

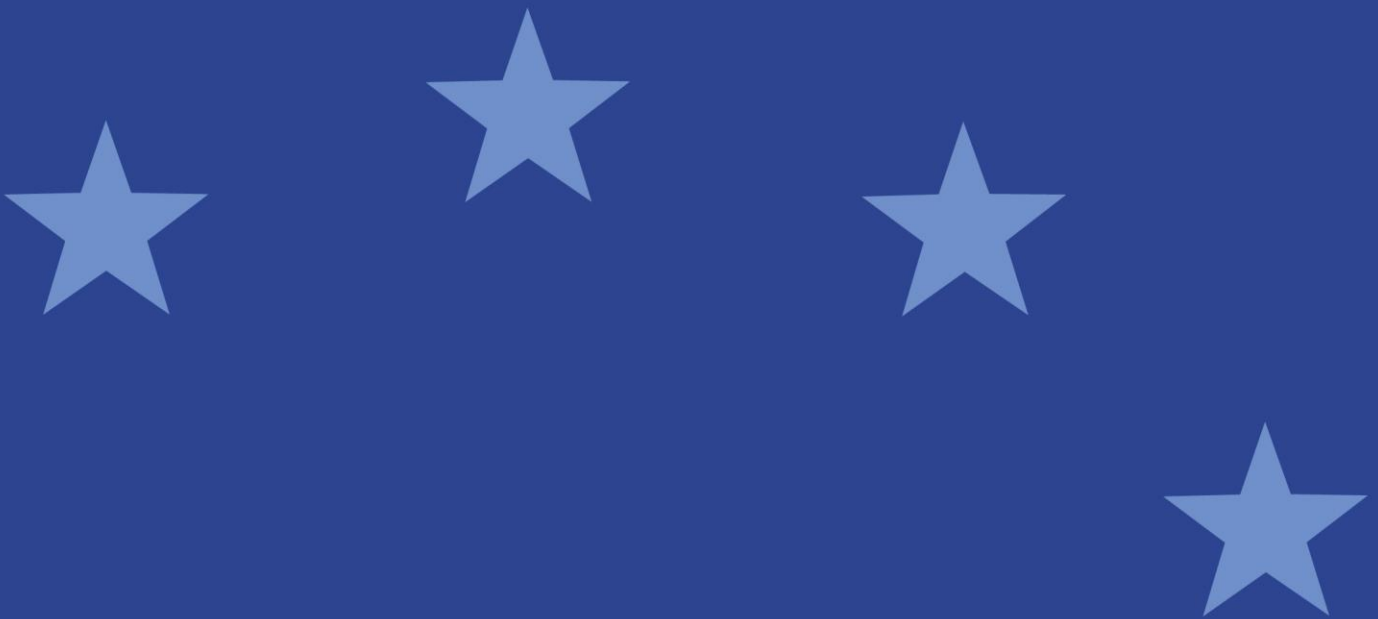


European Securities and
Markets Authority

2 June 2017

Questions and Answers

Implementation of the Regulation (EU) No 909/2014 on improving securities settlement in the EU and on central securities depositories



1. Background

1. 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 and amending Directives 98/26/EC and 2014/65/EC and Regulation (EU) No 236/2012 (“**CSDR**”) entered into force on 17 September 2014. Most of the obligations under the CSDR needed to be specified further via regulatory technical standards and they will take effect following the entry into force of the technical standards. On 11 November 2016, the European Commission adopted the regulatory technical standards developed by ESMA. These technical standards were published in the Official Journal on 10 March 2017.
2. The CSDR framework is made up of the following EU legislation:
 - (a) CSDR;
 - (b) Commission Delegated Regulation (EU) 2017/389 of 11 November 2016 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council as regards the parameters for the calculation of cash penalties for settlement fails and the operations of CSDs in host Member States (“**Delegated Act**”);
 - (c) Commission Delegated Regulation (EU) No 2017/390 of 11 November 2016 supplementing Regulation (EU) No 909/2014 of the European Parliament of Council of 23 July 2014 with regard to regulatory technical standards on prudential requirements for central securities depositories and designated credit institutions offering banking-type ancillary services (“**RTS on CSD Prudential Requirements**”);
 - (d) Commission Delegated Regulation (EU) 2017/391 of 11 November 2016 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards further specifying the content of the reporting on internalised settlements (“**RTS on Internalised Settlement**”);
 - (e) Commission Delegated Regulation (EU) 2017/392 of 11 November 2016 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on authorisation, supervisory and operational requirements for central securities depositories (“**RTS on CSD Requirements**”);
 - (f) Commission Implementing Regulation (EU) 2017/393 of 11 November 2016 laying down implementing technical standards with regard to the templates and procedures for the reporting and transmission of information on internalised settlements in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council (“**ITS on Internalised Settlement**”); and

(g) Commission Implementing Regulation (EU) 2017/394 of 11 November 2016 laying down implementing technical standards with regard to standard forms, templates and procedures for authorisation, review and evaluation of central securities depositories, for the cooperation between authorities of the home Member State and the host Member State, for the consultation of authorities involved in the authorisation to provide banking-type ancillary services, for access involving central securities depositories, and with regard to the format of the records to be maintained by central securities depositories in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council (**“ITS on CSD Requirements”**).

3. In addition, the CSDR framework is expected to be complemented by the delegated acts to be adopted by the European Commission pursuant to Articles 6(5) and 7(15) of CSDR, based on ESMA draft regulatory technical standards submitted to the European Commission on 2 February 2016 (**“RTS on settlement discipline”**);
4. The European Commission has already released some Frequently Asked Questions to clarify the timing and the scope of CSDR¹.
5. In view of ESMA’s statutory role to build a common supervisory culture by promoting convergent supervisory approaches and practices, ESMA has adopted this Q&As document which relates to the consistent application of CSDR. The first version of this document was published on 13 March 2017. This document is expected to be updated and expanded as and when appropriate.

2. Purpose

6. The purpose of this document is to promote common supervisory approaches and practices in the application of CSDR. It provides responses to questions posed by the general public, market participants and NCAs in relation to the practical application of CSDR.
7. This document is addressed to NCAs under the CSDR to ensure that in their supervisory activities their actions are converging along the lines of the responses adopted by ESMA. It should also help, CSDs, their participants, investors and other market participants by providing clarity on the implementation of CSDR requirements.

3. Status

8. The Q&A mechanism is a practical convergence tool used to promote common supervisory approaches and practices under Article 29(2) of the ESMA Regulation².
9. Therefore, due to the nature of Q&As, formal consultation on the draft answers is considered unnecessary. However, even if they are not formally consulted on, ESMA may check them with representatives of

¹ [EU FAQs on Regulation \(EU\) No 909/2014](#)

² 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 Regulation, 15.12.2010, L331/84.

ESMA's Securities and Markets Stakeholder Group, the relevant Standing Committees' Consultative Working Group or, where specific expertise is needed, with other external parties. In this particular case, considering the date of application of CSDR and the desirability of providing clarity to the market as soon as possible, ESMA has not engaged in such consultations.

10. ESMA will periodically review these questions and answers to identify if, in a certain area, there is a need to convert some of the material into ESMA Guidelines and Recommendations. In such cases, the procedures foreseen under Article 16 of the ESMA Regulation would be followed.

4. Questions and answers

11. This document is intended to be continually edited and updated as and when new questions are received. The date on which each section was last amended is included for ease of reference.

12. Questions on the practical application of any of the requirements of CSDR, including the requirements in CSDR technical standards, may be sent to ESMA using the procedure described on the [Q&As page of the website](#)³.

³ <https://www.esma.europa.eu/questions-and-answers>



Acronyms Used

CCP	Central counterparty
CSD	Central securities depository
CSDR	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 and amending Directives 98/26/EC and 2014/65/EC and Regulation (EU) No. 236/2012
EC	European Commission
ECB	European Central Bank
ESMA	European Securities and Markets Authority
ITS	Implementing technical standards
ITS on CSD Requirements	Commission Implementing Regulation (EU) 2017/394 of 11 November 2016 laying down implementing technical standards with regard to standard forms, templates and procedures for authorisation, review and evaluation of central securities depositories, for the cooperation between authorities of the home Member State and the host Member State, for the consultation of authorities involved in the authorisation to provide banking-type ancillary services, for access involving central securities depositories, and with regard to the format of the records to be maintained by central securities depositories in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council
NCA	National competent authority
Q&A	Question and answer
RTS	Regulatory technical standards
RTS on CSD Requirements	Commission Delegated Regulation (EU) No 2017/390 of 11 November 2016 supplementing Regulation (EU) No 909/2014 of the European Parliament of Council of 23 July 2014 with regard to regulatory technical standards on prudential requirements for central securities depositories and designated credit institutions offering banking-type ancillary services
RTS on Settlement Discipline	the delegated acts to be adopted by the EC pursuant to Articles 6(5) and 7(15) of CSDR, based on ESMA draft regulatory technical standards submitted to the EC on 2 February 2016

Table of questions

		Topic of the Question	Relevant Article	Last Updated
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	6	Prudential requirements – Operational risks	Art 45 of CSDR	2 June 2017
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General Questions

Last update 31 March 2017

General Question 1 [last update 13 March 2017]

Ancillary services

What does "providing regulatory reporting", the ancillary service mentioned in Section B point 4(b) of the Annex to CSDR, include?

General Answer 1

This service can be identified in cases where a user of a CSD has a regulatory obligation to provide certain information to its NCA and the CSD takes care of such reporting with the NCA on behalf of its user.

For the sake of clarity, this service cannot be identified in cases where the regulatory obligation to report certain information in respect of its users is imposed directly on the CSD.

General Question 2 [last update 31 March 2017]

Additional national requirements

Can Member States set additional requirements for CSDs to those set out in CSDR under national legislation?

General Answer 2

Article 1(1) and (2) of CSDR state that the Regulation lays down uniform requirements for settlement and rules on the organisation and conduct of CSDs, and that – unless otherwise specified in this Regulation – it applies to settlement in all financial instruments and activities of CSDs.

Such requirements that are allowed to be imposed by Member States are for instance mentioned in Article 38(5), second subparagraph, and explained in recital (42) of CSDR.

Against this background, the Member States should not set additional requirements in respect of the aspects harmonised by the CSDR unless otherwise provided by the CSDR itself. There might be however cases in which it is not clear whether a certain aspect has been harmonised. In those cases, a case-by-case analysis may be warranted.

Part II: Central Securities Depositories (CSD)

Last update 2 June 2017

CSD Question 1 [last update 13 March 2017]

Authorisation and supervision of CSDs

- (a) *When do the relevant deadlines pertaining to the review of a CSD's application for authorisation under CSDR (including six months for a final decision) begin? Can the clock be stopped on application deadlines when an NCA is waiting for further information from the CSD?*
- (b) *Do the procedures referred to in Article 20(5) of CSDR include also the transfer of issuance accounts and records linked to the provision of the notary or central maintenance services referred to in points 1 and 2 of Section A of the Annex to CSDR?*

CSD Answer 1

- (a) Article 17(8) of CSDR provides that the NCA shall inform an applicant CSD of its decision to authorise it or not "*within six months from the submission of a complete application*".

The relevant deadlines pertaining to the review of a CSD's application for authorisation under CSDR (including six months for a final decision) do not begin until the CSD has submitted an application which the NCA deems complete, *i.e.* the 'clock' does not start until the application is considered to be complete. However, once the NCA has deemed an application complete, this constitutes confirmation that it has the information necessary to assess the CSD's compliance.

- (b) In order to ensure the continuity and integrity of securities issues in relation to which a CSD provides the notary or central maintenance services, as well as the possibility for transferable securities to be traded on trading venues and to be subject to financial collateral arrangements in accordance with Article 3(2) of CSDR, the procedures referred to in Article 20(3) of CSDR should also cover the transfer of any issuance accounts and records to another CSD, which is able to provide the notary or central maintenance services in relation to the respective securities.

CSD Question 2 [last update 31 March 2017]

Organisational requirements: general

- (a) *Can a CSD have a combined audit and risk committee?*
- (b) *Should each of the risk, audit and remuneration committees be composed of entirely different members?*
- (c) *Which information is a CSD required to submit about changes in its management (board members and CEO)?*
- (d) *Article 27(2) of CSDR requires that "at least one third, but no less than two, of [the] members [of the management body] are independent". What does "independent" mean in respect of members of the management body?*

- (e) Are there any staff or category of staff that a CSD may not share with another entity of the same group of companies?

CSD Answer 2

- (a) No, the intention in Article 48 of the RTS on CSD Requirements is to have three separate committees for risk, audit, and remuneration.
- (b) No, there is no such requirement in CSDR. However, to ensure a separation between the committees, the chairs of each committee as well as the majority of their members should be different. In addition, conflicts of interest should be managed in respect of persons participating in more than one committee.
- (c) If there is a change in its management the CSD should provide information in the following cases:

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

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

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

- Upon request from CA: It should be noted that under Article 40(1)(c) of the RTS on CSD Requirements, a NCA may also request the provision of any additional information that is “*necessary for assessing the compliance of the CSD and its activities with the provisions of [CSDR and relating regulations]*”.

- (d) CSDR does not provide a definition of the term “independent member”. This being said, Article 27(3) of CSDR provides that “*the remuneration of the independent and other non-executive members of the management body shall not be linked to the business performance of the CSD.*” It may be inferred from this provision that “independent members” should be, at least, non-executive members of the management of the CSD.

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

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

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

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

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

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

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

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

Even though nothing is provided in respect of other functions, it is expected that for the sharing of personnel exercising any function in the CSD, the same requirements should apply.

CSD Question 3 [last update 31 March 2017]

Organisational requirements: Record keeping - Article 29 of CSDR

- (a) *When will the CSD record keeping requirements under CSDR and the related technical standards start applying?*
- (b) *Can a CSD only validate the format of the data field for an LEI and not check that the LEI actually exists and that it belongs to the said entity?*

*Article 55(2)(a) of the RTS on CSD Requirements
Annex IV, Field 1 of Table 2 on Position (Stock) Records of the ITS on CSD Requirements*

- (c) *Can a CSD refuse to complete field 16 of Table 2 (Types of securities account) on the basis that only the participant knows the usage?*

*Article 55(3)(b) of the RTS on CSD Requirement
Annex IV, Field 16 of Table 2 on Position (Stock) Records of the ITS on CSD Requirements*

- (d) *What is the point in time where settlement instructions are considered as 'failing settlement instructions'?*
- (e) *Should the record keeping requirements applying to the provision of ancillary services listed in the CSDR Annex also apply to the provision by a CSD of an ancillary service that is not precisely listed in the CSDR Annex?*
- (f) *Under rules implementing Articles 22 and 29 of CSDR, CSDs must record the LEIs of the issuers pertaining to the financial instruments in respect of which CSDs provide notary or central maintenance services. What action should be taken by CSDs in order to obtain the LEIs of issuers?*

CSD Answer 3

- (a) The CSD record keeping requirements under CSDR and the related technical standards will start applying from the date of authorisation of each CSD under CSDR, except for Article 54 (Transaction/Settlement Instruction (Flow) Records) of the RTS on CSD Requirements and Article 11(1) of the ITS on CSD Requirements, which apply as of date of entry into force of the RTS on Settlement discipline.
- (b) No. The notary function is a core service provided by a CSD. The CSD has a responsibility to verify that it has the correct credentials in place for issuers that wish to issue securities into its system. The CSD should verify that the LEI is for the correct entity, and that it is current (i.e. the status of the LEI shall be either "Issued", "Pending Transfer" or "Pending archival").

If the CSD finds out that the LEI status of an issuer is not current, it should put in place enforceable rules according to which appropriate validation should be carried out upstream by an issuer's agents, so that accurate up-to-date details are provided. This should apply in relation to all the information that issuers have to provide to CSDs under CSDR.
- (c) No. A participant need to know these details at all times, and a CSD should require in its rules that the participant disclose the account type to it and inform it of any updates.
- (d) Settlement instructions are considered as 'failing settlement instructions' from the moment when settlement at the Intended Settlement Date (ISD) is no longer possible, i.e. if they are still pending on the ISD after the settlement processing related to the respective settlement instructions submitted by the relevant cut-off time has been completed. The cut-off time is the deadline set by a system or an agent bank for the acceptance of transfer orders for a given settlement cycle, for the relevant settlement instructions, i.e. there could be different cut-off times for different settlement instructions.
- (e) The NCA should assess on a case by case basis whether an ancillary service provided by a CSD falls within one of the types of ancillary services listed in the CSDR Annex. If this is the case, the NCA should require the CSD to comply with the corresponding record keeping requirements specified in Annex II to the RTS on CSD Requirements. If this is not the case, i.e. the ancillary service does not fall within a type of ancillary services expressly listed in the CSDR Annex, the NCA should assess on whether the records kept by the CSD are adequate for the service provided.
- (f) CSDs should require in their rules that all issuers obtain and provide current LEI codes (cf. point (b) above).

For issuers of securities issues that will occur after the entry into force of the requirements for CSDs to record LEIs for issuers, CSDs should not accept new securities issues from issuers which cannot provide the CSD with an LEI that is current (cf. point (b) above).

For issuers of securities issues that have occurred before the entry into force of the requirements for CSD to record LEIs, the CSDs should inform the issuers pertaining to the securities in respect of which the CSD provide notary service or central maintenance service of their obligation to obtain an LEI that is current (cf. point (b) above).

CSD Question 4 [last update 13 March 2017]

Conduct of business rules - Article 35 of CSDR

Does Article 35 of CSDR allow CSDs to use internal or proprietary messaging standards in their communication procedures with participants of the securities settlement system?

CSD Answer 4

Article 35 of CSDR expressly requires that CSDs use “*international open communication procedures and standards with participants and market infrastructures*” and allows for no flexibility, therefore internal or domestic messaging standards would not fulfil this requirement, even with a mapping from domestic standards to international open communication procedures and standards such as the SWIFT/ISO standards.

CSD Question 5 [last update 31 March 2017]

Protection of securities of participants and those of their clients - Article 38 of CSDR

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

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

CSD Answer 5

- (a) Article 38(5) of CSDR applies to all participants of a CSD as of the authorisation of such CSD. Therefore, participants should be ready to “offer their clients at least the choice between omnibus client segregation and individual client segregation and inform them of the costs and risks associated with each option” at the time of the authorisation of the CSD that operates the securities settlement system in which they are participants. CSDs should be able to prove to their NCAs that they comply with Article 38 of CSDR, as this is one of the conditions to be granted authorisation under CSDR. This implies that CSDs need to coordinate with their participants (before they are granted authorisation under CSDR), in order to ensure that they take the necessary measures to be compliant with Article 38 of CSDR.
- (b) All clients (existing and new) should be offered the choice between omnibus client segregation and individual client segregation, and be informed of the costs and risks associated with each option.

CSD Question 6 [last update 2 June 2017]

Prudential requirements - Operational risks:

- (a) *Is the definition of a “critical service provider” referred to in Article 68 of the RTS on CSD Requirements restricted to a party that has a contract to provide services to the CSD?*
- (b) *Article 69 of the RTS on CSD Requirements refers to measures to be put in place to mitigate operational risks in the context of arrangements between a CSD and other market infrastructures. Does the reference to “market infrastructures” include trading venues?*
- (c) ****new*** Do overnight deposits with a central bank, an authorised credit institution or a CSD authorised to provide banking-type ancillary services fulfill the requirements specified in Article 82(1) of the RTS on CSD Requirements?*

CSD Answer 6

- (a) No. A contract for the provision of services is not necessary to identify a critical service provider – however, once a service provider has been identified as critical by the CSD, in accordance with Article 68, the CSD needs to put in place adequate contractual and organisational arrangements with the respective provider “before any relationship with such providers becomes operational”.
- (b) Yes. According to Article 53 of CSDR, market infrastructures include trading venues. Therefore, the same concept should apply to the RTS.
- (c) A CSD can use overnight deposits and other time deposits with a central bank, an authorised credit institution or a CSD authorised to provide banking-type ancillary services, provided that the CSD can have immediate and unconditional access to its respective cash assets.

CSD Question 7 [last update 31 March 2017]

Provision of banking-type ancillary services - Articles 54 et seq. of CSDR

Which are the participants' competent authorities responsible for the supervision of the participants of the CSD that are established in the three Member States with the largest settlement values in the CSD's securities settlement system pursuant to Article 55(4)(e) of CSDR?

CSD Answer 7

In order to determine which authorities should be involved under Article 55(4)(e) of CSDR, a CSD's NCA should first identify the three relevant Member States for this purpose and then identify the competent authorities of the participant in each of these Member States.

To identify the three relevant Member States, a CSD's NCA should (i) calculate the aggregate settlement values in each of the CSD's securities settlement system of each and every participant over a one-year period, (ii) aggregate such values by Member State and (iii) determine which are the top three Member States.

The authorities referred to in Article 55(4)(e) of CSDR will be the competent authorities of the participants located in these top three Member States. Where more than one competent authority is established for the relevant participant, they can all be entitled to receive the relevant information and issue reason opinions.

***new* CSD Question 8** [last update 2 June 2017]

Access to CSDs

Article 49(2) of CSDR provides that a CSD shall provide a response to an access request from an issuer within three months. If the CSD asks the requesting issuer for additional information, does it automatically entail an extension of the three-month period?

CSD Answer 8

No, CSDR does not provide CSDs with any possibility to extend this three-month period. If the request submitted by an issuer does not satisfy the access conditions set out by it, the CSD can, based on a comprehensive risk assessment, refuse to grant access to such issuer. In that case, as specified in Article 49(4) of CSDR, the issuer shall have the right to complain to the competent authority of the CSD.

new CSD Question 9 [last update 2 June 2017]

Provision of services in other Member States

Article 23(3) of CSDR relates to the provision of notary and central maintenance services in another Member State. Its paragraph (e) specifically provides that “where relevant, [a CSD shall communicate to the NCA of the home Member State] an assessment of the measures the CSD intends to take to allow its users to comply with the national law referred to in Article 49(1)” i.e. the corporate law of the Member State under which the securities are constituted.

- i. Does this requirement apply to all types of securities (shares, bonds, etc.)?*
- ii. What type of assessment should the CSD provide to the home Member State NCA?*

CSD Answer 9

- i. Yes, Article 23(3)(e) of CSDR applies to all types of securities (as defined under Article 2(8) of CSDR).
- ii. National laws referred to in Article 49(1) of CSDR govern the relationship between issuers and holders of such securities or any third party, such as ownership rights, voting rights, dividends and corporate action, which for the sake of clarity, is not the national law of the home NCA that will receive this communication.

Therefore, to assess that these measures allow its users to comply with the applicable securities law, the CSD should not only communicate the measures it intends to take and the procedure it intends to follow, but should also provide actual evidence that the proposed measures ensure compliance. To that end, independent legal opinions may be requested in order to certify that the rules and procedures set out by the CSD allow their users to comply with each applicable national law.