



September 4, 2024

VIA ELECTRONIC TRANSMISSION

European Securities and Markets Authority (www.esma.europa.eu)
Attention: Your Input-Consultations

RE: Consultation Paper, Draft RTS on the information notified by third-country CSDs under Art.25(13) and 69(4a) of CSDR

The Depository Trust & Clearing Corporation (“DTCC”)¹ and its central securities depository subsidiary, The Depository Trust Company (“DTC”), appreciate the opportunity to comment on the above referenced consultation paper (the “Consultation”) that sets out draft Regulatory Technical Standards (“RTS”) in relation to the information that third-country CSDs (“TC CSDs”) will be required to notify ESMA when providing notary, central maintenance and/or settlement services in relation to financial instruments constituted under the laws of an EU Member State.²

DTCC recognizes the need for ESMA to issue the proposals described in the Consultation (the “proposals”) to fulfill the new notification obligations introduced by CSDR Refit (hereinafter referred to as “CSDR”).³ As stated in Articles 25(13) and 69(4a) CSDR, ESMA is to develop draft RTS to specify the information that TC CSDs are required to provide in the notification which shall be limited to what is strictly necessary, and where such data is

¹ DTCC is the parent company of three SEC licensed clearing agencies: DTC, the Fixed Income Clearing Corporation (“FICC”) and National Securities Clearing Corporation (“NSCC”). FICC and NSCC are central counterparties (CCPs) and have been recognized by ESMA as Tier 1 third country CCPs.¹

² See ESMA Consultation at [ESMA74-2119945925-1984 CSDR Refit Consultation Paper on third-country CSDs \(europa.eu\)](https://www.esma.europa.eu/press-news/esma-news/esma74-2119945925-1984-csdr-refit-consultation-paper-on-third-country-csds)

³ Regulation (EU) 2023/2845 of the European Parliament and of the Council of 13 December 2023 amending Regulation (EU) No 909/2014 as regards settlement discipline, cross-border provision of services, supervisory cooperation, provision of banking-type ancillary services and requirements for third-country central securities depositories and amending Regulation (EU) No 236/2012.



applicable and available,⁴ to gain a proper understanding of the provision of the services in the EU and inform potential actions on recognition. We support ESMA’s overall approach to the information requested. However, DTCC believes that some aspects of the proposals are unduly burdensome, while there are others that we request ESMA consider clarifying, such as the type and format of data being requested in certain of the notice templates. We also note that in some cases the reporting period and frequency of reporting appear to go beyond the scope ESMA’s legislative mandate, and we request that ESMA consider revising those provisions.

We discuss our comments in more detail below.

Background: DTC and its Services

DTC is a limited purpose trust company organized under the Banking Law of the State of New York and is also a state member bank of the Federal Reserve System (“FRS”) and a registered clearing agency under the U.S. Securities Exchange Act of 1934, as amended, regulated by the U.S. Securities and Exchange Commission (“SEC”). As a trust company, DTC is supervised by the New York State Department of Financial Services and, subject to examination by the Federal Reserve Bank of New York under delegated authority from the Board of Governors⁵ of the FRS. In July 2012, DTC was designated as a systemically important financial market utility (“SIFMU”) under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and it is a covered clearing agency under the SEC’s Standards for Covered Clearing Agencies. DTC is the U.S. central securities depository, and eligible securities deposited with DTC for book-entry transfer services are registered in the name of its nominee, Cede & Co., a New York partnership. DTC maintains securities accounts for its accountholders (“DTC Participants”) to which it credits interests in eligible securities deposited by DTC Participants and for which DTC provides depository, book-entry transfer, and securities settlement services in the U.S. DTC provides its services pursuant to rules and procedures (“DTC Rules”) that constitute its agreement with DTC Participants, expressly governed by New York law. The DTC Rules are public and are filed with and approved by the SEC.

⁴ Article 25(13) and Article 69(4a) CSDR.

⁵ See Standards for Covered Clearing Agencies, Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (hereinafter, the “Covered Clearing Agency Standards” or “CCAS.”)



Comments

1. Notification timing and reporting period

(a) Reporting Period – initial notifications

Article 69(4a) and Article (4b) CSDR (Transitional Provisions) require TC CSDs to submit initial one-off notifications to ESMA by January 16, 2026 (notary and central maintenance services) and January 17, 2026 (settlement services).⁶ ESMA states that CSDR requires these notifications to cover information "for the period between 17 January 2024 and 16 January 2026, where applicable and available." Because this timeframe would present significant challenges for TC CSDs submitting notifications in January 2026, ESMA proposes that the notification should at a minimum cover the information for the period between 17 January 2024 and 30 September 2025 with respect to notary and central maintenance services, and between 1 October 2024 and 30 September 2025 for settlement services.⁷

However, ESMA does not state the basis for its conclusion that the information to be provided must cover information for any two-year period and this approach does not appear to be supported by the language in Article 69 or Article 25 CSDR. Indeed, Article 25(13b) makes clear that the information required to be provided is information on the number and value of relevant transactions settled "in the previous year" – although it does not make clear whether this is the year ending on the date of the notification or the calendar year ending before the date of the notification. It is not clear why reporting information for a two-year period is therefore "strictly necessary" or otherwise consistent with the policy objectives ESMA is seeking to achieve. For example, data from 2024 may be out-of-date or irrelevant by the January 2026 notice deadline (e.g., bonds reported will have matured before this date) and DTCC believes that TC CSDs should only provide information under these new requirements that is current and timely. To better achieve this outcome, DTCC encourages ESMA to revise the proposal to provide for a reporting timeframe of one-year prior to the notification date.

⁶ Article 69(4a) CSDR provides that "A third-country CSD that provides the core services referred to in Section A, points 1 and 2, of the Annex in relation to financial instruments constituted under the law of a Member State referred to in Article 49(1), second subparagraph, pursuant to the applicable national rules on recognition of third-country CSDs shall notify ESMA thereof withing two years of 16 January 2024." Article 69(4b) provides that "A third-country CSD that provided the core services referred to in Section A, point 3, of the Annex in relation to financial instruments constituted under the law of a Member State referred to in Article 49(1) second subparagraph, before 17 January 2026 shall submit the notification referred to in Article 25(2a) by 17 January 2026."

⁷ RTS, Recitals (6) and (8).



(b) Ongoing notification obligation

As currently drafted, the RTS would require any TC-CSD that intends to provide settlement services to submit a yearly notification to ESMA, even where a TC CSD is already providing notifications to ESMA because it has recognition due to its provision of notary and/ or central maintenance services.⁸ In DTCC's view, an annual notification obligation imposed on TC-CSDs already subject to notification obligations pursuant to ESMA recognition status is overly burdensome and not strictly necessary. We understand the purpose of the notification requirement stems from the fact that TC-CSDs providing only settlement services do not have ESMA recognition, and therefore neither ESMA nor the relevant national competent authorities are able to obtain information about these kinds of TC-CSDs.⁹ However, for TC-CSDs already subject to ESMA recognition requirements because of the provision of notary and central maintenance services, ESMA can today, and under the proposed RTS will continue to be able to, obtain current information from the TC-CSDs' home regulators pursuant to the cooperation arrangements entered into between ESMA and the home regulator as a condition to recognition. Given that this cooperation framework is how CSDR envisages that EU authorities will obtain information in respect of recognised TC-CSDs, the need for such TC-CSDs to also provide additional notifications to ESMA in connection with settlement services is simply redundant.¹⁰

2. Content of the notifications

DTCC evaluated each of the Articles¹¹ in the context of the markets served and services provided by DTC, our current reporting practices and other related factors. With those considerations in mind, we reviewed the Tables in the Annexes to determine if it is clear what information is being requested and whether DTC has the data and if so, if it is maintained in the format and manner to be provided. As is described in the examples below, we identified requests

⁸ RTS, Article 2, Section (3).

⁹ RTS, Recital 27 provides that TC-CSDs providing notary, central maintenance and/or settlement services are required to be recognized by ESMA to continue to provide those services, and that a TC CSD providing only settlement services is not subject to recognition requirements

¹⁰ DTC further notes that if the ongoing notification requirement with respect to settlement services is maintained, it should only apply after 17 January 2026. We are suggesting this since as currently drafted, Article 2(3) of the proposed RTS would require a notification on 1 April following the RTS entering into force which could be earlier than 17 January 2026.

¹¹ RTS, Article 1(Notification in relation to notary services and to central maintenance services, Article 2 (Notification in relation to settlement services), and Article 3 (Calculation requirements).



in the Articles that we believe require additional clarity from ESMA. Some of these requests for clarity arise due to differences in the respective EU and U.S. market conventions for securities holdings, as well as differences in existing regulatory terms across the two jurisdictions. We also noted certain types of requests that we believe go beyond either the “where applicable and available”¹² or “strictly necessary” standards.

(a) RTS Article 1 (Notification in relation to notary services and central maintenance services)

It is not clear whether the information required to be provided by Article 1 (One-off notification under Article 69(4a) in relation to notary services and to central maintenance services) relates solely to information concerning relevant financial instruments and participants located in the EU. While Article 25(13) CSDR is clearly limited in this way as reflected in Article 2 of the draft RTS (One-off notification under Article 69(4b) and ongoing notification obligation under Article 25(2a) in relation to securities settlement services), Article 69(4a) is not explicitly limited in the same way.¹³ However, DTCC believes that Article 1 should in fact be limited to relevant financial instruments and participants in the EU on the basis that Article 69(4a) requires the RTS to be “limited to what is strictly necessary” and Article 69(4a) refers to “the services referred to in the second subparagraph” which are limited to relevant financial instruments. DTCC therefore requests clarification on this point so TC CSDs know what information is required in Table 2 of Annex II (e.g., data covering the number of participants to which central maintenance services are provided).

In Article 1(c),¹⁴ for central maintenance services, the RTS should clarify whether the “jurisdiction in which services are provided” is: (i) the jurisdiction of the TC CSD participant; or (ii) the EU jurisdiction where the issuer of the relevant financial instrument is incorporated or the EU jurisdiction whose law governs the relevant financial instrument where this jurisdiction is different to the jurisdiction where the issuer is incorporated. However, if (i) is the applicable

¹² RTS, Article 1(2) and Article 2(2) make clear that TC CSDs are only required to provide the specified information “where applicable and available” in line with Article 25(13) and Article 69(4a).

¹³ Article 25(13) requests information as to “(a) the number of participants *located in the Union* (emphasis added) to whom the third-country CSD provides or intends to provide the services referred to in paragraph 2a. Whereas, Article 69(4a) refers to “(a) the number of participants to whom the third-country CSD provides or intends to provide the services referred to in the second paragraph.”

¹⁴ RTS Article 1(c) corresponds to the information requested in Annex II, Table 2 (Participants (for central maintenance services)).



concept, then DTCC would point out that this data item is duplicative of the jurisdiction of the participant required under column three of Table 2, and we therefore request that column three be removed.

In Article 1(d),¹⁵ the RTS should clarify how TC CSDs should calculate the total number and value of financial instruments given that the notification is not a point-in-time notification. In other words, it is unclear how TC CSDs should count financial instruments which reach maturity during the reporting period and/or where the values will vary over time.

(b) RTS Article 2 (Notification in relation to settlement services)

Article 2(1)(c)¹⁶ requires a breakdown of the number and the value of the "settlement instructions" in relation to relevant financial instruments. We have several practical concerns with this section of the notification template. First, categorising relevant financial instruments cleared by DTC based on the types of financial instruments in the notice template must be done by reference to EU concepts, which will be time-consuming and challenging for DTC to reconcile against applicable U.S. classifications. For example, the categories of financial instruments to be provided include: (a) transferable securities referred to in Article 4(1), point (44)(a) of Directive 2014/65/EU, (b) sovereign debt referred to in Article 4(1)(61) of Directive 2014/65/EU, and (c) transferable securities referred to in Article 4(1), point 44(c) of Directive 2014/65/EU. DTC does not currently maintain records of its securities holdings in such formats because it is not subject to any of the Directives referred to in the definitions of the categories immediately described. We have similar concerns regarding Article 2(2)(d)(iii) that requires categorizing the method of cash settlement against Article 40(1) and (2) CSDR. It is DTCC's understanding that Article 40 CSDR (Cash Settlement) does not apply to TC CSDs based on the fact that it is within Chapter II, Section 3 CSDR, which covers requirements applicable to CSDs located in the Union and thus, it is not clear why this information would be considered "strictly necessary." Secondly, Article 2(1)(c)(iv)¹⁷ requires information on the type of settlement instruction. DTC classifies settlement information at the transaction level, not at the security level and we do not maintain reporting for settlement volume or values at an issuer level. Therefore, if this requirement remains in the final RTS, DTC will need to engage in system

¹⁵ RTS Article 1(d) corresponds to the information requested in Annex II, Table 3 (Financial Instruments (both for notary services and for central maintenance services)).

¹⁶ RTS Article 2(1)(c) corresponds to the information requested in Annex III, Table (Transaction in financial instruments under the laws of an EU Member State).

¹⁷ RTS Article 2(1)(c) corresponds to the information requested in Annex III, Table 2 (Transaction in financial instruments under the laws of an EU Member State) and Table 3 (Instructions settlement by a participant located in the EU).



changes to generate the information in accordance with the format and calculation requirements in RTS Article 3. We therefore request that TC-CSDs that require technology and/or associated operational changes to complete the notification be provided with additional time to do so that takes into consideration the time and cost incurred to complete the notification.

With respect to the data to be provided about services provided to EU participants through links (See Annex III, Table 1, “type of link),” DTC does not consider this information as “strictly necessary” because it is redundant to the information already publicly disclosed by CSDs through their PFMI disclosures and the information ESMA already receives from EU CSDs about their links with TC CSDs, among other financial market infrastructures.¹⁸ We therefore request that this column be removed from the applicable Table.

We appreciate the opportunity to comment on the Consultation and ESMA’s consideration of our views. We would be glad to meet with ESMA to discuss further.

Very truly yours,

Brian Steele
Managing Director
President, Clearing & Securities Services

¹⁸ Link to the register of EU CSDs: https://www.esma.europa.eu/sites/default/files/library/esma70-155-11635_csds_register_art_21.pdf



