedure referred to in paragraphs 1 to 10 shall apply when the receiving party intends to withdraw access to a requesting party to whom it already provides its services.

CHAPTER IV

CSD LINKS

Article 4

Conditions for the adequate protection of linked CSDs and of their participants

(Article 48(3) of Regulation (EU) No 909/2014)

1. A CSD link shall be established and maintained under the following conditions:

- (a) The requesting CSD shall meet the requirements of the receiving CSD's participation rules.
- (b) The requesting CSD shall conduct an analysis of the receiving CSD's financial soundness, governance arrangements, processing capacity, operational reliability and any reliance on a critical service provider.
- (c) The requesting CSD shall take the necessary measures to monitor and manage the risks that may be identified following the analysis mentioned in point (b).
- (d) The requesting CSD shall make the terms and conditions of the link arrangement available to its participants to enable the participants to assess and manage the risks involved.
- (e) Before the establishment of a link with a third country CSD, the requesting CSD shall perform an initial verification of the local legislation applicable to the receiving CSD. In performing such a verification, the CSD shall ensure that the securities maintained in the securities settlement system operated by the receiving CSD benefit from a level of asset protection that has comparable effects to the one ensured by the regime applicable in the case of the securities settlement system operated by the requesting CSD. The requesting CSD shall require legal opinions addressing at least the following issues:
 - (i) the entitlement to the securities, including the law applicable to proprietary aspects, nature of the rights on the securities, permissibility of an attachment or freeze of the securities; and

- (ii) the impact of insolvency proceedings on at least segregation, settlement finality, procedures and deadlines to claim the securities.
- (f) A requesting CSD that is not authorised to provide banking-type ancillary services in accordance with Article 53 of Regulation (EU) No 909/2014 shall not receive banking-type of ancillary services from a receiving CSD authorised to provide banking-type ancillary services in accordance with Article 53 of Regulation (EU) No 909/2014, in relation to the settlement of the cash leg to be processed through the link.
- (g) The linked CSDs shall agree on common standards and procedures concerning operational issues, and communication, in accordance with Article 35 of Regulation (EU) No 909/2014.
- (h) The requesting CSD shall be responsible for having conducted end-to-end tests with the receiving CSD before the link becomes operational. An emergency plan shall be established before the link becomes operational, covering at least the situation where the securities settlement systems of the linked CSDs malfunction or break down and the remedial actions in such events.
- (i) All link arrangements shall be reviewed by the receiving CSD and the requesting CSD at least on an annual basis. The review shall take into account all relevant developments, including market and technology developments, as well as, if applicable, the local legislation referred to in point (e).
- (j) The annual review shall also include an assessment of any development that might result in the possibility to settle on a DVP basis for existing links which do not currently permit DVP settlement.

2. In case of a link allowing for DVP settlement, any additional risks resulting from the cash settlement shall be assessed and mitigated by the requesting CSD.

3. In addition to the conditions referred to in paragraphs 1 and 2, an interoperable link shall be established and maintained under the following conditions:

- (a) The linked CSDs shall agree on common standards concerning reconciliation, the opening hours for particular processes, corporate action processing and cut-off times.
- (b) The linked CSDs shall establish a common IT interface for the transmission of instructions between themselves, and common communication structures.
- (c) In the case of an interoperable link allowing for DVP settlement, the linked CSDs shall synchronise the settlement batches, where settlement occurs in batches.
- (d) The linked CSDs shall agree on common risk management models.
- (e) The linked CSDs shall agree on common contingency and default procedures.

Article 5

Risk monitoring and management when using indirect links or an intermediary to operate a CSD link

(Article 48(5) of Regulation (EU) No 909/2014)

1. Where a requesting CSD uses an indirect link or an intermediary to operate the link, it shall ensure that:
 - (a) The intermediary is one of the following:
 - (i) a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 that ensures the full segregation and protection of the securities and enables the requesting CSD prompt access to the securities when required and where the requesting CSD can demonstrate that the credit institution has low credit risk based upon an internal assessment by the requesting CSD. In performing such an assessment, the requesting CSD shall employ a defined and objective methodology that shall not fully rely on external opinions.
 - (ii) a third country financial institution that is subject to and complies with prudential rules considered by the relevant competent authorities to be at least as stringent as those laid down in Regulation (EU) No 575/2013 and which has robust accounting practices, safekeeping procedures, and internal controls and that ensures the full segregation and protection of those securities, enables the requesting CSD's prompt access to the securities when required and that the requesting CSD can demonstrate to have low credit risk based upon an internal assessment by the requesting CSD. In performing such an assessment, the requesting CSD shall employ a defined and objective methodology that shall not fully rely on external opinions.
 - (b) The intermediary complies with the rules and requirements of the requesting CSD, based on the information provided by the intermediary, including on the legal opinions or any relevant legal arrangements that demonstrate the ability of the intermediary to meet its obligations towards the requesting CSD.
 - (c) The intermediary is able to ensure, in accordance with the rules applicable in the home Member State of the requesting CSD, the confidentiality of information provided through the intermediary in connection to the link. The requesting CSD shall perform the assessment based on the information provided by the intermediary, including on any legal opinions or any relevant legal arrangements.
 - (d) The intermediary has the operational capacity and well-functioning routines/systems for handling the services provided, such as securities transfers, securities safekeeping, processing of corporate actions, as well as for sending the CSD any information relevant to the services provided or to the link in a timely manner, and for complying with the reconciliation measures in accordance with Article 6 and Chapter V of Regulation (EU) No..... [RTS on CSD requirements].
 - (e) The intermediary is able to adhere to and comply with the existing risk management rules of the requesting CSD and that it has the necessary expertise in that regard.
 - (f) The intermediary has in place measures to ensure the continuity of its services, the timely recovery of operations and the fulfilment of its obligations in the case of

events that pose a significant risk of disrupting its operations, including business continuity policies and disaster recovery plans.

- (g) The intermediary holds sufficient financial resources to fulfil its obligations towards the requesting CSD. The intermediary has financial means to cover any losses that the intermediary may be liable for.
 - (h) At least an individually segregated account at the receiving CSD is used for the operations of the link. The requesting CSD shall ensure that it can access the securities held in the individually segregated account at any point in time, including in the event of a change or insolvency of the intermediary.
 - (i) If applicable, the condition in point e) of Article 4(1) is fulfilled.
 - (j) It has a good knowledge of the continuity arrangements between the intermediary and the receiving CSD in the case of indirect links.
 - (k) The proceeds from settlement are promptly transferred to the requesting CSD.
- 2) In the case of an intermediary which operates a CSD link, the relevant accounts that the requesting CSD has in the receiving CSD operated by the intermediary shall be opened in name of the requesting CSD.
- 3) A requesting CSD referred to in paragraph 1 shall perform a yearly due diligence to monitor that the conditions referred to in paragraph 1 are fulfilled.

Article 6

Reconciliation Methods for Linked CSDs

(Article 48(6) of Regulation (EU) No 909/2014)

1. The reconciliation methods referred to in Article 48(6) of Regulation (EU) No 909/2014 shall include at least the following measures:
- (a) The receiving CSD shall transmit to the requesting CSD daily statements of information specifying the following, per account number and per securities issue:
 - (i) The aggregated opening balance;
 - (ii) The individual movements during the day;
 - (iii) The aggregated closing balance.
 - (b) The requesting CSD shall conduct a daily comparison of the opening balance and the closing balance communicated to it by the receiving CSD or by the intermediary with the records maintained by the requesting CSD itself.

In the case of an indirect link, the daily statements referred to in point a) of the first subparagraph shall be transmitted through the intermediary that operates the link.

2. If a common depository or any other relevant entity is used by the CSDs in an interoperable link, the CSDs shall reconcile their positions among themselves and with that other entity on a daily basis.

3. Where the reconciliation process reveals an undue creation or deletion of securities, the linked CSDs shall suspend the securities issue for settlement until the undue creation or deletion of securities has been remedied.

The linked CSDs shall analyse the impact and, where considered necessary, shall harmonize any restrictions regarding the respective securities issue, involving also the intermediary in the case of indirect link.

4. In the case of a corporate action that would change the balance of securities accounts held by a CSD with another CSD, settlement by the former CSD in the relevant securities issues shall not commence until the corporate action has been fully processed.

The issuer CSD shall ensure the transmission, including through its participants, of timely information on corporate actions processing to all the investor CSDs involved in the holding chain for a specific securities issue, enabling the coordination of their actions with regard to the adequate reflection of the corporate actions in the securities settlement systems operated by the respective investor CSDs.

Article 7

DVP Settlement through CSD links

(Article 48(7) of Regulation (EU) No 909/2014)

DVP settlement shall be regarded as practical and feasible under the following circumstances:

- (a) There is a market demand for DVP settlement evidenced through a request from any of the User Committees of the linked CSDs.
- (b) The linked CSDs may charge a reasonable commercial fee for the provision of DVP settlement, on a cost-plus basis, unless otherwise agreed by the CSDs and their User Committees.
- (c) There is a safe and efficient access to cash in the currencies used for settlement by the receiving CSD for the requesting CSD and for its participants.

CHAPTER V FINAL PROVISIONS

Article 8

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.

Done at Brussels,

For the Commission

The President

COMMISSION DELEGATED REGULATION (EU) No .../2015

supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 with regard to regulatory technical standards specifying the content of the reporting on internalised settlement

of []

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories (CSDs)²⁰, and in particular Article 9(2) thereof,

Whereas:

- (1) ESMA has considered the *Report on the outcome of CEBS's call for evidence on custodian banks' internalisation of settlement and CCP-like activities* of 17 April 2009.
- (2) Given the specific requirements on settlement discipline, as well as the prudential and organisational requirements applicable to CSDs in accordance with Regulation (EU) No 909/2014, do not cover institutions which execute transfer orders on behalf of their clients or on their own account other than through a securities settlement system, it is extremely important for competent authorities and for ESMA to monitor this internalised settlement activity. This is necessary for determining the scale of internalised settlement, as well as any related risk thereof and potential significant movement of settlement activity from the securities settlement systems operated by CSDs to the books of settlement internalisers.
- (3) In order to provide a good overview of the scope and of the extent of internalised settlement, the reports on internalised settlement should cover the aggregated volume (by number of transfer orders) and value (EUR) of transfer orders settled by settlement internalisers outside a securities settlement, split by asset class, type of securities transactions, type of clients, and country where the securities have been issued.
- (4) In order to clearly identify a limited number of concepts stemming from Regulation (EU) No 909/2014, as well as to specify the technical terms necessary for developing these technical standards, a number of terms should be defined.

²⁰ OJ.....

- (5) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the European Commission.
- (6) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council²¹, in developing the draft regulatory technical standards on which this Regulation is based, ESMA has conducted open public consultations, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of that Regulation.
- (7) In accordance with Article 9(2) of Regulation (EU) No 909/2014, in developing the draft regulatory technical standards on which this Regulation is based, ESMA has worked in close cooperation with the members of the European System of Central Banks.

HAS ADOPTED THIS REGULATION²²:

Article 1

Definitions

For the purposes of this Regulation the following definitions apply:

- (a) ‘failed transfer order’ means non-occurrence of settlement or partial settlement of a securities transaction at the date agreed by the parties concerned due to a lack of securities or cash and regardless of the underlying cause;
- (b) ‘professional client’ means a professional client as defined in point (10) of Article 4(1) of Directive 2014/65/EU;
- (c) ‘retail client’ means a retail client as defined in point (11) of Article 4(1) of Directive 2014/65/EU;
- (d) ‘exchange-traded fund (ETF)’ means a fund as defined in point 46 of Article 4(1) of Directive 2014/65/CE.

Article 2

Details to be included in the reports pursuant to Article 9(1) of Regulation (EU) No 909/2014

²¹ Regulation (EU) No 1095/2010 of 24 November 2010 of the European Parliament and of the Council establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

1. The reports to be submitted to the competent authorities by settlement internalisers pursuant to Article 9(1) of Regulation (EU) No 909/2014 shall include the following details:

a) country code for the country where the settlement internaliser is established;

b) reporting timestamp;

c) reporting period covered by the report;

d) settlement internaliser's identifier;

e) contact details for the settlement internaliser;

f) the aggregated volume (by number of transfer orders) and value (EUR) for each type of financial instruments settled by the settlement internaliser outside a securities settlement system during the period covered by the report, as follows:

- i. transferable securities referred to in point (a) of Article 4(1)(44) of Directive 2014/65/EU;
- ii. transferable securities referred to in point (b) of Article 4(1)(44) of Directive 2014/65/EU;
- iii. exchange-traded funds (ETFs);
- iv. units in collective investment undertakings, other than ETFs;
- v. money-market instruments;
- vi. emission allowances;
- vii. others.

g) the aggregated volume (by number of transfer orders) and value (EUR) for each type of securities transactions settled by the settlement internaliser outside a securities settlement system during the period covered by the report, as follows:

- i. trades (purchase or sale of securities);
- ii. collateral management operations, securities lending/borrowing, repurchase transactions;
- iii. corporate actions and custody related operations;
- iv. others.

h) the aggregated value (EUR) and volume (by number of transfer orders) of all transfer orders settled by the settlement internaliser outside a securities settlement system during the period covered by the report covering the types of clients, as follows:

- i. investment firms as defined in Article 4(1)(1) of Directive 2014/65/EU;
- ii. credit institutions as defined in Article 4(1)(1) of Regulation (EU) No 575/2013;
- iii. insurance undertakings life assurance undertakings, reinsurance undertakings as defined under Directive 2009/138/EC;

- iv. UCITS and, where relevant, their management companies, as defined under Directive 2009/65/EC;
- v. institutions for occupational retirement provision within the meaning of Article 6(a) of Directive 2003/41/EC;
- vi. alternative investment funds managed by AIFMs as defined under Directive 2011/61/EU;
- vii. CCPs as defined in Article 2(1) of Regulation (EU) No 648/2012 of the European Parliament and of the Council;
- viii. other professional clients, other than those mentioned under points i)-vii);
- ix. retail clients.

i) the aggregated volume (by number of transfer orders) and value (EUR) of all transfer orders settled by the settlement internaliser outside a securities settlement system during the period covered by the report, split by country where the securities have been issued.

j) information on failed transfer orders, including value (EUR) and number of failed transfer orders, as well as failed transfer orders rates compared to the value (EUR) and number of transfer orders settled by the settlement internaliser other than through a securities settlement system.

2. The reports under paragraph 1 shall cover transactions in all financial instruments, that are settled by settlement internalisers established in the Union, including by their branches established in a third country, as well as by branches of third country entities operating in the Union.

Article 3

Entry into force

This Regulation shall enter into force on the twentieth 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.

Done at Brussels,

For the Commission

The President

ANNEX VI – DRAFT ITS ON CSD AUTHORISATION, REVIEW AND EVALUATION, AND COOPERATION ARRANGEMENTS BETWEEN AUTHORITIES

**COMMISSION IMPLEMENTING REGULATION (EU) No .../2015
of [...]**

laying down implementing technical standards with regard to standard forms, templates and procedures for the authorisation and review and evaluation of CSDs, for the cooperation between authorities of the home Member State and the host Member State, and for the consultation of authorities on the authorisation to provide banking-type ancillary services, according to Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Opinion of the European Central Bank,

Having regard to Regulation (EU) No 909/2014 of the European Parliament and of the Council on improving securities settlement in the European Union and on central securities depositories (CSDs) and amending Directive 98/26/EC²³, and in particular Articles 17(10), 22(11), 24(8) and 55(8) thereof,

Whereas:

- (1) **[ART. 17]** Any information submitted to the competent authority in an application for authorisation of a CSD should be provided in a durable medium, which enables its storage for future use and reproduction. In order to facilitate the identification of the information submitted by a CSD, documents included with an application should bear a unique reference number.
- (2) **[ART. 22]** Any documentation submitted to the competent authority by a CSD as part of information required for the purposes of review and evaluation should be provided in a durable medium, which enables its storage for future use and reproduction.
- (3) In order to facilitate the identification of the information submitted by a CSD, all documents provided to the competent authority should bear a unique reference number and should contain precise indications on the changes the document has been submitted to during the review period.

²³ OJ L 257/1, 28.8.2014, p.1.

- (4) **[ART. 24]** The cooperation arrangements specified under Article 24 of Regulation (EU) No 909/2014 are without prejudice to other existing or future cooperation arrangements, such as supervisory cooperation arrangements for banks and oversight cooperation arrangements for securities settlement systems.
- (5) ESMA has considered the Responsibility E (*“Cooperation with other authorities”*) of the CPSS-IOSCO Principles (April 2012), Recommendation 18 (*“Regulation, supervision and oversight”*) of the ESCB-CESR Recommendations of Securities Settlement Systems (May 2009), the IOSCO Principles regarding cross-border supervisory cooperation (May 2010) and section 5 (*“Cooperative oversight”*) of the CPSS Central bank oversight of payment and settlement systems document (May 2005) for the development of this Regulation.
- (6) **[ART. 55]** In order to facilitate the consultation by the competent authority of a CSD with other authorities referred to Regulation (EU) No 909/2014 prior to granting or refusing authorisation to provide banking-type ancillary services, it is necessary to provide for an effective and structured process for that consultation. In order to facilitate the timely cooperation of the authorities concerned and allow each of them to provide a reasoned opinion concerning the application, the documents and data attached to an application should be organised according to common templates. The granularity level of the elements to be included in such application depend on whether it is submitted at the same time or after an application to provide general CSD services under Article 17 of Regulation (EU) No 909/2014.
- (7) **[FINAL]** This Regulation is based on the draft implementing technical standards submitted by the European Securities and Markets Authority (ESMA) to the European Commission.
- (8) In accordance with Article 15 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority) , ESMA has conducted an open public consultation before submitting the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010. In developing the draft implementing technical standards on which this Regulation is based, ESMA has worked in close cooperation with the members of the European System of Central Banks.

HAS ADOPTED THIS REGULATION:

CHAPTER I

CSD AUTHORISATION

(Article 17(10) of Regulation (EU) No 909/2014)

Article 1

Standard forms and templates for the application

1. An application for authorisation of a CSD shall be provided in an instrument which stores information in a durable medium so that the information is accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored.
2. An applicant CSD shall give a unique reference number to any documentation submitted as part of the application, in order to allow the competent authority to easily and quickly identify the information.
3. A list of the provided documents accompanied by their reference number has to be provided by the applicant CSD to the competent authority covering the following:
 - (a) unique reference number of the document;
 - (b) title of the document;
 - (c) chapter, section or page of the document where the information is provided or reason why the information is not provided.
4. An application for authorisation shall be submitted in the standard forms and templates set out in Annex I.
5. Information shall be submitted in the language indicated by the competent authority. The competent authority may request the CSD to submit the same information in more than one language.

Article 2

Verification of the accuracy and completeness of the application

1. The application for authorisation submitted to the competent authority shall be accompanied by a letter signed by a member of the management body of the applicant CSD and a member of the senior management, attesting that the submitted information is accurate and complete to the best of their knowledge, as of the date of that submission. The application letter shall also specify the CSD staff member who is authorised to submit additional information to the competent authority during the authorisation process.
2. Where an applicant CSD considers that a requirement of Regulation (EU) No....[the Article 17 RTS] is not applicable to it, it shall clearly indicate that requirement in its application and also provide an explanation why such requirement does not apply.

CHAPTER II

REVIEW AND EVALUATION

(Article 22(11) of Regulation (EU) No 909/2014)

Article 3

Standard forms, templates and procedures for the provision of information by a CSD

1. Information for the purposes of review and evaluation shall be provided in an instrument which stores information in a durable medium so that the information is accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored.
2. A CSD shall give a unique reference number to any document submitted.
3. Information referred to in paragraph 1 shall be provided in a way that allows the competent authority to easily and quickly identify all material changes introduced to the CSD's arrangements, strategies, processes and mechanisms in the review period as referred to in Article 22(1) of Regulation (EU) No 909/2014. This can include highlighting and inserting comment boxes within the updated documents if appropriate.
4. The CSD shall structure the information to be provided to the competent authority using the templates in Annex II to this Regulation where relevant, as well as the template under Table 2 of Annex I, with an additional column specifying the chapter, section or page of the document where changes have been introduced during the review period and/or any additional explanations in relation to the changes introduced during the review period.
5. When supervising a CSD which maintains the types of relations referred to in points (a), (b) and (c) of the first subparagraph of Article 17(6) of Regulation (EU) No 909/2014, the

competent authority shall establish a list of the other competent authorities regularly involved and establish a list of contact persons within the authorities involved and put this list at the disposal of the involved authorities.

6. Information referred to in paragraph 1 shall be provided in a way that enables the competent authority to easily and quickly distribute it to other competent authorities referred to in paragraph 5 and relevant authorities in accordance with provisions of Regulation (EU) No 909/2014 and Regulation (EU) No... [Article 22 RTS].
7. Information shall be submitted in the language indicated by the competent authority. The competent authority may request the CSD to submit the same information in more than one language.

Article 4

Provision of information by a CSD to the competent authority

1. The information required for the review and evaluation referred to in Article 38(1) of Regulation (EU) No...[RTS] shall be provided by the CSD to its competent authority at least annually. The competent authority shall be entitled to request more frequent reporting of such information.
2. The competent authority shall determine and communicate to the CSD the frequency of the review and evaluation process as well as the timeframe of the review period. Any changes thereto shall be communicated to the CSD without undue delay.
3. The CSD shall provide the information required for each review and evaluation within two months following the end of the review period.
4. If the competent authority requests the CSD to provide further information or additional explanation referred to in Article 39(2) of Regulation (EU) No...[RTS], it shall be made available by the CSD without undue delay.
5. If the competent authority requests the CSD to provide further information or additional explanations, these shall be made available by the CSD within a reasonable time indicated in the request.

Article 5

Provision of information to the relevant authorities and, where applicable, to the authority referred to in Article 67 of Directive 2014/65/EU

1. Upon completion of the review and evaluation, the competent authority shall communicate to the relevant authorities the results of the review and evaluation referred to in Article 22(1) of Regulation (EU) No 909/2014 within 3 working days.

2. If the review and evaluation resulted in any remedial actions or penalties the relevant authorities shall be informed within 3 working days after such measures have been taken.

Article 6

Exchange of information between competent authorities

1. When receiving the requested data from the supervised CSD, the competent authority shall provide any relevant information to the competent authorities responsible for supervising CSDs which maintain the types of relations referred to in points (a), (b) and (c) of Article 17(6) of Regulation (EU) No 909/2014 within 10 working days from the receipt of the information.
2. Within 20 working days from the deadline specified under the first paragraph, the competent authorities responsible for supervising CSDs which maintain the types of relations referred to in points (a), (b) and (c) of Article 17(6) of Regulation (EU) No 909/2014 shall send to the competent authority their own assessment based on the information received under the first paragraph.
3. Within 3 working days from the finalisation of the review and evaluation referred to in Article 22(1) of Regulation (EU) No 909/2014, the competent authority shall send to the competent authorities referred to in points (a), (b) and (c) of Article 17(6) of Regulation (EU) No 909/2014 the results of that review and evaluation, including any remedial actions or penalties.

CHAPTER III

COOPERATION ARRANGEMENTS

(Article 24(8) of Regulation (EU) No 909/2014)

Article 7

General requirements regarding the cooperation between authorities of the home and of the host Member States

1. Cooperation between the competent authority of the home Member State and the competent authority of the host Member State shall not prejudice any powers of each competent authority, nor shall they constrain in any way a competent authority's powers

to fulfil its statutory or legislative mandate or its discretion to act in accordance with those powers.

2. The exchange of information in the context of the cooperation between the competent authority of the home Member State and of the host Member State shall reflect their respective responsibilities and information needs. To avoid unnecessary information flows, the exchange of information shall be proportionate and risk-focused.
3. The competent authority of the home Member State and the competent authority of the host Member State shall ensure that the confidential information received from one another is only used in the course of their duties in accordance with Article 13(2) of the Regulation (EU) No 909/2014. Information exchanged or received by a competent authority may be shared with other competent authorities concerned within its jurisdiction.
4. The competent authority of the home Member State and the competent authority of the host Member State shall define their working language during their cooperation. The working language shall be a language customary in the sphere of international finance.
5. Each competent authority shall designate one primary and one secondary contact person. The competent authorities shall share the name, telephone number, email address and any other relevant contact details of the primary and secondary contact persons with each other. Each competent authority shall promptly notify the other of any changes to its contact details.
6. The involved competent authorities may choose the most effective communication channel or channels from the following ones, in order to ensure a continuous, timely and proportionate exchange of information:
 - (a) letter;
 - (b) email;
 - (c) conference call;
 - (d) in-person meeting.

Article 8

Cooperation between the competent authority of the home Member State and the competent authority of the host Member State where a branch of a CSD is set up in another Member State

Where a CSD authorised in one Member State has set up a branch in another Member State, the competent authority of the home Member State and the competent authority of the host Member State shall use the form and template set out in Table I of Annex III to this

Regulation for the exchange of information. If a competent authority requests supplementary information, it shall provide the other competent authority with a rationale for such request.

Article 9

Cooperation between the competent authority of the home Member State and the competent authority of the host Member State in case of an on-site-inspection in the branch of a CSD set up in another Member State

1. In case of on-site inspections in the branch of a CSD, the following shall apply:
 - (a) both competent authorities perform the on-site inspection together, or
 - (b) the host competent authority performs the on-site inspection itself, informing in advance the home competent authority about the reasons justifying the on-site inspection, and, after the inspection, informing the home competent authority of the results of the inspection, or
 - (c) the home competent authority performs the on-site inspection itself, informing in advance the host competent authority about the reasons justifying the on-site inspection, after the inspection, informing the host authority of the results of the inspection.
2. The competent authority of the home Member State and the competent authority of the host Member State shall reach a common understanding on the terms and scope of the on-site inspection of the branch, particularly by determining the respective roles and responsibilities of both competent authorities.
3. The competent authority of the home Member State and the competent authority of the host Member State shall assist each other in reviewing, interpreting and analysing the content of public and non-public documents relevant for the on-site inspection in the branch and in obtaining information from the directors and the senior management of the branch.
4. The competent authority of the home Member State or the competent authority of the host Member State requesting the on-site inspection in the branch of the CSD shall fill in the template set out in Table 2 of Annex III to this Regulation and shall provide it to the other competent authority.

Article 10

Exchange of information between the competent authority of the home Member State and the competent authority of the host Member State on the activities of the CSD in the host Member State

1. The request for information by the competent authority of the host Member State on the activities of the CSD in the host Member State, as referred to in Article 24(3) of the Regulation (EU) No 909/2014, shall be addressed by letter or e-mail to the competent authority of the home Member State and shall include the rationale for the request.
2. The competent authority of the home Member State shall provide the competent authority of the host Member State with a written response sent by letter or e-mail containing the details set out in Table 3 of Annex III of this Regulation.
3. The requested information set out in Table 3 of Annex III of this Regulation can be supplemented by any other relevant information concerning the activities of the CSD in the host Member State. Where the competent authority of the host Member State requests supplementary information, the rationale for this request shall be provided in writing to the competent authority of the home Member State.

Article 11

Procedure in case the competent authority of the host Member State has clear and demonstrable grounds for believing that a CSD providing services in its territory in accordance with Article 23 of Regulation (EU) No 909/2014 is in breach of the obligations arising from the provisions of that Regulation

1. The competent authority of the host Member State shall provide the competent authority of the home Member State and ESMA with a clear and demonstrable written description based on the template of Table 4 of Annex III, of the grounds for believing that a CSD providing services in accordance with Article 23 of Regulation (EU) No 909/2014 is in breach of the requirements under Regulation (EU) No 909/2014.
2. After having received the written description from the competent authority of the host Member State, the competent authority of the home Member State shall review the arguments and provide the competent authority of the host Member State and ESMA with a formal response regarding the proposed way for dealing with the signalled problem.
3. If the competent authority of the home Member State agrees with the arguments of the competent authority of the host Member State, it shall prepare an action plan developed in cooperation with the relevant CSD and describing how the compliance with the obligations arising from the provisions of Regulation (EU) No 909/2014 will be ensured.

The action plan shall contain a detailed analysis of the issue raised by the competent authority of the host Member State, a proposed solution, an implementation plan of the proposed solution and a binding timeframe of the implementation plan. Such documentation shall be shared at the same time with the competent authority of the host Member State and ESMA.

4. If the competent authority of the host Member State does not consider the measures notified by the competent authority of the home Member State adequate, it shall provide the competent authority of the home Member State as well as ESMA with its reasons.

CHAPTER IV

PROCEDURE FOR GRANTING AND REFUSING AUTHORISATION TO PROVIDE BANKING-TYPE ANCILLARY SERVICES

(Article 55(8) of Regulation (EU) No 909/2014)

Article 12

List of the authorities entitled to issue a reasoned opinion

1. Upon receipt of an application for the authorisations referred to in Article 54(2) of Regulation (EU) No 909/2014, the competent authority shall identify the authorities that are entitled to issue a reasoned opinion in accordance with Article 55(4) of Regulation (EU) No 909/2014.
2. The competent authority shall without delay provide ESMA with a copy of the list referred to in paragraph 1.
3. The list mentioned in paragraph 2 shall provide the basis on which each authority has been identified for the purposes of Article 55(4) of Regulation (EU) No 909/2014.

Article 13

Completeness of the application and request for a reasoned opinion

1. As from the moment where the application is considered to be complete, the competent authority shall transmit all information provided in the application and all the information required for the authorisation referred to under Article 17(2) of Regulation (EU) No 909/2014 to all the authorities referred to in Article 55(4) and request them to

issue a reasoned opinion on the application using the template provided in Section 1 of Annex IV of this Regulation.

2. Each authority entitled to issue a reasoned opinion in accordance with Article 55(5) of Regulation (EU) No 909/2014 shall confirm by electronic mail, immediately upon such receipt, that it received a request to issue such as opinion, enabling the start of counting of the 30-day deadline provided for in Article 55(5) of Regulation (EU) No 909/2014.
3. If no confirmation of receipt is received, the competent authority shall consider that the 30-day period provided in Article 55(5) of Regulation (EU) No 909/2014 starts on the second business day after dispatching the documents.

Article 14

Reasoned opinion

1. Each authority entitled to issue a reasoned opinion under Article 55(5) of Regulation (EU) No 909/2014 shall structure that opinion by using the template provided in Section 2 of Annex IV of this Regulation and transmit it to the competent authority within 30 days of the receipt of the request for an opinion. The competent authority shall without delay transmit such a reasoned opinion to all the authorities referred to in Article 55(4) of Regulation (EU) No 909/2014.
2. Where at least one of the authorities referred to in Article 55(4) of Regulation (EU) No 909/2014 has issued a negative reasoned opinion, the reasoned decision provided by that authority shall be structured by using the template provided in Section 3 of Annex IV. Such reasoned decision shall be transmitted to each of the other authorities referred to in Article 55(4).

Article 15

Authorisation irrespective of negative reasoned opinion

1. Where an authority has issued a negative reasoned opinion and the competent authority still wishes to grant the authorisation, and an authority decides to refer the matter to ESMA in accordance with Article 55(5) of Regulation (EU) No 909/2014, the template provided in Section 4 of Annex IV shall be used for such a referral.
2. The referring authority shall provide ESMA with all the documentation provided by the competent authority in accordance with paragraph 1, any negative reasoned opinions issued by the authorities concerned, and the reasoned decision issued by the competent authority in accordance with Article 55(5) of Regulation (EU) No 909/2014.
3. The referring authority shall provide without undue delay a copy of the referral to ESMA to the competent authority and the authorities referred to in Article 55(4) of Regulation No 909/2014.

Article 16

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.

Done at Brussels, []

[For the Commission

The President]

ANNEX I

(Article 17(10) of Regulation (EU) No 909/2014)

FORMAT OF APPLICATION

TABLE 1

GENERAL INFORMATION

Type of information	Format
Date of application	ISO 8601 date in the format YYYY-MM-DD
Corporate name of CSD	Free text
Identification of CSD	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code
Legal address of CSD	Free text
Securities settlement system(s) operated by the CSD	Free text
Name of the person assuming the responsibility for the application	Free text
Contact details of the person assuming the responsibility for the application (name, function, phone number, email address)	Free text
Name of other person(s) responsible for the CSD compliance	Free text
Contact details of the person(s) responsible for the CSD compliance (name, function, phone number, email address)	Free text
List of all documents provided by the CSD with unique reference numbers	Free text

TABLE 2

DOCUMENT REFERENCES

The scope of information to be submitted in accordance with the specific requirement of the delegated act with regard to regulatory technical standards specifying the details of the application for authorisation of CSDs adopted pursuant to Article 17(9) of Regulation (EU) No 909/2014	Unique reference number of the document	Title of the document	Chapter or section or page of the document where the information is provided or reason why the information is not provided
A. General Information on the applicant CSD (Article 2-4 of Regulation xx/xxx [RTS])			
<i>CSD identification and legal status (Article 2 of Regulation xx/xxx [RTS])</i>			
The corporate name of the applicant CSD, its legal status and legal address within the Union			
Articles of incorporation, and/or other statutory documentation			
Excerpt from the relevant commercial or court register, or other forms of certified evidence of the place of incorporation and scope of business activity of the applicant CSD, valid at the application date			
Reference to the securities settlement system(s) operated by the CSD			
Copy of the decision of the management body regarding the application and the minutes from the meeting in which the management body approved the application file and its submission			
Contact person's details			
Chart showing the ownership links between the parent undertaking, subsidiaries and any other associated entities or branches; the undertakings shown in the chart shall be identified by their full name, legal status, legal			

address, and tax numbers or company registration numbers;			
Scope of business activities of CSD's subsidiaries and other legal persons in which the applicant CSD has a participation, including information on the level of participation;			
A list containing the name of each person or entity who directly or indirectly holds 5 % or more of the applicant CSD's capital or of its voting rights or whose holding makes it possible to exercise a significant influence over the applicant CSD's management;			
A list of any undertakings in which the applicant CSD holds 5 % or more of the capital or voting rights or over whose management they exercise a significant influence			
List of core services specified under Section A of the Annex to Regulation (EU) No 909/2014 that the applicant CSD is providing or intends to provide under Regulation (EU) No 909/2014			
List of ancillary services in accordance with section B of the Annex to Regulation (EU) No 909/2014 (if the applicant CSD is providing or intends to provide such services), including those services permitted under, but not explicitly specified under Section B of the Annex to Regulation (EU) No 909/2014			
Where applicable, a list of any services and activities that the CSD is providing or intends to provide under Directive 2014/65/EU			
List outsourced services to a third party under Article 30 of Regulation (EU) No 909/2014			
Currency or currencies it processes or intends to process			
Pending judicial, administrative, arbitration or any other litigation proceedings, where the CSD may be a party, which may incur significant financial and reputational costs			
If the applicant CSD intends to provide services as indicated in Article 23(2) of Regulation (EU) No 909/2014 in any other Member State than the country of its incorporation:			

the Member State(s) in which the CSD intends to operate			
a programme of operations stating in particular the services which it provides or intends to provide			
currency or currencies it processes or intends to process			
in case of a branch, the organizational structure of the branch and the names of those responsible for the management of the branch			
whenever relevant, an assessment of the measures the CSD intends to take to allow its users' to comply with the national laws referred to in Article 49(1) of Regulation (EU) No 909/2014			
<i>Policies and Procedures required under Regulation xx/xxxx [RTS](Article 3 of Regulation xx/xxxx [RTS])</i>			
Persons responsible for the approval and maintenance of the policies and procedures			
Description of how compliance with the policies and procedures will be ensured and monitored, and the person responsible for compliance in that regard			
Description of the measures to adopt in the event of a breach of policies and procedures			
Procedure for reporting to competent authority any material breach of policies or procedures, in particular when such infringement may result in a breach of the conditions for initial authorization, as well as in any infringement of Regulation (EU) No 909/2014.			
<i>Information for groups (Article 4 of Regulation xx/xxx [RTS])</i>			
Policies and procedures specifying how the organisational requirements apply to the group and to the different entities of the group, from the perspective of the interaction with the CSD			
Information on the composition of the senior management, management body and shareholders of the parent undertaking or group of undertakings where relevant			

Services as well as key individuals other than senior management that are shared by the group			
Where the CSD has a parent undertaking:			
identification of the legal address			
indication whether the parent undertaking is authorised or registered and subject to supervision, and when this is the case, any relevant reference number and the name of the competent authority or authorities			
Description of the respective ancillary services, where the CSD offers, or plans to offer, through an undertaking within its group, or through an undertaking with which the CSD has an agreement, ancillary services permitted under section B of the Annex to Regulation (EU) No 909/2014			
Description and a copy of an agreement with an undertaking within the group relating to the offering of trading or post-trading services, where the CSD has such agreement			
B. Financial reports, business plans, recovery plans and resolution plans (Article 5 of Regulation xx/xxx [RTS])			
Information related to financial reports, business plans and recovery plan of the CSD:			
complete set of financial statements, prepared in conformity with Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002, for the preceding three years			
financial reports including the statutory audit report on the annual and consolidated financial statements, within the meaning of Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006, for the preceding three years			
name and the national registration number of the external auditor, if the applicant CSD is audited by an external auditor			
a business plan, including a financial plan and an estimated budget, contemplating different business scenarios for the CSD services, over a minimum of			

three years reference period			
Where historical financial information referred to above is not available:			
pro-forma statement demonstrating proper resources and expected business status in six months after authorisation is granted			
interim financial report where the financial statements are not yet available for the requested period of time			
statement of financial position, such as a balance sheet, income statement, changes in equity and of cash flows and notes comprising a summary of accounting policies and other explanatory notes			
if applicable, audited annual financial statements of any parent undertaking for the three financial years preceding the date of the application			
indication of future plans for the establishment of subsidiaries and their location			
description of the business activities which the CSD plans to carry out, specifying the activities of any subsidiaries or branches			
An adequate recovery plan to ensure continuity of the applicant CSD's critical operations, including:			
a high-level summary that provides an overview of the plan and how it will be implemented			
the identification of the applicant CSD's critical services, stress scenarios and recovery triggers, as well as a substantive description of its recovery tools			
description of how the interests of all stakeholders who are likely to be affected by the recovery plan have been considered by the applicant CSD's management body when the plan was developed, as well as a description of how they will be considered when the plan is to be implemented			
assessment of the legal enforceability of the recovery plan by the applicant CSD, taking into account any constraints potentially imposed by domestic or			

foreign laws or regulations			
The resolution plan established and maintained for the CSD so as to ensure continuity of at least its core functions, having regard to the size, systemic importance, nature, scale and complexity of the activities of the CSD concerned			
C. Organisational requirements (Articles 6– 14 of Regulation xx/xxx [RTS])			
<i>Organisational chart (Article 6 of Regulation xx/xxx [RTS])</i>			
The organisational chart detailing the organisational structure of the applicant CSD including:			
information about the identity of the person responsible for each significant role, including senior management, managers in charge of main operational roles, and persons who direct the activities of any branches, and definition of their roles			
number of dedicated staff members by division/operational unit			
<i>Staffing policies and procedures (Article 7 of Regulation xx/xxx [RTS])</i>			
Copy of the remuneration policy, providing information on both fixed and variable elements, for the senior management, the members of the management body, and the staff employed in risk and control functions of the CSD in accordance with Article 26(1) of Regulation (EU) No 909/2014			
Measures put in place by the CSD to mitigate the risk of over-reliance on any individual person			
<i>Corporate Governance (Article 8 of Regulation xx/xxx [RTS])</i>			
Lines of responsibility within the CSD, its internal corporate governance policies and procedures, and the terms of reference which govern its senior management, its management body, including its independent and other non-executive members, and relevant committees			
Processes to identify, manage, monitor and report the risks to which the CSD is or might be exposed			
Description of the selection process, appointment, performance evaluation and removal of senior			

management and members of the management body			
Description of the method employed by the CSD to make its governance arrangements and the rules governing its activity available to the public in accordance with Article 26(4) of Regulation (EU) No 909/2014			
Where the CSD adheres to a recognized corporate governance code of conduct:			
the identification of the code of conduct (a copy of the code)			
an explanation for any situations where the CSD deviates from the code			
<i>Internal control mechanisms (Article 9 of Regulation xx/xxx [RTS])</i>			
Overview of the internal controls of the CSD including:			
CSD's internal control policies and procedures			
Description of monitoring and evaluation tools of the adequacy and effectiveness of the CSD's systems			
Description of control and safeguard tools for the CSD's information processing systems			
Internal bodies in charge of the evaluation of the findings			
Procedures for its employees to report potential violations internally through a specific channel			
Information with respect to the CSD's internal audit function including:			
an explanation of how its internal audit methodology is developed and applied taking into account the nature of the CSD's activities, complexities and risks			
a work plan for three years following the date of application			
a description of the roles of its members			
Information with respect to the CSD's compliance arrangements including:			

a description of the roles and qualifications of each individual who is responsible for compliance and of any other staff involved in the compliance assessments, including how the independence of the compliance function from the rest of the business will be ensured			
the internal policies and procedures designed to ensure that the CSD, including its managers and employees, will comply with all the provisions of Regulation (EU) No 909/2014, including a description of the role of the management body and senior management			
where available, the most recent internal report prepared by the persons responsible for compliance or any other staff involved in compliance assessments within the applicant CSD			
<i>Senior management, management body and shareholders (Article 10 of Regulation xx/xxx [RTS])</i>			
Information in respect of each member of the senior management and each member of the management body including:			
a copy of the curriculum vitae in order to enable the assessment on the adequate experience and knowledge to adequately perform their responsibilities			
details regarding any criminal and administrative sanctions in connection with the provision of financial or data services or in relation to acts of fraud or embezzlement, notably via an official certificate if available within the relevant Member State			
a self-declaration of good repute in relation to the provision of a financial or data service, including statements indicated in Article 9(1) (c) of Regulation (EU) No 909/2014			
a declaration of any potential conflicts of interests that the senior management and the members of the management body may have in performing their duties and how these conflicts are managed			
Where applicable, a declaration regarding the independent status of the members of the management			

body in accordance with Article 27(2) and (3) of Regulation (EU) No 909/2014			
Description of the roles and responsibilities of the CSD management body in accordance with Article 27(5) of Regulation (EU) No 909/2014			
Description of a target for the representation of the underrepresented gender in the management body and a relevant policy as referred to in Article 27(4) of Regulation No 909/2014 as well as the method employed by the applicant CSD to make such target and policy public			
A description of the ownership structure of the applicant CSD, and in particular, the identity and scale of interests of any parties in a position to exercise control over the operation of the CSD as referred to in Article 27(7)(a) of Regulation (EU) No 909/2014			
List of the shareholders and persons who are in a position to exercise, directly or indirectly, control over the management of the applicant CSD to satisfy the competent authority that the requirement set out in Article 27(6) of Regulation (EU) No 909/2014 is met			
<i>Management of conflicts of interest (Article 11 of Regulation xx/xxx [RTS])</i>			
Policies and procedures put in place to identify and manage conflicts of interest by the CSD:			
arrangements made to ensure that individuals who may have a permanent conflict of interest in certain circumstances are excluded from the process of taking decisions (or receiving information) about matters in which that conflict of interest would be relevant			
an up-to-date register, at the time of the application, of existing material conflicts of interest in relation to any services provided by the CSD and a description of how these are being managed			
where the CSD is part of a group, indication (within the register) of any material conflicts of interest arising from other undertakings within the group and the arrangements made to manage these conflicts			

Confidentiality (Article 12 of Regulation xx/xxx [RTS])			
Internal policies and mechanisms preventing any use, for commercial purposes, of:			
confidential information			
information related to participant, clients or issuers			
any other information, not permitted to be used for commercial purposes, that the applicant CSD may have stored in the performance of its duties.			
Internal procedures on the staff permissions for ensuring secure access to data, specifying any restrictions on the use of data			
User committee (Article 13 of Regulation xx/xxx [RTS])			
The following documents or information for each user committee to comply with Article 28 of Regulation (EU) No 909/2014:			
the mandate of the user committee			
its governance arrangements			
its operating procedures			
the eligibility criteria and appointment process for its members			
a list of proposed members and the indication of parties that they represent			
mandate for each established user committee, the governance arrangements necessary to ensure its independence and its operational procedures, as well as the admission criteria and the election mechanism for user committee members			
Record keeping (Article 14 of Regulation xx/xxx [RTS])			
Description of the CSD record-keeping systems, policies and procedures enabling it to comply with the requirements of Article 29 of Regulation (EU) No 909/2014 and Regulation (EU) No.....[RTS]			
D. Conduct of business rules (Articles 15 – 19 of Regulation xx/xxx [RTS])			

Goals and objectives (Article 15 of Regulation xx/xxx [RTS])			
CSD goals and objectives defined by the applicant CSD to comply with Article 32(1) of Regulation (EU) No 909/2014			
Handling of complaints (Article 16 of Regulation xx/xxx [RTS])			
Procedures for the handling of complaints in a transparent manner to comply with Article 32(2) of Regulation (EU) No 909/2014			
Participation requirements (Article 17 of Regulation xx/xxx [RTS])			
The information regarding participation in securities settlement system(s) operated by the prospective CSD to comply with Article 33 of Regulation (EU) No 909/2014 and with Regulation (EU) No.....[RTS]:			
criteria for participation which allow fair and open access for all legal persons that intend to become a participant of the securities settlement system(s) operated by the CSD			
procedures for the application of disciplinary measures, including for the suspension and orderly exit of participants that no longer meet the criteria for participation			
Pricing policy transparency (Article 18 of Regulation xx/xxx [RTS])			
Relevant documents regarding pricing policy, including any existing discounts and rebates and conditions to benefit from such reductions for each core and ancillary service that are to be disclosed in accordance with Article 34 of Regulation (EU) No 909/2014			
Description of methods used in order to make the information available for clients and prospective clients, including a copy of the fee structure and the evidence that the CSD services are unbundled			
Communication procedures with participants and other market infrastructure (Article 19 of Regulation xx/xxx [RTS])			
Relevant documents regarding the use of international open communication procedures and standards for messaging and reference data in relation to its			

communication procedures with participants and other market infrastructures in accordance with Article 35 of Regulation (EU) No 909/2014.			
E. Requirements for CSDs services (Articles 20– 27 of Regulation xx/xxx [RTS])			
<i>Book-entry form (Article 20 of Regulation xx/xxx [RTS])</i>			
CSD capacity to record securities in book-entry form in accordance with Article 3 of Regulation (EU) No 909/2014			
<i>Intended settlement dates and measures for preventing and addressing settlement fails (Article 21 of Regulation xx/xxx [RTS])</i>			
Rules and procedures that facilitate the settlements of transactions the intended settlement date in accordance with Article 5 of Regulation (EU) No 909/2014			
Details of mechanisms promoting early settlement on the intended settlement date and measures to encourage and incentivise the timely settlement of transactions by its participants to comply with Article 6(2) and (3) of Regulation (EU) No 909/2014 and with Regulation No xx/xxx [RTS]			
Details of the measures to address fails in accordance with Article 7 of Regulation (EU) No 909/2014 and with Regulation xx/xxx [RTS]			
<i>Integrity of the issue (Article 22 of Regulation xx/xxx [RTS])</i>			
Rules and procedures for ensuring the integrity of securities issues put in place by the applicant CSD in accordance with article 37 of Regulation (EU) No 909/2014 and with Regulation xx/xxx [RTS]			
<i>Protection of participants' securities (Article 23 of Regulation xx/xxx [RTS])</i>			
Information on mechanisms established to ensure the protection of participants' and their clients' securities in accordance with Article 38 of Regulation (EU) No 909/2014:			
rules and procedures to help reduce and manage the risks associated with the safekeeping of securities			
details of the different levels of segregation offered by the CSD, including a description of the main			

legal implications of the respective levels of segregation offered, and information on the insolvency law applicable in the relevant jurisdictions			
rules ensuring that the CSD shall not use for any purpose securities that do not belong to it, unless it has obtained the relevant participants' prior express consent, including, if applicable, any necessary prior consent obtained by participants from their clients			
<i>Settlement finality (Article 24 of Regulation xx/xxx [RTS])</i>			
Rules on settlement finality put in place in accordance with Article 39 of Regulation (EU) No 909/2014			
<i>Cash settlement (Article 25 of Regulation xx/xxx [RTS])</i>			
Effective and clearly defined rules and procedures put in place to manage the default of a participant in accordance with Article 41 of Regulation (EU) No 909/2014			
<i>Participant default rules and procedures (Article 26 of Regulation xx/xxx [RTS])</i>			
Effective and clearly defined rules and procedures put in place to manage the default of a participant in accordance with Article 41 of Regulation (EU) No 909/2014			
Information on the details and results of the tests conducted in accordance with Article 41 (3) of Regulation (EU) No 909/2014, where applicable			
<i>Portability (Article 27 of Regulation xx/xxx [RTS])</i>			
Procedure put in place by the applicant CSD in accordance with Article 20 (1) of Regulation (EU) No 909/2014, ensuring the timely and orderly settlement and transfer of the assets of clients and participants to another CSD in the event of a withdrawal of authorisation			
F. Prudential requirements (Articles 28 – 32 of Regulation xx/xxx [RTS])			
<i>Legal risks (Article 28 of Regulation xx/xxx [RTS])</i>			
Information enabling the competent authority to assess, in accordance with Article 43(1) and (2) of Regulation (EU) No 909/2014, that the applicant CSD rules, procedures, and contracts are clear and understandable and			

enforceable in all relevant jurisdictions			
Information on procedures put in place to identify and mitigate the risks arising from potential conflicts of laws across jurisdictions, in accordance with Article 43(3) of Regulation (EU) No 909/2014, if the applicant CSD intends to conduct business in different jurisdictions. Legal opinions shall be provided as appropriate.			
General business risks (article 29 of Regulation xx/xxx [RTS])			
Description of management and control systems as well as IT tools put in place in accordance with Article 44 of Regulation (EU) No 909/2014			
If applicable, the risk rating received by the applicant CSD from a third entity, along with any supporting information.			
Operational risks (Article 30 of Regulation xx/xxx [RTS])			
Information demonstrating that the applicant CSD is compliant with Article 45 of Regulation (EU) No 909/2014 and Regulation (EU) No....[RTS]			
Outsourcing agreements, referred to in Article 30 of Regulation (EU) No 909/2014, entered into by the applicant CSD, together with the methods employed to monitor the service level of the outsourced functions and a copy of the contracts governing such arrangements			
Investment policy (Article 31 of Regulation xx/xxx [RTS])			
Confirmation that the applicant CSD holds its financial assets in accordance with Article 46(1), (2) and (5) of Regulation (EU) No 909/2014 and with Regulation xx/xxx [RTS]			
Confirmation that the applicant CSD's investments are limited to financial resources referred to in Article 46(3) of Regulation (EU) No 909/2014 and in Regulation xx/xxx [RTS]			
Capital requirements (Article 32 of Regulation xx/xxx [RTS])			
Information demonstrating that the capital, including retained earnings and reserves of the applicant CSD is maintained in accordance with Article 47(1) of Regulation (EU) No 909/2014 and with Regulation xx/xxx [RTS]			

Plan referred to in Article 47(2) of Regulation (EU) No 909/2014 (approved by the management body or an appropriate committee of the management body of the applicant CSD) for:			
raising of additional capital if its equity capital approaches or falls below the requirements			
achieving of an orderly wind down or reorganisation of its operations and services in case the CSD is unable to raise new capital			
G. CSD Services (Article 33 of Regulation xx/xxx [RTS])			
Detailed descriptions and procedures regarding the services that the CSD provides or intends to provide covering the following:			
the core services specified under Section A of the Annex Regulation (EU) No 909/2014 that the applicant CSD is providing or intends to provide			
the ancillary services specified under section B of the Annex to Regulation (EU) No 909/2014, if the applicant CSD is providing or intends to provide such services			
any other services permitted under, but not explicitly specified under Section B of the Annex to Regulation (EU) No 909/2014, that the applicant CSD is providing, or intends to provide			
any services and activities that the CSD is providing or intends to provide under Directive 2014/65/EU			
H. Links (Article 34 of Regulation xx/xxx [RTS])			
Procedures regarding the identification, assessment, monitoring and management of all potential sources of risk for the applicant CSD and for its participants arising from the link arrangement, including an assessment of the insolvency law applicable, and the appropriate measures put in place to mitigate them;			
Other information necessary for assessing the compliance with the requirements provided in Article 48 of Regulation (EU) No 909/2014 and Regulation xx/xxx [RTS]			
A description of the links			

Expected/effective settlement volumes, in terms of number of instructions and turnover.			
The CSD assessment of the link arrangement.			
Detailed description of the existing or prospective an interoperable links which are subject to authorization in accordance with Article 19(1) (e) of Regulation (EU) No 909/2014, together with the CSD assessment of the link arrangement.			
I. Access (Article 35 of Regulation xx/xxx [RTS])			
Procedures for dealing with requests for access:			
from legal persons that intend to become participants to the CSD under Article 33 of Regulation (EU) No 909/2014 and Regulation xx/xxx [RTS]			
from issuers under Article 49 of Regulation (EU) No 909/2014 and Regulation xx/xxx [RTS]			
between CSDs under Article 52 of Regulation (EU) No 909/2014 and Regulation xx/xxx [RTS]			
between the CSD and another market infrastructure under Article 53 of Regulation (EU) No 909/2014 and Regulation (EU) No... [RTS]			
J. Any additional information			

ANNEX II

(Article 22(11) of Regulation (EU) No 909/2014)

TEMPLATES FOR SUBMISSION OF INFORMATION FOR THE REVIEW AND EVALUATION

Table I

GENERAL INFORMATION

Type of information	Format
Date of submission of information	ISO 8601 date in the format YYYY-MM-DD
Date of the last review and evaluation	ISO 8601 date in the format YYYY-MM-DD
Corporate name of CSD	Free text
Identification of CSD	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code
Legal address of CSD	Free text
Securities settlement system(s) operated by the CSD	Free text
Name of the person assuming the responsibility of the review and evaluation process	Free text
Contact details of the person assuming the responsibility of the review and evaluation process (name, function, phone number, email address)	Free text
Name of other person(s) responsible for the CSD compliance	Free text
Contact details of the person(s) responsible for the CSD compliance (name, function, phone number, email address)	Free text
List of all documents provided by the CSD with unique reference numbers	Free text
Report summarising material changes to the arrangements, strategies, processes and mechanisms which were introduced in the review period, including a self-assessment of the CSD's	Free text

compliance with the provisions of the Regulation (EU) No 909/2014	
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Table 2

INFORMATION RELATED TO PERIODIC EVENTS

No	Type of information	The unique reference number of the document in which the information is included
1	A complete set of the latest audited financial statements of the CSD, including those at consolidated level	
2	A management accounts report containing the most recent and interim financial statements of the CSD	
3	Copies of the minutes from meetings of the management body that took place in the review period	
4	Any decision of the management body following the advice of the user committee, as well as any decision in which the management body has decided not to follow the advice of the user committee.	
5	Information on any pending judicial, administrative, arbitration or any other litigation proceedings, particularly as regards tax and insolvency matters, that the CSD may be party to, and which may incur significant financial or reputational costs	
6	Information on any pending judicial, administrative, arbitration or any other litigation proceedings, irrespective of their type, that a member of the management body or a member of the senior management may be party to and that may have an adverse impact upon the CSD	

7	A copy of the results of business continuity stress tests or similar exercises performed in the review period	
8	Information on any complaints received by the CSD in the review period, specifying the nature of the complaint, disposition of the complaint and date when the complaint was resolved	
9	Information on cases where the CSD denied access to its securities settlement system to a participant, another CSD, a CCP or a trading venue, or refused to provide services to an issuer	
10	Information on any changes affecting any links of the CSD, including the mechanisms and procedures used for settlement	
11	Information on any operational incidents that occurred in the review period and affected the smooth functioning of any core services provided	
12	Information on manual intervention cases	
13	Information on all cases of identified conflicts of interest that occurred in the review period, including the way in which they were managed	
14	Information on measures taken to address the identified technical incidents, and conflicts of interest as well as the results thereof	
15	Information on internal controls and audits performed in the review period	
16	Information on any identified infringements of CSD's rules and obligations under Regulation (EU) No 909/2014, including in connection to Article 26(5) of Regulation (EU) No 909/2014	

17	Detailed information on disciplinary actions, which the CSD imposed, including information indicating participants which were suspended pursuant to in Article 7(9) of Regulation (EU) No 909/2014, specifying the suspension period and the reason for its application	
18	Business operations report concerning the review period	
19	Detailed business plan for services provided by the CSD covering at least a period of one year following the review and evaluation, including also a general business strategy over a minimum period of three years	
20	Information on any changes to the recovery plan, including the identification of the CSD's critical services, results of stress scenarios and recovery triggers, as well as the CSD recovery tools	
21	Information on any changes to the resolution plan established and maintained for the CSD so as to ensure continuity of at least its core functions, having regard to the size, systemic importance, nature, scale and complexity of the activities of the CSD concerned, and any relevant resolution plan established in accordance with Directive 2014/59/EU	

Table 3

STATISTICAL DATA

No	Type of data	Format
1	List of participants to each securities settlement system operated by the CSD,	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code (for each

	including information on their country of incorporation	participant)
2	List of issuers and list of securities issues maintained by the CSD, including information on the issuers' country of incorporation, highlighting those for whom the CSD provides notary services	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code (for each issuer) ISO 6166 ISIN 12 character alphanumeric code (for each security issue) + Notary: Y/N
3	Nominal and market value of the securities maintained in each securities settlement system operated by the CSD in total and divided as follows: <ul style="list-style-type: none"> - by asset class; - by country of incorporation of the participant; - by country of incorporation of the issuer. 	For each asset class/ country of incorporation of the participant (ISO 3166 2 character country code)/ country of incorporation of the issuer (ISO 3166 2 character country code): <ul style="list-style-type: none"> a) Nominal value of securities maintained in each securities settlement system operated by the CSD: Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character. The negative symbol, if populated, is not counted as a numerical character. b) Market value of securities maintained in each securities settlement system operated by the CSD: Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character. The negative symbol, if populated, is not counted as a numerical character.
4	Nominal and market value of the securities centrally maintained in each securities settlement system operated by the CSD,	For each asset class/ country of incorporation of the participant (ISO 3166 2 character country code)/ country of incorporation of the issuer (ISO 3166 2

	<p>divided as follows:</p> <ul style="list-style-type: none"> - by asset class; - by country of incorporation of the participant; - by country of incorporation of the issuer. 	<p>character country code):</p> <p>a) Nominal value of securities centrally maintained in each securities settlement system operated by the CSD:</p> <p>Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character. The negative symbol, if populated, is not counted as a numerical character.</p> <p>b) Market value of securities centrally maintained in each securities settlement system operated by the CSD:</p> <p>Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character. The negative symbol, if populated, is not counted as a numerical character.</p>
5	<p>Number, nominal value and market value of settlement instructions settled in each securities settlement system operated by the CSD in total and divided as follows:</p> <ul style="list-style-type: none"> - by asset class; - by country of the incorporation of the participant; - by country of incorporation of the issuer; - by settlement currency; - by type of settlement instructions; - by value of settlement in accordance with Article 40(1) of Regulation EU) No 909/2014 and value settlement value in accordance with Article 40(2) of Regulation EU) No 909/2014, in the case of DvP settlement instructions. 	<p>For each asset class/ country of incorporation of the participant (ISO 3166 2 character country code)/ country of incorporation of the issuer (ISO 3166 2 character country code)/ settlement currency (ISO 4217 Currency Code, 3 alphabetical digits)/ type of settlement instruction (DVP/RVP/DFP/RFP)/ settlement in central bank money (NCB)/commercial bank money (COM):</p> <p>a) Number of settlement instructions settled in each securities settlement system operated by the CSD:</p> <p>Up to 20 numerical characters.</p> <p>b) Nominal value of of settlement instructions settled in each securities settlement system operated by the CSD:</p>

		<p>Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character. The negative symbol, if populated, is not counted as a numerical character.</p> <p>c) Market value of of settlement instructions settled in each securities settlement system operated by the CSD:</p> <p>Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character. The negative symbol, if populated, is not counted as a numerical character.</p>
6	Number, nominal value and market value of buy-in transactions referred to in Article 7(3) and (4) of Regulation (EU) No 909/2014	<p>a) Number of buy-in transactions: Up to 20 numerical characters.</p> <p>b) Nominal value of buy-in transactions: Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character. The negative symbol, if populated, is not counted as a numerical character.</p> <p>c) Market value of buy-in transactions: Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character. The negative symbol, if populated, is not counted as a numerical character.</p>
7	If applicable, nominal value and market value of securities borrowing and lending operations processed within the securities lending mechanism operated by a CSD when a CSD	<p>For each asset class:</p> <p>Up to 20 numerical characters including decimals. At least one character before and</p>

	plays the role of an agent among participants of a securities settlement system, as divided per asset class:	one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character. The negative symbol, if populated, is not counted as a numerical character.
8	If applicable, nominal value and market value of settlement instructions settled via any link, as divided per each link	For each identified link: Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character. The negative symbol, if populated, is not counted as a numerical character.
9	If applicable, value of guaranties and commitments related to securities lending and borrowing operations	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character. The negative symbol, if populated, is not counted as a numerical character.
10	If applicable, value of treasury activities involving foreign exchange and transferable securities related to managing participants' long balances, including categories of institutions	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character. The negative symbol, if populated, is not counted as a numerical character.

ANNEX III

(Article 24(8) of Regulation (EU) No 909/2014)

Table 1

TEMPLATE FOR THE EXCHANGE OF INFORMATION BETWEEN THE COMPETENT AUTHORITY OF THE HOME MEMBER STATE AND THE COMPETENT AUTHORITY OF THE HOST MEMBER STATE WHERE A BRANCH OF A CSD AUTHORISED IN ONE MEMBER STATE HAS SET UP A BRANCH IN ANOTHER MEMBER STATE

Field	Content	Frequency
Details with respect to Article 22(1) of Regulation (EU) No 909/2014		
<i>Information to be provided by the competent authority of the home Member State</i>		
Corporate name of CSD	name	when changes occur
Legal address of the CSD	address	when changes occur
List of services the CSD provides (based on the Annex of Regulation (EU) No 909/2014)	list	when changes occur
Structure and ownership of the CSD group	schema	when significant changes occur
Level of the CSD capital (Tier 1 capital and total capital)	table	when significant changes occur
Organization, senior management of the CSD (incl. CVs)	description	when changes occur
Processes and arrangements for governance	description	when changes significantly impact the governance of the CSD
Details of the authorities involved in the supervision/oversight of the CSD	name/function	advance notification, where practicable, or as soon as possible
Information on any material threats to the CSD's ability to comply with the Regulation (EU) No 909/2014 and relevant delegated and implementing regulations	description	advance notification, where practicable, or as soon as possible
Sanctions and exceptional supervisory measures which may impact the activities of the branch	description	advance notification, where practicable, or as soon as possible
Reports on major performance problems or incidents and remedial actions taken which may impact the activities of the branch	description	when it occurs
Difficulties of the CSD that have potentially significant spill-over effects on the branch	description	as soon as possible
Factors which suggest a potentially high risk of contagion	description	as soon as possible
Extension of services or withdrawal of the	description	advance notification, where practicable,

authorization	on	or as soon as possible
Headcount statistics	table	yearly basis
Financial data (e.g. balance sheet, profit and loss account)	table	yearly basis
Size of the operations (assets under custody, revenues)	table	yearly basis
Risk Management Policy	description	when changes significantly impact the governance or risk management of the CSD
Outsourcing structure of the CSD group (if relevant for the branch)	schema	when changes significantly impact the governance or risk management of the CSD
<i>Information to be provided by the competent authority of the host Member State</i>		
Corporate name of branch	name	when changes occur
Legal address of the branch	address	when changes occur
List of services provided via the branch (based on the Annex of Regulation (EU) No 909/2014)	list	when changes occur
Organization, senior management of the branch	description	when changes occur
Processes and arrangements specific to the governance of the branch	description	when changes significantly impact the governance or risk management of the CSD
Details of the authorities involved in the supervision/oversight of the branch	name/function	advance notification, where practicable, or as soon as possible
Information on any material threats to the CSD branch's ability to comply with the Regulation (EU) No 909/2014 and relevant delegated and implementing regulations	description	advance notification, where practicable,
		or as soon as possible
Sanctions and exceptional supervisory measures	description	advance notification, where practicable, or as soon as possible
Reports on major performance problems or incidents and remedial actions taken	description	when it occurs

Difficulties of the branch that have potentially significant spill-over effects on the CSD	description	as soon as possible
Factors which suggest a potentially high risk of contagion	description	as soon as possible
Headcount statistics of the branch	table	yearly basis
Financial data (such as balance sheet, profit and loss account)	table	yearly basis

Table 2

TEMPLATE TO BE FILLED IN BY THE COMPETENT AUTHORITY CARRYING OUT THE ON-SITE INSPECTION IN THE BRANCH OF THE CSD

Field	Content
Name of the competent authority requesting the on-site inspection	name
Primary and secondary contact person of the competent authority requesting the on-site inspection	name, telephone number, e-mail address, role
Name of the branch of the CSD wherein the on-site inspection will take place	name and address
Name of the CSD that has established the branch	name
Contact person of the CSD or the branch in charge of the on-site inspection (if available at this stage)	name, telephone number, e-mail address, role
Name of the other competent authority	name
Primary and secondary contact person of the other competent authority	name, telephone number, e-mail address, role
Scheduled date of the on-site inspection	YYYY/MM/DD - YYYY/MM/DD
Rationale for the on-site inspection	text
Underlying documents foreseen to be used in the context of the on-site inspection	list of documents

Table 3

TEMPLATE TO BE FILLED IN BY THE COMPETENT AUTHORITY OF THE HOME MEMBER STATE FOLLOWING THE REQUEST OF INFORMATION BY THE COMPETENT AUTHORITY OF THE HOST MEMBER STATE

Field	Content
Corporate name of CSD	name
Legal address of the CSD	address
List of services the CSD provides (based on the Annex to Regulation (EU) No 909/2014)	list
Full name of the Legal Entity of the participants	list
Home country of the participants (ISO 2-digit country)	list
Full name of the Legal Entity of the issuer	list
Home country of the issuer (ISO 2-digit country)	list
ISIN code of the issued securities constituted under the law of the host Member State initially recorded in the CSD of the home Member State	list
Market value (EUR) (based on the closing price of the most relevant market in terms of liquidity) or, if not available, nominal value (EUR) of securities issued by issuers from the host Member State initially recorded in the CSD of the home Member State	figure
Market value (EUR) (based on the closing price of the most relevant market in terms of liquidity) or, if not available, nominal value (EUR) of securities centrally maintained by the CSD of the home Member State for participants and other holders of securities accounts of the host Member State	figure
Market value (EUR) (based on the closing price of the most relevant market in terms of liquidity) or, if not available, nominal value (EUR) of securities issued in a CSD established in the European Union, non-centrally maintained by the CSD of the home Member State for participants other than CSDs, as well as for other holders of securities accounts of the host Member State	figure
Value (EUR) of the DVP settlement instructions plus the market value of the FOP settlement instructions (based on the closing price of the most relevant market in terms of liquidity) or, if not available, the nominal value of the FOP settlement instructions settled by the CSD of the home Member State in relation to transactions in securities issued by issuers from the host Member State	figure
Value (EUR) of the DVP settlement instructions plus the market value (EUR) of the FOP settlement instructions (based on the closing price of the most relevant market in	figure

terms of liquidity) or, if not available, nominal value (EUR) of FOP settlement instructions settled by the CSD of the home Member State from participants as well as for other holders of securities accounts of the host Member State	
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Table 4

TEMPLATE TO BE FILLED IN BY THE COMPETENT AUTHORITY OF THE HOST MEMBER STATE HAVING CLEAR AND DEMONSTRABLE GROUNDS FOR BELIEVING THAT A CSD PROVIDING SERVICES WITHIN ITS TERRITORY IN ACCORDANCE WITH ARTICLE 23 OF REGULATION (EU) NO 909/2014 IS IN BREACH OF THE OBLIGATIONS ARISING FROM THE PROVISIONS OF REGULATION (EU) NO 909/2014

Field	Content
Name of the competent authority of the host Member State	name
Primary and secondary contact person of the competent authority of the host Member State	name, telephone number, e-mail address, role
Name of the CSD providing services in the host Member State being considered to be in breach of obligations	name and address
Contact person of the CSD providing services in the host Member State being considered to be in breach of obligations	name, telephone number, e-mail address, role
Name of the competent authority of the home Member State	name
Primary and secondary contact person of the competent authority of the home Member State	name, telephone number, e-mail address, role
Primary and secondary contact person of ESMA	name, telephone number, e-mail address, role
Description of the ground for believing that the CSD established in the home Member State providing services in the territory if the host Member State according to Article 23 of Regulation (EU) No 909/2014 is in breach of the obligations arising from the provisions of the Regulation (EU) No 909/2014.	text

ANNEX IV

(Article 55(8) of Regulation (EU) No 909/2014)

Section 1

TEMPLATE FOR REQUEST TO ISSUE A REASONED OPINION

[Name of the authority requesting the reasoned opinion]

Contact details of the above Authority

Name of person(s) responsible for further contacts:

Function:

Telephone number:

Email address:

(1) On [date of submission of request], [Name of Applicant CSD] submitted its application for authorisation to [designate a credit institution to provide / provide]²⁴ banking-type ancillary services to [Name of the Competent Authority] in accordance with Article 55(1) of Regulation (EU) No 909/2014.

(2) [Name of the Competent Authority] has examined the completeness of the application and considers it to be complete.

(3) [Name of the Competent Authority] hereby transmits all the information included in the application, attached as an Annex [Competent Authority should ensure this information is sent as an Annex to this letter], to all authorities referred to in Article 55(5) of Regulation (EU) No 909/2014, and requests a reasoned opinion from these authorities within 30 days from the date of receipt of this letter. It is required from each authority to acknowledge receipt of this application and related information attached on the day of receipt. Where an authority does not provide an opinion within 30 days, it shall be deemed to have a positive opinion.

Done aton [insert date].....

On behalf of [Name of home Competent Authority],

[signature]

The list of Addressees – Authorities entitled to issue a reasoned opinion:

1. [Competent Authority to list the Authorities referred to in Article 55(4) of Regulation (EU) No 909/2014]

Section 2

²⁴ The appropriate reference should be used, depending on the case and the specific entity should be identified.

REASONED OPINION TEMPLATE

[Name of the Authority issuing the reasoned opinion]

Contact details of the above Authority

Name of person(s) responsible for further contacts:

Function:

Telephone number:

Email address:

- (1) On [date of submission of request], [Name of Applicant CSD] submitted its application for authorisation to [designate a credit institution / provide]²⁵ banking-type ancillary services to [Name of the Competent Authority] in accordance with Article 55(1) of Regulation (EU) No 909/2014.
- (2) [Name of the Competent Authority] has examined the completeness of the application, transmitted the information included in the application, and required a reasoned opinion from [the authority concerned] in accordance with Article 55(5) of Regulation (EU) No 909/2014. The request was received on [date ...].
- (3) Having regard to Article 55(5) of Regulation (EU) No 909/2014, [Name of the Authority concerned issuing the opinion] is hereby issuing this reasoned opinion on the application.

Reasoned opinion: [choose one option: Positive or Negative]

[Please provide full and detailed justification in case of a negative reasoned opinion ...]

Done aton [insert date].....

On behalf of [Name of concerned Authority issuing the opinion],

[signature]

²⁵ The appropriate reference should be used, depending on the case and the specific entity should be identified.

Section 3

REASONED DECISION ADDRESSING A NEGATIVE REASONED OPINION TEMPLATE

[Name of the home Competent Authority]

Contact details of the above Authority

Name of person(s) responsible for further contacts:

Function:

Telephone number:

Email address:

- (1) On [date of submission of request], [Name of Applicant CSD] submitted its application for authorisation to [designate a credit institution / provide]²⁶ banking-type ancillary services to [Name of the Competent Authority] in accordance with Article 55(1) of Regulation (EU) No 909/2014.
- (2) [Name of the Competent Authority] has examined the completeness of the application, transmitted the information included in the application, and required a reasoned opinion from [all entitled authorities identified by the Competent Authority in accordance with Article 55(4) of Regulation (EU) No 909/2014.
- (3) Having regard to the negative reasoned opinion(s) issued in accordance with Article 55(5) of Regulation (EU) No 909/2014 on the application by:
 - [Name of Authority concerned having issued an opinion] on [date of the reasoned opinion];
 - [Name of Authority concerned having issued an opinion] on [date of the reasoned opinion];
 - ...
- (4) [Name of the Competent Authority] has closely examined the reasoned opinion(s) and is hereby issuing this reasoned decision in accordance with Article 55(5) of Regulation (EU) No 909/2014.

Reasoned decision addressing the negative opinion(s):

[Choose one option] Proceed / Not Proceed to grant authorisation

[Please add the reasons and justification for determining the reasoned decision here...]

²⁶ The appropriate reference should be used, depending on the case and the specific entity should be identified.

Done aton [insert date].....

On behalf of [Name of Competent Authority]

[signature]

Section 4

REQUEST FOR ESMA ASSISTANCE TEMPLATE

[Name of the Authority concerned referring the matter to ESMA]

Contact details of the above Authority

Name of person(s) responsible for further contacts :

Function:

Telephone number:

Email address:

- (1) On [date of submission of request], [Name of Applicant CSD] submitted its application for authorisation to [designate a credit institution / provide]²⁷ banking-type ancillary services to [Name of the Competent Authority] in accordance with Article 55 (1) of Regulation (EU) No 909/2014,
- (2) [Name of the home Competent Authority] has examined the completeness of the application, transmitted the information included in the application, and required a reasoned opinion from [all required authorities] in accordance with Article 55 (4) of Regulation (EU) No 909/2014.
- (3) Having regard to the negative reasoned opinion(s) issued in accordance with Article 55 (5) of Regulation (EU) No 909/2014 on the application by:
 - [Name of Authority concerned that had issued a negative reasoned opinion] on [date of the reasoned opinion],
 - [Name of Authority concerned that had issued a negative reasoned opinion] on [date of the reasoned opinion],
 - ...

- (4) Having regard to the reasoned decision to proceed to grant authorisation by [Name of the Competent Authority] on [date of issuing a reasoned decision concerning the opinion] addressing the aforementioned negative reasoned opinion(s) in accordance with Article 55 (5) of Regulation (EU) No 909/2014,
- (5) Having regard to the absence of an agreement over the assessment of the application from the competent authority and the authorities referred to in Article 55(4) of Regulation (EU) No 909/2014, despite further attempts to reach such an agreement,
- (6) In accordance with Article 55(5) of Regulation (EU) No 909/2014, [name of the Authority issuing the request] hereby refers the matter to ESMA for assistance, provides ESMA with a copy of the aforementioned application, reasoned opinion(s), and decision, and requests ESMA to proceed in accordance with Article 31 of Regulation (EU) No 1095/2010 within 30 days of receipt by ESMA of this referral.

Reasons for request:

[Please outline the reasons for the referral to ESMA]

Done aton [insert date].....

On behalf of [Name of Authority referring the matter to ESMA]

[signature]

ANNEX VII – DRAFT ITS ON CSD RECORD KEEPING

COMMISSION IMPLEMENTING REGULATION (EU) No .../2015 of [...]

laying down implementing technical standards with regard to the format of the records to be maintained by central securities depositories according to Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Opinion of the European Central Bank,

Having regard to Regulation (EU) No 909/2014 of the European Parliament and of the Council on improving securities settlement in the European Union and on central securities depositories (CSDs) and amending Directive 98/26/EC²⁸, and in particular Article 29(4) thereof,

Whereas:

- (1) To carry out their duties effectively and consistently, authorities referred to in Article 29(2) of Regulation (EU) No 909/2014 should be provided with data that is comparable among central securities depositories (CSDs). The use of common formats also facilitates post-trading integration and the communication processes between CSDs and their participants based on an integrated technical environment. The use of common formats across different financial market infrastructures facilitates the greater use of these formats by a wide variety of market participants, thus promoting standardisation.
- (2) Standardised procedures and data formats across CSDs reduce the costs for market participants and facilitate the tasks of supervisors and regulators.
- (3) To ensure consistency, all legal entities should be identified by a unique code. The use of a legal entity identifier (LEI) is required under Commission Implementing Regulation (EU) No 1247/2012. The use of proprietary formats by CSDs should be limited to internal processes only, but for reporting purposes and to provide information to competent authorities any internal code should be appropriately converted into a globally accepted standard.

²⁸ OJ L 257/1, 28.8.2014, p.1.

- (4) In view of the global nature of financial markets, this Regulation takes into account the Principles for Financial Market Infrastructures issued by the Committee on Payment and Settlement Systems and the International Organization of Securities Commissions (CPSS-IOSCO Principles) which serve as a global benchmark for regulatory requirements for central securities depositories (CSDs).
- (5) This Regulation is based on the draft implementing technical standards submitted by the European Securities and Markets Authority (ESMA) to the European Commission.
- (6) In accordance with Article 15 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council, ESMA has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010. In developing the draft implementing technical standards on which this Regulation is based, ESMA has worked in close cooperation with the members of the European System of Central Banks.

HAS ADOPTED THIS REGULATION:

Article 1

Format of records

1. A CSD shall retain the records specified in Article 9 of Regulation (EU) No... [RTS on CSD requirements], adopted pursuant to Article 29(3) of Regulation (EU) No 909/2014, for all transactions, settlement instructions and settlement restriction orders it processes , in the format set out in Table 1 in the Annex.
2. A CSD shall retain the records specified in Article 10 of Regulation (EU) No... [RTS on CSD requirements], adopted pursuant to Article 29(3) of Regulation (EU) No 909/2014, for the positions corresponding to all the securities accounts it maintains, in the format set out in Table 2 in the Annex.
3. A CSD shall retain the records specified in Article 11 Regulation (EU) No... [RTS on CSD requirements], adopted pursuant to Article 29(3) of Regulation (EU) No 909/2014, for the ancillary services it provides, in the format set out in Table 3 in the Annex.
4. A CSD shall retain the records specified in Article 12 of Regulation (EU) No... [RTS on CSD requirements], adopted pursuant to Article 29(3) of Regulation (EU) No 909/2014, for

activities related to its business and internal organisation, in the format set out in Table 4 in the Annex.

5. A CSD may use a proprietary format only if this format can be converted without undue delay into an open format for reporting purposes to authorities in accordance with Regulation (EU) No 909/2014.

Article 2

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.

Done at Brussels, []

[For the Commission

The President]

TABLE 1**TRANSACTION/SETTLEMENT INSTRUCTION (FLOW)
RECORDS**

No	Field	Format
1	Settlement instruction type (covering at least the settlement instruction types specified in point g) of Article 4(2) of Regulation (EU) No... [RTS on settlement discipline])	<ul style="list-style-type: none"> - DVP (Delivery-versus-payment) - RVP (Receive-versus-payment) - DFP (Deliver Free of Payment) - RFP (Receive Free of Payment)
2	Deliver/Receive	<ul style="list-style-type: none"> - DEL (Deliver) - REC (Receive)
2	Transaction type (covering at least the transaction types specified in point e) of Article 4(2) of Regulation (EU) No... [RTS on settlement discipline])	<ul style="list-style-type: none"> - TRAD (purchase or sale of securities executed on a trading venue) - TRAO (OTC purchase or sale of securities) - SECL/SECB (securities lending and borrowing) - REPU/RVPO (repurchase transactions) - COLL (collateral management) - CORP (corporate actions) - CUST (custody related operations) - CCPC (CCP-cleared transactions)
3	Unique Instruction Reference of the participant	Unique instruction reference of the participant according to the CSD rules
4	Trade date	ISO 8601 date in the format YYYY-MM-DD
5	Intended Settlement Date	ISO 8601 date in the format YYYY-MM-DD
6	Settlement timestamp	ISO 8601 date in the UTC time format YYYY-MM-DDThh:mm:ssZ
7	Timestamp of moment of entry of the settlement instruction into the securities	ISO 8601 date in the UTC time format YYYY-MM-DDThh:mm:ssZ

	settlement system	
8	Timestamp of moment of irrevocability of the settlement instruction	ISO 8601 date in the UTC time format YYYY-MM-DDThh:mm:ssZ
9	Matching timestamp, where applicable	ISO 8601 date in the UTC time format YYYY-MM-DDThh:mm:ssZ
10	Securities account identifier	Unique securities account identifier provided by the CSD
11	Cash account identifier	International Bank Account Number (IBAN)
12	Settlement bank identifier	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code, or Bank Identifier Code (BIC) (with the obligation to convert to LEI for reporting purposes to authorities)
13	Identifier of instructing participant	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code, or Bank Identifier Code (BIC) (with the obligation to convert to LEI for reporting purposes to authorities)
14	Identifier of the instructing participant's counterpart	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code, or Bank Identifier Code (BIC) (with the obligation to convert to LEI for reporting purposes to authorities)
15	Identifier of the instructing participant's client, where known to the CSD	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code, or Bank Identifier Code (BIC) for legal persons (with the obligation to convert to LEI for reporting purposes to authorities) Available national identifier for natural persons (50 alphanumeric digits) which allows the unique identification of the natural person at a national level
16	Identifier of the client of the instructing participant's counterpart, where known to the CSD	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code, or Bank Identifier Code (BIC) for legal persons (with the obligation to convert to LEI for reporting purposes to authorities) Available national identifier for natural persons

		(50 alphanumeric digits) which allows the unique identification of the natural person at a national level
17	Securities identifiers	ISO 6166 ISIN 12 character alphanumeric code
18	Settlement currency	ISO 4217 Currency Code, 3 alphabetical digits
19	Settlement cash amount	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character. The negative symbol, if populated, is not counted as a numerical character.
20	Quantity or nominal amount of securities	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character. The negative symbol, if populated, is not counted as a numerical character.
21	Status type (in accordance with Article 4(1) of Regulation (EU) No... [RTS on settlement discipline])	<p>MATY (matched settlement instructions that are not settled)</p> <p>MATN (settlement instructions that are not matched)</p> <p>HOLD (settlement instructions on hold)</p> <p>PART (partially settled settlement instructions)</p> <p>FAIL (failed settlement instructions)</p> <p>RECL (recycled settlement instructions)</p> <p>DELL (cancelled settlement instructions)</p> <p>SETL (settled settlement instructions)</p>
22	Where a buy-in process is initiated for a transaction, the following details: a) length of extension period;	<p>Buy-in initiated: Y/N</p> <p>Length of extension period: 2 digits</p>

	<p>b) where applicable, length of the deferral period;</p> <p>c) length of the buy-in period;</p> <p>d) if the buy-in is successful or not;</p> <p>e) payment of cash compensation</p>	<p>Length of deferral period: 2 digits</p> <p>Length of the buy-in period: 2 digits</p> <p>Buy-in successful: Y/N</p> <p>Payment of cash compensation: Y/N</p>
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Table 2

Position (Stock) Records

No	Field	Format
1	Identifiers of issuers for which the CSD provides the core service referred to in point 1 of Section A of the Annex to Regulation (EU) No 909/2014	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code, or Bank Identifier Code (BIC) for legal persons (with the obligation to convert to LEI for reporting purposes to authorities)
2	Securities issues for which the CSD provides the core service referred to in point 1 of Section A of the Annex to Regulation (EU) No 909/2014	ISO 6166 ISIN 12 character alphanumeric code
3	Securities maintained by the CSD	ISO 6166 ISIN 12 character alphanumeric code
4	Issuer CSD (for each securities issue maintained by the CSD)	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code, or Bank Identifier Code (BIC) for legal persons (with the obligation to convert to LEI for reporting purposes to authorities)
5	Country of issue (law under which the securities maintained by the CSD are constituted) for each securities issue maintained by the CSD	ISO 3166 2 character country code
6	Country of incorporation of the issuers of securities maintained by the CSD	ISO 3166 2 character country code
7	Issuers' securities accounts identifiers	Unique securities account identifier provided by the CSD
8	Issuers' cash accounts identifiers	International Bank Account Number (IBAN)
9	Identifiers of settlement banks used by each issuer	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code, or Bank Identifier Code (BIC) for legal persons (with the obligation to convert to LEI for reporting purposes to authorities)
11	Participants' identifiers	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code, or Bank Identifier Code (BIC) for legal persons (with

		the obligation to convert to LEI for reporting purposes to authorities)
12	Participants' country of incorporation	ISO 3166 2 character country code
13	Participants' securities accounts identifiers	Unique securities account identifier provided by the CSD
14	Participants' cash accounts identifiers;	International Bank Account Number (IBAN)
15	Identifiers of settlement banks used by the each participant	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumerical character code, or Bank Identifier Code (BIC) for legal persons (with the obligation to convert to LEI for reporting purposes to authorities)
16	Country of incorporation of settlement banks used by each participant	ISO 3166 2 character country code
17	Identifiers of participants and of other securities account holders	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumerical character code, or Bank Identifier Code (BIC) for legal persons (with the obligation to convert to LEI for reporting purposes to authorities) Available national identifier for natural persons (50 alphanumerical digits) which allows the unique identification of the natural person at a national level
18	Type of securities accounts (own account, omnibus account, individual account, other)	OW = own account OM = omnibus account ID = individual OT = other
18	Securities accounts end of day balances (for each ISIN)	Documents/Files
19	For each securities account and ISIN, the number of securities subject to settlement restrictions, type of restriction and, if relevant, the identity of the beneficiary of the restriction at the end of day	Documents/Files

20	The end of day balances of the cash accounts provided by the CSD (for each currency)	Documents/Files
21	Records of settlement fails, as well as of the measures adopted by the CSD and its participants to improve settlement efficiency, in accordance with the RTS on monitoring of settlement fails under Article 7 of Regulation (EU) No 909/2014	Documents/Files

Table 3

Ancillary Services Records

No.	Ancillary Services under Regulation (EU) No 909/2014	Types of records
1	Organising a securities lending mechanism, as agent among participants of a securities settlement system	<ul style="list-style-type: none"> a) Identification of delivering/receiving parties, b) Details regarding each securities lending/borrowing operation, including volume and value of securities, ISIN, c) Purpose of each securities lending/borrowing operations, d) Types of collateral, e) Collateral valuation.
2	Providing collateral management services, as agent for participants in a securities settlement system	<ul style="list-style-type: none"> a) Identification of delivering/receiving parties, b) Details regarding each operation, including volume and value of securities, ISIN, c) Types of collateral, d) Purpose of collateral use, e) Collateral valuation.
3	Settlement matching, instruction routing, trade confirmation, trade verification	<ul style="list-style-type: none"> a) Identification of the entities for which the CSD provides the services, b) Types of operations, c) Details regarding each operation, including volume and value of securities, ISIN.
4	Services related to shareholders' registers	<ul style="list-style-type: none"> a) Identification of the entities for which the CSD provides the services, b) Types of services, c) Details regarding each operation, including volume and

		value of securities, ISIN.
5	Supporting the processing of corporate actions, including tax, general meetings and information services	<ul style="list-style-type: none"> a) Identification of the entities for which the CSD provides the services, b) Types of services, c) Details regarding each operation, including volume and value of securities/cash, beneficiaries of the operation, ISIN.
6	New issue services, including allocation and management of ISIN codes and similar codes	<ul style="list-style-type: none"> a) Identification of the entities for which the CSD provides the services, b) Types of services, c) Details regarding each operation, including ISIN.
7	Instruction routing and processing, fee collection and processing and related reporting	<ul style="list-style-type: none"> a) Identification of the entities for which the CSD provides the services, b) Types of services, c) Details regarding each operation, including volume and value of securities/cash, beneficiaries of the operation, ISIN, purpose of the operation.
8	Establishing CSD links, providing, maintaining or operating securities accounts in relation to the settlement service, collateral management, other ancillary services	<ul style="list-style-type: none"> a) Details regarding the CSD links, including identification of CSDs, b) Types of services, c) Relevant information under Articles 3 and 4 of the present Regulation.
9	Providing general collateral management services as agent	<ul style="list-style-type: none"> a) Identification of delivering/receiving parties, b) Details regarding each operation, including volume and value of securities, ISIN, c) Types of collateral, d) Purpose of collateral use, b) Collateral valuation.
10	Providing regulatory reporting	<ul style="list-style-type: none"> a) Identification of the entities for which the CSD provides the reporting,

		<ul style="list-style-type: none"> b) Types of services. c) Details regarding the data provided, including the legal basis and the purpose.
11	Providing information, data and statistics to market/census bureaus or other governmental or inter-governmental entities	<ul style="list-style-type: none"> a) Identification of the entities for which the CSD provides the services, b) Types of services. c) Details regarding the data provided, including the legal basis and the purpose.
12	Providing IT services	<ul style="list-style-type: none"> a) Identification of the entities for which the CSD provides the services, b) Types of services. b) Details regarding the IT services.
13	Providing cash accounts to, and accepting deposits from, participants in a securities settlement system and holders of securities accounts, within the meaning of point 1 of Annex I of Directive 2013/36/EU	<ul style="list-style-type: none"> a) Identification of the entities for which the CSD provides the services, b) Cash accounts details, c) Currency, d) Deposits amounts.
14	Providing cash credit for reimbursement no later than the following business day, cash lending to pre-finance corporate actions and lending securities to holders of securities accounts, within the meaning of point 2 of Annex I to Directive 2013/36/EU	<ul style="list-style-type: none"> a) Identification of the entities for which the CSD provides the services, b) Types of services c) Details regarding each operation, including volume and value of securities/cash, ISIN, d) Types of collateral, e) Collateral valuation, f) Purpose of operations, g) Information about any incidents in relation to such services and remediating actions including follow-up.
15	Payment services involving processing of cash and foreign exchange transactions, within the	<ul style="list-style-type: none"> a) Identification of the entities for which the CSD provides the services,

	meaning of point 4 of Annex I to Directive 2013/36/EU	<ul style="list-style-type: none"> b) Types of services, c) Details regarding each operation, including volume of cash, and purpose of operation.
16	Guarantees and commitments related to securities lending and borrowing, within the meaning of point 6 of Annex I to Directive 2013/36/EU	<ul style="list-style-type: none"> a) Identification of the entities for which the CSD provides the services, b) Types of services, c) Details regarding each operation, including volume and value of securities/cash, and purpose of operation.
	Treasury activities involving foreign exchange and transferable securities related to managing participants' long balances, within the meaning of points 7(b) and (e) of Annex I to Directive 2013/36/EU	<ul style="list-style-type: none"> a) Identification of the entities for which the CSD provides the services, b) Types of services, c) Details regarding each operation, including volume and value of securities/cash, and purpose of operation.

Table 4

Business Records

No	Field	Format	Description
1	Organisational charts	Free text	Management body, senior management and relevant committees, operational units and all other relevant units or divisions
2	Identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and the amounts of	S= Shareholder / M = Member D = Direct / I = Indirect N = Natural person / L = Legal person Amount of the holding = Up to 20 numerical characters	Shareholders or members that have qualifying holdings (fields to be added for each of the relevant shareholder/member)

	those holdings	including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character. The negative symbol, if populated, is not counted as a numerical character.	
3	CSD participations in other legal entities	Free text Amount of the holding = Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character. The negative symbol, if populated, is not counted as a numerical character.	Identification of each legal entity (fields to be added for each legal entity)
4	Documents attesting the policies, procedures and processes required under the relevant organisational requirements	Documents	
5	Minutes of management body meetings, and, if applicable, of meetings of senior management committees and other committees	Documents	
6	Minutes of meetings of the user committee	Documents	
7	Minutes of consultation groups with participants and clients, if any	Documents	

8	Internal and external audit, risk management, compliance reports, including management responses	Documents	
9	All outsourcing contracts	Documents	
10	Business continuity policy and disaster recovery plan	Documents	
11	Records reflecting all assets and liabilities and capital accounts as required under Article 47 of Regulation (EU) No 909/2014	Documents	
12	Complaints received	Free text	For each complaint: information on complainant's name and address; date of receiving the complaint; names of all persons identified in the complaint; description of the nature of the complaint; disposition of the complaint; date when the complaint was resolved.
13	Information on any interruption of services or dysfunction	Free text	Records of any interruption of services or dysfunction, including a detailed report on the timing, effects and remedial actions
14	Records of the results of the back and stress tests performed for the CSDs providing banking type of ancillary services	Documents	

15	Written communications with the competent authority, ESMA and relevant authorities	Documents	
16	Legal opinions received in accordance with provisions on organisational requirements in accordance with Regulation (EU) No...[RTS]	Documents	
17	Where applicable, legal documentation regarding link arrangements in accordance with Regulation (EU) No...[RTS]	Documents	
18	Information on the development of new business initiatives	Documents	The most complete documents describing the development of new business initiatives
19	Tariffs and fees applied to the different services, including any discount or rebate, as well as, if applicable, penalties per participant	Free text	

COMMISSION IMPLEMENTING REGULATION (EU) No .../2015

laying down implementing technical standards with regard to the standard forms and templates for the procedures concerning the access of participants to central securities depositories (CSDs), the access of issuers to CSDs, the access between CSDs, and the access between a CSD and another market infrastructure in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014

of []

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the opinion of the ESCB,

Having regard to Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories (CSDs)²⁹, and in particular Article 33(6), Article 49(6), Article 52(4), and Article 53(5) thereof,

Whereas:

- (7) In view of the global nature of financial markets, this Regulation takes into account the Principles for Financial Market Infrastructures issued by the Committee on Payment and Settlement Systems and the International Organization of Securities Commissions (CPSS-IOSCO Principles) which serve as a global benchmark for regulatory requirements for central securities depositories (CSDs).
- (8) In order to ensure a harmonised approach regarding the processing of complaints concerning the access of participants to central securities depositories (CSDs), the access of issuers to CSDs, the access between CSDs, and the access between a CSD and another market infrastructure, standard forms and templates should be used, specifying the identified risks and the assessment of the identified risks.
- (9) This Regulation is based on the draft implementing technical standards submitted by the European Securities and Markets Authority (ESMA) to the European Commission.
- (10) In accordance with Article 15 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)³⁰, ESMA has

²⁹ OJ L 257, 28.8.2014, p. 1

³⁰ OJ L 331, 15.12.2010, p. 84.

conducted an open public consultation before submitting the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010. In developing the draft implementing technical standards on which this Regulation is based, ESMA has worked in close cooperation with the members of the European System of Central Banks.

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL

Article 1

Definitions

For the purposes of this Regulation the definitions in Article 1 of Regulation (EU) No 909/2014 [RTS on Access and Links] shall apply.

CHAPTER II

ACCESS

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

Article 2

Standard forms and templates for the access procedure

1. A requesting CSD shall use the template specified in Annex I to this Regulation when submitting a request for access under Article 52(1) of Regulation (EU) No 909/2014.
2. A CSD shall use the template in Annex II to this Regulation when denying a request for access in accordance with Article 33(3), 49(4), 52(2) or 53(3) of Regulation (EU) No 909/2014.
3. A CCP or a trading venue shall use the template in Annex II to this Regulation when denying a request for access in accordance with Article 53(3) of Regulation (EU) No 909/2014.

4. A requesting party shall use the template in Annex III to this Regulation when submitting a complaint to the competent authority of a receiving CSD, CCP or trading venue that has refused access to it in accordance with Article 33(3), 49(4), 52(2) or 53(3) of Regulation (EU) No 909/2014.

5. The competent authority referred to in paragraph 4 shall use the template in Annex IV to this Regulation when consulting the following authorities on its assessment of the complaint, as appropriate:

(a) the competent authority of the place of establishment of the requesting participant in accordance with Article 33(3) of Regulation (EU) No 909/2014;

(b) the competent authority of the place of establishment of the requesting issuer in accordance with Article 49(4) of Regulation (EU) No 909/2014;

(c) the competent authority of the requesting CSD and the authority responsible for the oversight of the securities settlement system operated by the requesting CSD in the Member State whose law applies to that securities settlement system in accordance with Article 52(2) of Regulation (EU) No 909/2014;

(d) the competent authority of the requesting CCP or trading venue and the authority responsible for the oversight of the securities settlement system operated by the CSD in the Member State whose law applies to that securities settlement system in accordance with Article 53(3) of Regulation (EU) No 909/2014.

6. The competent authorities referred to in subparagraphs (a) to (d) of paragraph 3 shall use the template in Annex V to this Regulation when responding to the consultation referred to in that paragraph.

7. The competent authorities referred to in this Article shall use the template set out in Annex V to this Regulation if any of them decides to refer the matter to ESMA in accordance with Article 33(3), 49(4), 52(2) or 53(3) of Regulation (EU) No 909/2014.

8. The competent authority referred to in paragraph 4 shall provide the requesting party with a reasoned reply in the format set out in Annex VI to this Regulation.

CHAPTER III

FINAL PROVISIONS

Article 3

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.

Done at Brussels, []

For the Commission

The President

ANNEX I

REQUEST FOR ACCESS TEMPLATE (IN THE CASE OF CSD LINKS)

I. General information				
Sender: requesting CSD				
Addressee: receiving CSD				
Date of request for access				
Reference number given by the requesting CSD				
II. Identification of requesting party				
Corporate name of requesting CSD				
Country of origin				
Legal address				
LEI				
Name and contact details of the person responsible for the request for access (name, function, phone number, email address)	Name	Function	Phone	Email
III. Services that form the object of the request for access				
Types of services				
If applicable, relevant references under European Union legislation				
Description of services				
IV. Identification of authorities				
Name and contact details of the competent authority of the requesting CSD (main liaison, name, function, phone number, email address)	Name	Function	Phone	Email
Name and contact details of the authority responsible for the oversight of the securities settlement system operated by the requesting CSD referred to in point (a) of Article 12(1) of Regulation (EU) No 909/2014 (main liaison, name, function, phone number, email address)	Name	Function	Phone	Email
V. Any other relevant information and/or documents				

ANNEX II

TEMPLATE FOR THE RESPONSE TO THE REQUEST FOR ACCESS

I. General information				
Sender: receiving party				
Addressee: requesting party				
Date of request for access				
Reference number given by the requesting party				
Date of receipt of the request for access				
Reference number given by the receiving party				
II. Identification of receiving party				
Corporate name of receiving party				
Country of origin				
Legal address				
LEI				
Name and contact details of the person responsible for the assessment of the request for access (name, function, phone number, email address)	Name	Function	Phone	Email
III. Identification of requesting party				
Corporate name of the requesting party				
Country of origin				
Legal address				
LEI				
Name and contact details of the person responsible for the request for access (name, function, phone number, email address)	Name	Function	Phone	Email
IV. Risk analysis of the request for access				
Legal risks resulting from the provision of services				
Financial risks resulting from the provision of services				
Operational risks resulting from the provision of services				

V. Outcome of the risk analysis				
Access would affect the risk profile of the CSD	YES		NO	
Access would affect the smooth and orderly functioning of the financial markets	YES		NO	
Access would cause systemic risk	YES		NO	
Access granted	YES		NO	
In case of refusal of access, a summary of the reasons for such a refusal				
In case of refusal of access, deadline for complaint by the requesting party to the competent authority of the receiving party	One month from receipt of refusal			
VI. Non-provision of services referred to in point 1 of Section A of the Annex to CSDR in relation to securities constituted under the corporate law or other similar law of the relevant Member State (in the case of access of issuers to the services provided by CSDs)				
The receiving CSD provides the services referred to in point 1 of Section A of the Annex to Regulation (EU) No 909/2014 in relation to securities constituted under the corporate law or other similar law of the relevant Member State applicable to the specific issue that is the object of the application from the requesting issuer.	YES		NO	
	Please specify the corporate law and provide details regarding the issue.		Please specify the corporate law and provide details regarding the issue.	
Access granted	YES		NO	
VII. Identification of authorities				
Name and contact details of the competent authority of the receiving party (main liaison, name, function, phone number, email address)	Name	Function	Phone	Email
Where applicable, name and contact details of the relevant authority of the receiving party referred to in point (a) of Article 12(1) of Regulation (EU) No 909/2014 (main liaison, name, function, phone number, email address)	Name	Function	Phone	Email
Name and contact details of the competent authority of the requesting party (main liaison, name, function, phone number, email address)	Name	Function	Phone	Email
Where applicable, name and contact details of the relevant authority of the requesting party referred to in point (a) of Article 12(1) of Regulation (EU) No 909/2014 (main liaison, name, function, phone number, email address)	Name	Function	Phone	Email

ANNEX III

TEMPLATE FOR THE COMPLAINT FOR REFUSAL OF ACCESS

I. General information				
Sender: requesting party				
Addressee: competent authority of receiving party				
Date of request for access				
Reference number given by the requesting party				
Date of receipt of request for access				
Reference number given by the receiving party				
II. Identification of requesting party				
Corporate name of requesting party				
Country of origin				
Legal address				
LEI				
Name and contact details of the person responsible for the request for access (name, function, phone number, email address)				
III. Identification of receiving party				
Corporate name of receiving party				
Country of origin				
Legal address				
Name and contact details of the person responsible for the assessment of the request for access (name, function, phone number, email address)	Name	Function	Phone	Email
IV. Comments of the requesting party in relation to the risk assessment of the request for access conducted by the receiving party and the reasons for refusal of access				
Comments of the requesting party on the legal risks resulting from the provision of services				

Comments of the requesting party on the financial risks resulting from the provision of services	
Comments of the requesting party on the operational risks resulting from the provision of services	
Comments of the requesting party concerning the refusal to provide the services referred to in point 1 of Section A of the Annex to Regulation (EU) No. 909/2014 applicable to the specific issue of securities.	
Comments of the requesting party on the reasons of the receiving party for refusal of access	
Any relevant additional information	
V. Annexes	
Copy of the initial application for access submitted by the requesting party to the receiving party (including a copy of the information provided under Annex I)	
Copy of the response of the receiving party to the initial request for access (including a copy of the information provided under Annex II)	
VI. Any other relevant information and/or documents	

ANNEX IV

TEMPLATE FOR THE CONSULTATION OF OTHER AUTHORITIES ON THE ASSESSMENT OF REFUSAL OF ACCESS

I. General information					
Sender: competent authority of the receiving party					
Addressee: - the competent authority of the requesting party; and - where applicable, the relevant authority of the requesting party referred to in point (a) of Article 12(1) of Regulation (EU) No 909/2014					
Date of the request for access					
Reference number given by the requesting party					
Date of receipt of the request for access					
Reference number given by the receiving party					
Date of receipt of refusal of access complaint					
Reference number given by the competent authority of the receiving party					
II. Identification of authorities					
Name and contact details of the competent authority of the receiving party (main liaison, name, function, phone number, email address)		Name	Function	Phone	Email
If applicable, name and contact details of the relevant authority of the receiving party referred to in point (a) of Article 12(1) of Regulation (EU) No 909/2014 (main liaison, name, function, phone number, email address)		Name	Function	Phone	Email
III. Identification of requesting party					
Corporate name of requesting party					
Country of origin					
Legal address					
LEI					
Name and contact details of the person assuming the responsibility of the request for access (name, function, phone number, email address)					

IV. Identification of receiving party				
Corporate name of receiving party				
Country of origin				
Legal address				
LEI				
Name and contact details of the person responsible for the assessment of the request for access (name, function, phone number, email address)	Name	Function	Phone	Email
V. Assessment by the competent authority of the receiving party				
Comments of the competent authority concerning the reasons of the receiving party for refusal of access, and concerning the comments made by the requesting party				
Where applicable, comments of the relevant authority of the receiving party referred to in point (a) of Article 12(1) of Regulation (EU) No 909/2014				
Refusal to grant access is deemed unjustified	YES		NO	
Reasons provided by the competent authority of the receiving party in support of its assessment				
VI. Annexes				
Copy of the initial application for access submitted by the requesting party to the receiving party (including a copy of the information provided under Annex I)				
Copy of the response of the receiving party to the initial request for access (including a copy of the information provided under Annex II)				
Copy of the complaint from the requesting party regarding the refusal of access (including a copy of the information provided under Annex III)				
VII. Any other relevant information and/or documents				

ANNEX V

TEMPLATE FOR THE RESPONSE TO THE CONSULTATION OF OTHER AUTHORITIES ON THE ASSESSMENT OF REFUSAL OF ACCESS, AND, WHERE APPLICABLE, FOR REFERRAL TO ESMA

I. General information				
Sender:				
- the competent authority of the requesting party; or				
- where applicable, the relevant authority of the requesting party referred to in point (a) of Article 12(1) of regulation (EU) No 909/2014				
Addressee: competent authority of the receiving party				
Date of the request for access				
Reference number given by the requesting party				
Date of receipt of the request for access				
Reference number given by the receiving party				
Date of receipt of the complaint for refusal of access				
Reference number given by the competent authority of the receiving party				
Date of receipt of the assessment provided by the competent authority to the receiving party				
Reference number given by the competent authority of the requesting party				
II. Identification of the authority submitting the response to the assessment by the competent authority of the receiving party				
Name and contact details of:	Name	Function	Phone	Email
a) the competent authority of the requesting party				
b) where applicable, the relevant authority of the requesting party referred to in point (a) of Article 12(1) of Regulation (EU) No 909/2014				
III. Identification of the requesting party				
Corporate name of requesting party				
Country of origin				
Legal address				

LEI				
Name and contact details of the person responsible for the request for access (name, function, phone number, email address)				
IV. Identification of receiving party				
Corporate name of receiving party				
Country of origin				
Legal address				
LEI				
Name and contact details of the person responsible for the assessment of the request for access (name, function, phone number, email address)	Name	Function	Phone	Email
V. Assessment by the relevant authority of the requesting party referred to in point (a) of Article 12(1) of Regulation (EU) No 909/2014				
Comments concerning the reasons of the receiving party for refusal of access, comments provided by the requesting party				
Refusal to grant access is deemed unjustified	YES		NO	
Reasons provided by the authority in support of its assessment				
VI. Annexes				
Copy of the complaint of the requesting party regarding the refusal of access (including a copy of the information provided under Annex I)				
Copy of the assessment of the competent authority of the receiving party on the complaint of the requesting party regarding the refusal of access (including a copy of the information provided under Annex II)				
VII. Any other relevant information and/or documents				

ANNEX VI

TEMPLATE FOR THE RESPONSE TO THE COMPLAINT FOR REFUSAL OF ACCESS

I. General information				
Sender: competent authority of the receiving party				
Addressee:				
- requesting party;				
- receiving party;				
- where applicable, the relevant authority of the receiving party referred to in point (a) of Article 12(1) of Regulation (EU) No 909/2014;				
- the competent authority of the requesting party;				
- where applicable, the relevant authority of the requesting party referred to in point (a) of Article 12(1) of Regulation (EU) No 909/2014				
Date of the request for access				
Reference number given by the requesting party				
Date of receipt of the request for access				
Reference number given by the receiving party				
Date of receipt of the complaint for refusal of access				
Reference number given by the competent authority of the receiving party				
Date of receipt of the assessment by the competent authority of the requesting party and, where applicable, of the relevant authority of the requesting party referred to in point (a) of Article 12(1) of Regulation (EU) No 909/2014				
Reference number given by the competent authority of the requesting party or, where applicable, of the relevant authority of the requesting party referred to in point (a) of Article 12(1) of Regulation (EU) No 909/2014				
II. Identification of the authority submitting the response to the refusal of access complaint				
Name and contact details of the competent authority of the receiving party	Name	Function	Phone	Email

III. Identification of requesting party				
Corporate name of requesting party				
Country of origin				
Legal address				
LEI				
Name and contact details of the person responsible for the request for access (name, function, phone number, email address)				
IV. Identification of receiving party				
Corporate name of receiving party				
Country of origin				
Legal address				
LEI				
Name and contact details of the person responsible for the assessment of the request for access (name, function, phone number, email address)	Name	Function	Phone	Email
V. Assessment by the competent authority of the receiving party				
Comments concerning the reasons of the receiving party for refusal of access, and the comments provided by the requesting party				
Where applicable, comments of the relevant authority of the receiving party referred to in point (a) of Article 12(1) of Regulation (EU) No 909/2014				
Refusal to grant access is deemed unjustified	YES		NO	
Reasons provided by the competent authority of the receiving party in support of its assessment				
VI. Order requiring the receiving party to grant access to the requesting party				
If refusal to grant access is deemed unjustified, details of the order requiring the receiving party to grant access to the requesting party including applicable deadline for compliance.				
VII. Any other relevant information and/or documents				

COMMISSION IMPLEMENTING REGULATION (EU) No .../2015

laying down implementing technical standards with regard to the standard forms, templates and procedures for the reporting and transmission of information on internalised settlement according to Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014

of []

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories (CSDs) and amending Directive 98/26/EC³¹, and in particular Article 9(3) thereof,

Whereas:

- (1) In order to obtain the necessary information to assess the risks of internalised settlement, competent authorities, ESMA, as well as competent authorities responsible for the supervision of settlement internalisers should provide one another with the relevant information required under the Regulation (EU) No[RTS on Art. 9] in the format prescribed under this Regulation.
- (2) In order to help identify potential risks related to the internalised settlement activity, the reports to be submitted by competent authorities to ESMA should specify the top settlement internalisers in each Member State, based on the number and value of transfer orders settled by settlement internalisers outside a securities settlement system.
- (3) This Regulation is based on the draft implementing technical standards submitted by the European Securities and Markets Authority (ESMA) to the European Commission.
- (4) In accordance with Article 15 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)³², ESMA has conducted an open public consultation before submitting the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010. In developing the draft implementing technical standards on which this Regulation is

³¹ OJ [...]

³² OJ L 331, 15.12.2010, p. 84.

based, ESMA has worked in close cooperation with the members of the European System of Central Banks.

HAS ADOPTED THIS REGULATION³³:

Article 1

Standard forms and templates for the reporting and transmission of information on internalised settlement

1. A settlement internaliser shall use the templates specified in Annexes I and II to this Regulation when reporting the information on internalised settlement to the competent authority of their place of establishment, as referred to in Article 11 of Regulation (EU) No 909/2014, pursuant to the first subparagraph of Article 9 (1) of Regulation (EU) No 909/2014 and Regulation (EU) No [...] [RTS on Art. 9]

2. The competent authority shall use the templates specified in Annexes I to III to this Regulation when transmitting the information to ESMA in accordance with the second subparagraph of Article 9 (1) of Regulation (EU) No. 909/2014 and Regulation (EU) No [...] [RTS on Art. 9].

Article 2

Procedures for the reporting and transmission of information on internalised settlement

1. Within 10 working days from the end of each quarter, a settlement internaliser shall report the information on internalised settlement by using the templates specified in Annexes I and II to the competent authority, in accordance with the first subparagraph of Article 9(1) of Regulation (EU) No 909/2014 and Regulation (EU) No. [...] [RTS on Art. 9].

2. Competent authorities shall submit the information received from settlement internalisers to ESMA without undue delay and no later than 5 working days from the date of the receipt of each report.

3. Within 30 working days from the end of each quarter, competent authorities shall inform ESMA of any potential risk resulting from internalised settlement by using the template specified under Annex III, given their mandate and competences, and based in particular on the information received from settlement internalisers in accordance with Regulation (EU) No [...] [RTS on Art. 9] and this Regulation.

4. The information referred to in this Article shall be transmitted in a machine readable format.

Article 3

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.

Done at Brussels, []

For the Commission

The President

ANNEX I

INFORMATION ON INTERNALISED SETTLEMENT

No.	Field	Format
1.	Country code	ISO 3166 2 character country code
2.	Reporting timestamp	ISO 8601 date in the UTC time format YYYY-MM-DDThh:mm:ssZ
3.	Reporting period	ISO 8601 date in the format YYYY-MM-DD-YYYY-MM-DD
4.	Settlement internaliser identifier	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code
5.	Name and contact details of the person assuming the responsibility for the report sent by the settlement internaliser (name, function, phone number, email address)	Free text
6.	Aggregated number of transfer orders for each type of financial instruments settled by the settlement internaliser outside a securities settlement system during the period covered by the report, according to the asset classes specified in point f) of Article 2(1) of the RTS	For each asset class: Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
7.	Aggregated value (EUR) of transfer orders for each type of financial instruments settled by the settlement internaliser outside a securities settlement system during the period covered by the report, according to the asset classes specified in point f) of Article 2(1) of the RTS	For each asset class: Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
8.	Aggregated number of transfer orders for each type of securities transactions settled by the settlement internaliser outside a securities settlement system during the	For each type of securities transaction: Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The

	period covered by the report, according to the types of transactions specified in point g) of Article 2(1) of the RTS	decimal mark is not counted as a numerical character.
9.	Aggregated value (EUR) of transfer orders for each type of securities transactions settled by the settlement internaliser outside a securities settlement system during the period covered by the report, according to the types of transactions specified in point g) of Article 2(1) of the RTS	For each type of securities transaction: Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
10.	Aggregated number of transfer orders settled by the settlement internaliser outside a securities settlement system during the period covered by the report (by number of transfer orders), according to the types of clients specified in point h) of Article 2(1) of the RTS	For each type of client: Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
11.	Aggregated value (EUR) of transfer orders settled by the settlement internaliser outside a securities settlement system during the period covered by the report, according to the types of clients specified in point h) of Article 2(1) of the RTS	For each type of client: Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
12.	Aggregated number of transfer orders of all transfer orders settled by the settlement internaliser outside a securities settlement system during the period covered by the report, split by country where the securities have been issued	For each country identified by the first two letters of each ISIN: Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
13.	Aggregated value (EUR) of all transfer orders settled by the settlement internaliser outside a securities settlement system during the period covered by the report, split by country where the securities have been issued	For each country identified by the first two letters of each ISIN: Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.

ANNEX II

INFORMATION ON FAILED TRANSFER ORDERS REFERRED TO IN POINT I) OF ARTICLE 2(1) OF REGULATION (EU) NO.... [Article 9 RTS]

		Number of transfer orders settled by the settlement internaliser outside a securities settlement system		Value (EUR) of transfer orders settled by the settlement outside a securities settlement system		Fails %	
Type of asset class	Type of transaction	Total volume	Volume of failed transfer orders	Total value	Value of failed transfer orders	% Failed transfer orders based on volume	% Failed transfer orders based on value
Transferable securities referred to in point (a) of Article 4(1)(44) of Directive 2014/65/EU	Trades (purchase or sale of securities)						
	Collateral management operations, securities lending/borrowing, repurchase transactions						
	Corporate actions and custody related operations						

	Others (please specify)						
Transferable securities referred to in point (b) of Article 4(1)(44) of Directive 2014/65/EU	Trades (purchase or sale of securities)						
	Collateral management operations, securities lending/borrowing, repurchase transactions						
	Corporate actions and custody related operations						
	Others (please specify)						
Exchange-traded funds (ETFs)	Trades (purchase or sale of securities)						
	Collateral management operations, securities lending/borrowing, repurchase transactions						
	Corporate actions and custody related operations						
	Others (please specify)						
Units in collective	Trades (purchase or sale of securities)						

investment undertakings, other than ETFs							
	Collateral management operations, securities lending/borrowing, repurchase transactions						
	Corporate actions and custody related operations						
	Others (please specify)						
Money market instruments	Trades (purchase or sale of securities)						
	Collateral management operations, securities lending/borrowing, repurchase transactions						
	Corporate actions and custody related operations						
	Others (please specify)						
Emission allowances	Trades (purchase or sale of securities)						
	Collateral management operations, securities lending/borrowing,						

	repurchase transactions						
	Corporate actions and custody related operations						
	Others (please specify)						
Others (please specify)	Trades (purchase or sale of securities)						
	Collateral management operations, securities lending/borrowing, repurchase transactions						
	Corporate actions and custody related operations						
	Others (please specify)						

ANNEX III

POTENTIAL RISKS TEMPLATE

I. General information for overall jurisdiction	
Date and reference number of report on potential risks by competent authority to ESMA	ISO 8601 date in the format YYYY-MM-DD-RefNumber1
Reporting period	ISO 8601 date in the format YYYY-MM-DD-YYYY-MM-DD
Date and reference number of quarterly reports by settlement internalisers to competent authority	ISO 8601 date in the format YYYY-MM-DD YYYY-MM-DD-RefNumber1, YYYY-MM-DD-RefNumber2...
Date and reference number of quarterly reports by settlement internalisers to competent authority submitted by competent authority to ESMA	ISO 8601 date in the format YYYY-MM-DD YYYY-MM-DD-RefNumber1, YYYY-MM-DD-RefNumber2...
Total number of transfer orders settled by settlement internalisers in the jurisdiction outside a securities settlement system	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
Total value (EUR) of transfer orders settled by settlement internalisers in the jurisdiction outside a securities settlement system	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
Total number of transfer orders settled by settlement internalisers in the jurisdiction outside a securities settlement system, split by country where the securities have been issued	For each country identified by the first two letters of each ISIN: Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
Total value (EUR) of transfer orders settled by settlement internalisers in the jurisdiction outside a securities settlement system, split by country where the securities have been issued	For each country identified by the first two letters of each ISIN: Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
Total number of transfer orders settled in securities settlement systems in the jurisdiction	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be



	populated. The decimal mark is not counted as a numerical character.			
Total value (EUR) of transfer orders settled in securities settlement systems in the jurisdiction	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.			
II. Identification of the reporting competent authority				
Name and contact details of the competent authority (main liaison, name, function, phone number, email address)	Name	Function	Phone	Email
III. Identification of any potential risks resulting from the internalised settlement activity in the jurisdiction				
Free text				
IV. Top settlement internalisers in the jurisdiction				
Top five settlement internalisers, based on number of transfer orders settled by settlement internalisers in the jurisdiction outside a securities settlement system	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code of each settlement internaliser, separated by comma			
Top five settlement internalisers, based on value (EUR) of transfer orders settled by settlement internalisers in the jurisdiction outside a securities settlement system	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code of each settlement internaliser, separated by comma			