EUROPEAN PARLIAMENT 2009 - 2014

Plenary sitting

A7-0039/2013

13.2.2013

***I

REPORT

on the proposal for a regulation 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/EC

(COM(2012)0073 – C7-0071/2012 – 2012/0029(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Kay Swinburne

Symbols for procedures

*	Consultation procedure
***	Consent procedure
***I	Ordinary legislative procedure (first reading)
***II	Ordinary legislative procedure (second reading)
***III	Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: **[...]**.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation 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/EC
(COM(2012)0073 – C7-0071/2012 – 2012/0029(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2012)0073),

– having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0071/2012),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to the opinion of the European Central Bank of 1 August 2012[1],

– having regard to the opinion of the European Economic and Social Committee of 11 July 2012[2],

– having regard to Rule 55 of its Rules of Procedure,

– having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on Legal Affairs (A7-0039/2013),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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1 OJ C 310, 13.10.2012, p. 12.
2 OJ C 299, 4.10.2012, p. 76.

Amendment 1

AMENDMENTS BY THE EUROPEAN PARLIAMENT*

to the Commission proposal

REGULATION 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/EC

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national *parliaments*,

Having regard to the opinion of the European Central Bank[1],

Having regard to the opinion of the European Economic and Social Committee[2],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Central Securities Depositories (CSDs), along with *central counterparties* (CCPs) contribute to a large degree in maintaining post trade infrastructures that safeguard financial markets and give market participants confidence that securities transactions are executed properly and in a timely manner, including during periods of extreme stress. ***Noting the systemic relevance of market infrastructures, including CSDs and***

* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol ▌.

1 OJ C 310, 13.10.2012, p. 12.

2 OJ C 299, 4.10.2012, p. 76..

CCPs, it is important to increase competition for post trade services, whereby it is possible for investors to switch easily between service providers to ensure continuity of services and transactions and avoid over-reliance on 'too big to fail' market infrastructure which the taxpayer would have to bail out. This will also lower investment costs, eliminate inefficiencies and foster innovation in Union markets.

(1a) The creation of an integrated market for securities settlement, with no distinction between national and cross-border securities transactions is needed for the proper functioning of the internal market. Market-driven transformation from national settlement systems into a more integrated market has, for various reasons, proven to be very slow. It is assumed that operation of securities settlement systems needs to be more open to competition and user participation to allow for faster market driven development of more efficient settlement models and interoperability standards. While this Regulation focuses mainly in increasing competition and addressing systemic risks, it is acknowledged that it takes only the first step towards a fully integrated post-trade environment. However, before taking further steps, the development of the settlement efficiency and best practices needs to take place in a market-driven way. Securities in book-entry form should be able to be processed in an efficient, timely way with no overlapping processes and ensuring efficient information for the different needs of public authorities. Inspiration may also be sought from the development of the Single European Payments Area where the same is being achieved in transactions with money.

(2) Due to their ***key*** position ***in*** the settlement process, the securities settlement systems operated by CSDs are of a systemic importance for the functioning of securities markets. ***The*** securities settlement systems ***and the account systems*** operated by CSDs also serve as an essential tool to control the integrity of an issue, ***that is, hindering unwarranted creation or reduction of issued securities and thereby*** playing an important role in maintaining investor confidence. Moreover, securities settlement systems operated by CSDs are closely involved in ***securing collateral for*** monetary policy operations as well as in the collateralisation process between credit institutions and are, therefore, important actors in the ***collateralisation processes***.

(3) While Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems[1] reduced the disruption to a securities settlement system caused by insolvency proceedings against a participant in that system, it is necessary to address other risks that securities settlement systems are facing, as well as the risk of insolvency or disruption in the functioning of the CSDs that operate securities settlement systems. A number of CSDs are subject to credit and liquidity risks deriving from the provision of banking services ancillary to settlement.

(4) The increasing number of cross-border settlements as a consequence of the development of link agreements between CSDs calls into question the resilience, in the absence of common prudential rules, of CSDs when importing the risks encountered by CSDs from other Member States. Moreover, despite the increase in

[1] OJ L 166, 11.6.1998, p. 45.

cross-border settlements, the settlement markets in the Union remain fragmented and cross-border settlement more costly, due to different national rules regulating settlement and the activities of CSDs and limited competition between CSDs. This fragmentation hinders and creates additional risks and costs for cross-border settlement. In the absence of identical obligations for market operators and common prudential standards for CSDs, likely divergent measures taken at national level will have a direct negative impact on the safety, efficiency and competition in the settlement markets in the Union. It is necessary to remove those significant obstacles in the functioning of the internal market and avoid distortions of competition and to prevent such obstacles and distortions from arising in the future. Consequently, the appropriate legal basis for this Regulation should be Article 114 of the Treaty on the Functioning of the European Union *(TFEU)*, as interpreted in accordance with the consistent case law of the Court of Justice of the European Union.

(5) ***An open internal market in securities needs to provide complete reachability, meaning that any investor can invest in all Union securities with the same ease and by using the same familiar processes as for domestic securities. It should be sufficient for an investor to use the services of one custodian in order to invest in any Union securities.*** It is necessary to lay down in a Regulation a number of uniform obligations to be imposed on market participants regarding certain aspects of the settlement cycle and discipline and to provide a set of common requirements for ***operators of*** securities settlement systems. The directly applicable rules of a Regulation should ensure that all market operators and CSDs are subject to identical directly applicable obligations***, standards*** and rules. A Regulation should increase the safety and efficiency of settlement in the Union by preventing any diverging national rules as a result of the transposition of a directive. A Regulation should reduce the regulatory complexity for market operators and CSDs resulting from different national rules and should allow CSDs to provide their services on a cross-border basis without having to comply with different sets of national requirements such as those concerning the authorisation, supervision, organisation or risks of CSDs. A Regulation imposing identical requirements on CSDs should also contribute to eliminating competitive distortions. ***This Regulation should therefore be applied symmetrically in the event that a CSD acquires a banking licence or a bank acquires authorisation to operate a CSD. A CSD might be established in any Member State. No Member State or group of Member States should be discriminated against directly or indirectly, as a venue for CSD and settlement services. Nothing in this Regulation should attempt to restrict or impede a CSD in one jurisdiction from settling a product denominated in the currency of another Member State or in the currency of a third country.***

(5a) This Regulation should recognise and support the existing CSD models of all Member States and the services they provide, which have developed to meet the specific needs of their national financial markets, their national economy and companies, and to comply with their Member State's laws. This Regulation should not make changes to existing CSD models or services unless they cannot meet the objectives of the Regulation or they pose undue risks.

(6) The Financial Stability Board (FSB) called, on 20 October 2010[1], for more robust core market infrastructures and asked for the revision and enhancement of the existing standards. The Committee on Payments and Settlement Systems (CPSS) of the Bank of International Settlements (BIS) and the International Organisation of Securities Commissions (IOSCO) ***have finalised*** global *principles*. These ***have replaced*** the BIS recommendations from 2001, which were adapted through non-binding guidelines at European level in 2009 by the European System of Central Banks (ESCB) and the Committee of European Securities Regulators (CESR). ***This Regulation should complement these new global principles.***

(6a) Where possible, the CPSS-IOSCO principles for financial market infrastructure, established on 12 April 2012, should be applied by market participants, as well as by the European Supervisory Authority (European Securities and Markets Authority) (ESMA), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council[2] and by the Commission when fulfilling their obligations under this Regulation.

(7) The Council, in its conclusions of 2 December 2008[3], emphasised the need to strengthen the safety and soundness of the securities settlement systems, and to address legal barriers to post-trading in the Union.

(8) One of the basic tasks of the ESCB is to promote the smooth operation of payment systems. In this respect, the members of the ESCB execute oversight by ensuring efficient and sound clearing and payment systems. The members of the ESCB often act as settlement agents for the cash leg of the securities transactions. They are also important clients of CSDs, which often manage the collateralisation of monetary policy operations. The members of the ESCB should be closely involved ***and be*** consulted in the authorisation and supervision of CSDs, recognition of third country CSDs and the approval of CSD links***. To prevent the emergence of parallel sets of rules, they*** should also be ▌ involved ***and be*** consulted ***where necessary*** in the setting of regulatory and implementing technical standards as well as of guidelines and recommendations. The provisions of this Regulation ***are*** without prejudice to the responsibilities of the European Central Bank (ECB) and the National Central Banks (NCBs) to ensure efficient and sound clearing and payment systems within the Union and other countries ***and should not include systems within the meaning of Directive 98/26/EC that have been set up by mutual agreement. Access to information by the members of the ESCB is important for the adequate performance of their oversight of financial market infrastructures and financial stability as well as to the functioning of central banks*** .

(9) Member States' central banks or any other bodies performing similar functions in certain Member States, such as the Member States national bodies charged with or intervening in the management of the public debt may themselves provide a number of

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1 FSB "Reducing the moral hazard posed by systemically important financial institutions", 20 October 2010.

2 *OJ L 331, 15.12.2010, p. 84.*

3 Conclusions of 2911th Council meeting, ECOFIN, 2 December 2008.

services which would qualify them as a CSD. Such institutions should be exempt from the authorisation and supervision requirements, but should remain subject to the ***appropriate*** set of prudential requirements for CSDs. Since central banks act as settlement agents for the purpose of settlement, they should also be exempt from the requirements set out in Title IV of this Regulation.

(10) This Regulation should apply to the settlement of transactions in all financial instruments and activities of CSDs unless specified otherwise. This Regulation should also be without prejudice to other *Union law* concerning specific financial instruments such as Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community[1]and measures adopted in accordance with that Directive.

(10a) CSDs are of systemic importance. Where a function or service performed by a CSD is regulated in other Union legal act it is therefore appropriate for the strictest legal act to apply. Nevertheless there should not be multiple application, for example, of reporting of capital requirements. ESMA and the European Supervisory Authority (European Banking Authority) (EBA), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council[2] should provide an opinion on the Union legal act to be applied by the competent authority.

(11) The recording of securities in book-entry form is an important step to increase the efficiency of settlement and ensure the integrity of a securities issue, especially in a context of increasing complexity of holding and transfer methods. For reasons of safety, this Regulation provides for the recording in book-entry form of all transferable securities. This Regulation should not impose one particular method for the initial book-entry recording, which may take the form of immobilisation through the issuance of a global note or of immediate dematerialisation. This Regulation should not impose the type of institution that should record securities in book-entry form upon issuance and permits different actors, including registrars, to perform this function. However, once such securities are traded on trading venues regulated by Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments[3] or provided as collateral under the conditions of Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements[4], such securities should be recorded in a CSD book-entry system in order to ensure, inter alia, that all such securities can be settled in a securities settlement system.

(12) In order to ensure the safety of settlement, any participant to a securities settlement system buying or selling certain financial instruments, namely transferable securities, money-market instruments, units in collective investment undertakings and emission allowances, should settle its obligation on the intended settlement date.

(13) Longer settlement periods of transactions in transferable securities cause uncertainty

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2 OJ L 331, 15.12.2010, p. 12.

3 OJ L 145, 30.4.2004, p. 1.

4 OJ L 168, 27.6.2002, p. 43.

and increased risk for securities settlement systems participants. Different durations of settlement periods across Member States hamper reconciliation and are sources of errors for issuers, investors and intermediaries. It is therefore necessary to provide a common settlement period which would facilitate the identification of the intended settlement date and facilitate the implementation of settlement discipline measures. The intended settlement date of transactions in transferable securities which are admitted to trading on trading venues regulated by Directive 2004/39/EC should be no later than on the second business day after the trading takes place.

(14) CSDs and other market infrastructures should take measures to prevent and address settlement fails. It is essential that such rules be uniformly and directly applied in the Union. In particular, CSDs and other market infrastructures should be required to put in place procedures enabling them to take appropriate measures to suspend any participant that systematically causes settlement fails and to disclose its identity to the public, provided that that participant has the opportunity to submit observations before such a decision is taken.

(15) One of the most efficient ways to address settlement fails is to require failing participants to be subject to a buy-in ***at the request of the receiving party***, whereby the securities which ought to be delivered must be bought in the market after the intended settlement date and delivered to the receiving participant. This Regulation *provides* for ▌ rules concerning certain aspects of the buy-in transaction for all transferable securities, money-market instruments, units in collective investment undertakings and emission allowances, such as the timing, notice period, pricing and penalties***. The specific nature of the securities should be taken into account***.

(15a) In the case of SME growth markets, while settlement should be expected on the same basis as all other trading venues, it is appropriate to allow those venues the flexibility not to apply sanctions for settlement fails or the buy-in procedure until up to 15 days after the trade has taken place so as to allow the activity of market makers in those less liquid markets. As identified in the Commission Staff Working Paper of 7 December 2011 accompanying the Commission communication entitled, "An action plan to improve access to finance for SMEs", access to capital markets should be developed as an alternative to bank lending to SMEs and it is therefore appropriate to tailor rules to better serve the needs of those SME growth markets.

(16) As the main purpose of this Regulation is to introduce a number of legal obligations imposed directly on market operators consisting, inter alia, in the recording in book-entry form in a CSD of all transferable securities once such securities are traded on trading venues regulated by Directive 2004/39/EC or provided as collateral under the conditions of Directive 2002/47/EC and in the settling their obligations no later than on the second business day after trading takes place and as CSDs are responsible for the operation of ***most*** securities settlement systems and the application of measures to provide timely settlement in the Union, it is essential to ensure that all CSDs are safe and sound and comply at all times with stringent organisational, conduct of business***, including taking all reasonable steps to mitigate against fraud and negligence,*** and prudential requirements established by this Regulation. Uniform and directly applicable rules regarding the authorisation and ongoing supervision of CSDs are

therefore an essential corollary of and are interrelated with the legal obligations imposed on market participants by this Regulation. It is, therefore, necessary to include the rules regarding the authorisation and supervision of CSDs in the same act as the legal obligations imposed on market participants.

(17) Taking into account that CSDs should be subject to a set of common requirements and in order to dismantle the existing barriers to cross-border settlement, any authorised CSD should enjoy the freedom to provide its services within the territory of the Union either by establishment of a branch or by way of direct provision of services.

(18) Within a borderless Union settlement market, it is necessary to define the competences of the different authorities involved in the application of this Regulation. Member States should specifically designate the competent authorities responsible for the application of this Regulation, which should be afforded the supervisory and investigatory powers necessary for the exercise of their functions. A CSD should be subject to the authorisation and supervision of the competent authority of its place of establishment, which is well placed and should be empowered to examine how CSDs operate on a daily basis, to carry out regular reviews and to take appropriate action when necessary. That authority should however consult at the earliest stage and cooperate with other relevant authorities, which include the authorities responsible for the oversight of each securities settlement system operated by the CSD and, where applicable, the relevant central banks that act as settlement agent for each securities settlement system, and, also, where applicable, the competent authorities of other group entities. This cooperation also implies immediate information of the authorities involved in case of emergency situations affecting the liquidity and stability of the financial system in any of the Member States where the CSD or its participants are established. Whenever a CSD provides its services in another Member State than where it is established either by the establishment of a branch or by way of direct provision of services the competent authority of its place of establishment is mainly responsible for the supervision of that CSD. ***In accordance with Articles 8, 16 and 30 of Regulation (EU) No 1095/2010, ESMA should be involved in coordinating the activities of competent authorities, to further strengthen consistency in supervisory outcomes. In order to formalise that cooperation, it should take place under the aegis of the ESMA peer review mechanism, ensuring that all interested competent authorities receive all relevant information concerning the activities of CSDs within the Union. ESMA should also, where appropriate, request opinions or advice from the Securities and Markets Stakeholder Group referred to in Article 37 of Regulation (EU) No 1095/2010 on specific questions concerning the supervision of CSDs with cross-border activities and interoperability links.***

(19) Any legal person falling within the definition of a CSD needs to be authorised by the competent national authorities before starting its activities. In view of taking into account different business models, a CSD should be defined by reference to certain core services, which consist of settlement, implying the operation of a securities settlement system, notary and central securities accounts maintenance services. A CSD should at least operate a securities settlement system and provide one other core service. ***CSDs should be able to outsource the operations of the services provided.*** The definition ***of a CSD*** should exclude, therefore, entities which do not operate

securities settlement systems such as registrars***, depositaries, funds transfer agents*** or public authorities and bodies in charge of a registry system established under Directive 2003/87/EC. This combination is essential for CSDs to play their role in the securities settlement and in ensuring the integrity of a securities issue.

(19a) Settlement internalisers, although not defined as CSDs in this Regulation, should also be required to report their settlement activities to their competent authority. Furthermore, ESMA should monitor internalised settlement, particularly after the introduction of Target2Securities. If systemic risk prevalence increases, ESMA should be able to issue guidelines requiring more detailed reporting.

(20) 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 and 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[1], 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.

(21) In order to ensure the safety in the functioning of the securities settlement systems ***and to include all entities performing settlement functions, all securities settlement systems, including those*** operated ***by a CSD, should be appropriately covered by*** the rules provided in this Regulation or by central banks.

(22) Without prejudice to specific requirements of Member States tax *law*, CSDs should be authorised to provide services ancillary to their core services that contribute to enhancing the safety, efficiency and transparency of the securities markets. Where the provision of such services relates to ▌ tax procedures, it will continue to be carried out in accordance with the *law* of the Member States concerned.

(23) A CSD intending to outsource a core service to a third party or to provide a new core or ***certain*** ancillary ***services,*** to operate another securities settlement system, to use another central bank as settlement agent or to set up ***either an interoperable*** link ***or a customised CSD link that cause a transfer of risk between CSDs*** should apply for authorisation following the same procedure as that required for initial authorisation, with the exception that the competent authority should inform the applicant CSD within three months whether authorisation has been granted or refused.

(23a) Where a CSD intends to extend its services to ancillary services relating to notary and central maintenance services, and certain other ancillary services which do not entail an increase in the risk profile of the CSD, it should be able to do so following notification to the competent authority.

(23b) The direct holding systems in several Member States involve a particular tripartite relationship in which the investor has a direct account at the CSD level, but rights and obligations vis-à-vis the investor are shared between the CSD and the account

[1] OJ L 222 , 14.8.1978, p. 11.

operator. This sharing of functions should not be considered to be outsourcing as defined in in this Regulation.

(24) CSDs established in third countries may offer their services either through a branch or by way of direct provision of services to issuers and participants established in the Union in relation to their activities there and may set up links with CSDs established in the Union subject to recognition by ESMA. ***Third-country CSDs should be able to set up standard links with CSDs established in the Union in the absence of such recognition provided that the relevant competent authority does not object.*** In view of the global nature of financial markets, ESMA is best placed to recognise *third-country* CSDs. ESMA *should* recognise third country CSDs only if the Commission concludes that they are subject to a legal and supervisory framework ***with*** equivalent ***effect*** to *that* provided in this Regulation, if they are effectively authorised and supervised in their country and if cooperation arrangements have been established between ESMA and the competent authorities of CSDs. ▌

(***24a) This Regulation should have the objective to increase competition, reduce cross-border barriers and improve Union-wide reachability among participants, custodians and end investors in order to serve the whole Union and the internal market. Important features supporting those objectives are freedom to provide cross-border services and efficient infrastructural links among CSDs and towards other entities.***

(25) Considering the global nature of financial markets and the systemic importance of the CSDs, it is necessary to ensure international convergence of the prudential requirements to which they are subject. The provisions of this Regulation should follow the existing CPSS-IOSCO ***principles for financial market infrastructures and the ESCB-CESR*** recommendations ***for securities settlement systems and recommendations for CCPs in the Union***. ESMA should consider the existing standards and their future developments when drawing up or proposing to revise the regulatory technical and implementing standards as well as the guidelines and recommendations ***referred to*** in this Regulation.

(26) Considering the complexity as well as the systemic nature of the CSDs and of the services they provide, transparent governance rules should ensure that senior management, board members, shareholders and participants, who are in a position to exercise control as defined by reference to the Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts[1], over the operation of the CSD, are suitable to ensure the sound and prudent management of the CSD.

(27) Transparent governance rules should ensure that the interests of the shareholders, the management and staff of the CSD, on the one hand, and the interests of their users, on the other, are taken into account. *Those* governance principles should apply without prejudice to the ownership model adopted by the CSD. ***Nonetheless, user owned CSDs should be encouraged.*** User committees should be established for each

[1] OJ L 193, 18.7.1983, p. 1.

securities settlement system operated by the CSD to advise the board of the CSD on the key issues that impact its members ***and should be given the tools necessary to perform their role***.

(28) Considering the importance of the tasks entrusted to CSDs, this Regulation should provide that CSDs do not transfer their responsibilities to third parties through *the* outsourcing of their activities. Outsourcing of such activities should be subject to strict conditions that maintain the responsibility *of CSDs* for their activities and ensure that the supervision and oversight of the CSDs are not impaired. Outsourcing by a CSD of its activities to public entities may, under certain conditions, be exempted from these requirements.

(28a) Account operators, as defined in certain legal systems based on a direct holding model, record entries into securities accounts maintained by the CSD without necessarily being account providers themselves. In view of the need for legal certainty on the entries made into accounts at the CSD level, the specific role played by account operators should be recognised by this Regulation. It should therefore be possible, under specific circumstances and subject to strict rules laid down by law, to share the responsibility for maintaining securities accounts at the CSD with another person that is subject to appropriate regulation and supervision.

(29) Conduct of business rules should provide transparency in the relations between the CSD and its users. In particular, a CSD should have publicly disclosed, transparent, objective and non-discriminatory criteria for participation to the securities settlement system, which would allow restricting access of the participants only on the basis of the risks involved. A quick and appropriate remedy should be made available to competent authorities to address any unjustified refusal of CSDs to provide their services to participants. A CSD should publicly disclose prices and fees for its services. In order to provide open and non-discriminatory access to CSD services and in view of the significant market power that CSDs still enjoy on the territory of their respective Member States, a CSD may not diverge from its published pricing policy. A CSD should provide for ***open*** communication procedures ***in accordance with CPSS-IOSCO Principle 22: Communication procedures and standards***. These participation provisions complement and reinforce the right of market participants to use a settlement system in another Member State provided for in Directive 2004/39/EC.

(30) Considering the central role of securities settlement systems in the financial markets, CSDs should, when providing their services, ensure the timely settlement, the integrity of the issue, the segregation of the securities accounts maintained for each participant and the ***requirement*** to offer, upon request, ***both omnibus accounts, where appropriate, in order to increase efficiencies and single beneficiary accounts so clients can choose the level of*** segregation ***they believe is appropriate to their needs. Those services should be provided on a reasonable commercial basis.*** CSDs should ensure that these requirements apply separately to each securities settlement system operated by them.

(31) In order to avoid settlement risks due to the insolvency of the settlement agent, a CSD should settle, whenever practical and available, the cash leg of the securities

transaction through accounts opened with a central bank. If this option is not practical and available, a CSD should be able to settle through accounts opened with a credit institution established under the conditions provided in Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions[1] and subject to a specific authorisation procedure and prudential requirements provided in Title IV of this Regulation. ***It is desirable that the credit institution be a separate legal entity from the CSD so as to reduce the risk to which the settlement system itself is exposed. Such a separation between core services of CSDs and banking services ancillary to settlement appears to be indispensible for eliminating any danger of transmission of the risks from the banking services, such as credit and liquidity risks, to the provision of core services of CSDs. There are no less intrusive measures available for eliminating those credit and liquidity risks in order to ensure the envisaged level of safety and resilience of CSDs. However, in order to secure the efficiencies resulting from the provision of both CSD and banking services within the same group of undertakings, the requirement that banking services be carried out by a separate credit institution should not prevent that credit institution from belonging to the same group of undertakings as the CSD. It is appropriate to provide for transitional arrangements under which CSDs may be authorised to provide ancillary services from within the same legal entity. In such cases additional conditions should be imposed before authorisation is granted to reflect the increased risk profile. Wherever a credit institution other than a central bank acts*** as settlement agent, ***the credit institution*** should be able to provide to the CSD's participants the services set out in this Regulation, which are covered by the authorisation, ***but should not provide other banking services from the same legal entity in order to limit the settlement system's exposure to risk from the failure of the credit institution***.

(32) Considering that Directive 2006/48/EC does not address specifically intraday credit and liquidity risks resulting from the provision of banking services ancillary to settlement, credit institutions providing such services should also be subject to specific enhanced credit and liquidity risk mitigation requirements that should apply to each securities settlement system in respect of which they act as settlement agents. In order to ensure full compliance with specific measures aimed at mitigating credit and liquidity risks, the competent authorities should be able to require CSDs to designate more than one credit institution whenever they can demonstrate, based on the available evidence, that the exposures of one credit institution to the concentration of credit and liquidity risks is not fully mitigated. ***CSDs should also be able to nominate more than one credit institution.***

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(34) In order to provide a sufficient degree of safety and continuity of the services provided by the CSDs, the CSD should be subject to specific uniform and directly applicable prudential and capital requirements which do mitigate their legal, operational and investment risks.

[1] OJ L 177, 30.6.2006, p. 1.

(35) The safety of the link arrangements set up between CSDs should be subject to specific requirements to enable the access of their respective participants to other securities settlement systems. The requirement to provide banking type of ancillary services in separate legal entity should not prevent CSDs from receiving such services, in particular when they are participants in a securities settlement system operated by another CSD. It is particularly important that any potential risks resulting from the link arrangements such as credit, liquidity, organisational or any other relevant risks for CSDs are fully mitigated. For interoperability links, it is important that linked securities settlement systems have ***coordinated rules for*** moments of entry of transfer orders into the system, irrevocability of transfer orders and finality of transfers of securities and cash. The same principles should apply to CSDs that use a common settlement information technology (IT) infrastructure.

(36) As ***the main*** operators of securities settlement systems, CSDs perform a key role in the process of transferring securities on securities accounts. In order to enhance legal certainty especially in a cross-border context, it is important to establish clear rules on the law applicable to ownership aspects in relation to the securities that are maintained by a CSD in its accounts. Following the approach taken by the existing conflict of laws rules, the applicable law should be the law of the place where the accounts of a CSD are maintained.

(36a) It is necessary for supervisors to have knowledge of the level, at least in aggregate terms, of institutions' repurchase agreements, securities lending and all forms of encumbrance or claw back arrangements in order for supervisors to have a full picture and understanding these operations which are not transparent and may give rise to uncertainties in settlement and ownership. CSDs should, therefore, store all data on such transactions which they process and where applicable provide services for, and allow access to such information, inter alia, by ESMA, EBA, relevant competent authorities, the ESRB, relevant central banks and the ESCB. That information will also enable a meaningful review of exemption policy, for example with regard to buy-in conditions.

(36b) Following the development of a Legal Entity Identifier (LEI), and building on its usefulness, CSDs should work together with regulators to develop similar common standards with relation to repurchase agreements and securities reporting to cover principle, interest rate, collateral, haircuts, tenor, counterparties and other aspects, which help the formation of aggregates. Further, it should be an objective to achieve real time transaction mapping in all financial services and for this to be aided and automated via standardised messaging and data identifiers in conformity with industry open standards. CSDs should play a key role in advancing that objective.

(37) In many Member States issuers are required by national law to issue certain types of securities, notably shares, within their national CSDs. In order to remove this barrier to the smooth functioning of the Union post-trading market and to allow issuers to opt for the most efficient way for managing their securities, issuers should have the right to choose any CSD established in the Union for recording their securities and receiving any relevant CSD services. A quick and appropriate remedy should be made

available to competent authorities to address any unjustified refusal of CSDs to provide their services to issuers. In order to protect the rights of shareholders, the right of issuers to choose a CSD should not prevent the application of the national corporate laws under which the securities are constituted and which govern the relation between issuers and their shareholders.

(37a) The corporate or other law under which the securities are constituted should include the law which establishes their legal nature as regards the issuer, and which governs the relationship between the issuer and the holder or any third party and their respective rights and duties attached to the securities such as voting rights, dividends and other corporate actions.

(37b) While the provisions of this Regulation require some harmonisation of securities law they should not be considered sufficient for creating a fully coherent legal basis for securities settlement and the completion of the internal market in post trade services across the Union. The Commission should put forward legislative proposals concerning securities law as soon as is practically possible so as to complete the internal market in financial services.

(38) The European Code of Conduct for Clearing and Settlement of 7 November 2006[1] created a voluntary framework to enable access between CSDs and other market infrastructures. However, the post-trade sector remains fragmented along national lines, making cross-border trades ***unnecessarily*** costly. It is necessary to lay down uniform conditions for links between CSDs and of access between CSDs and other market infrastructures. In order to enable CSDs to offer their participants access to other markets, they should have a right to become a participant of another CSD or request another CSD to develop special functions for having access to the latter. A quick and appropriate remedy should be made available to competent authorities to address any unjustified refusal of a CSD to grant access to another CSD. ***Where*** CSD links may introduce additional risk for settlement, they should be subject to authorisation and supervision by the relevant competent authorities***, while standard links which do not involve the transference of risk should be subject to a notification procedure rather than explicit authorisation***.

(39) CSDs should also have access to transaction feeds from a CCP or a trading venue and those market infrastructures should have access to the securities settlement systems operated by the CSDs ▌. A quick and appropriate remedy should be made available to competent authorities to address any unjustified refusal of CSDs or market infrastructures to provide access to their services. ***This Regulation completes the access arrangements laid down in Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories[2] and in Regulation (EU) No .../... on markets in financial instruments [MiFIR] between trading venues, CCPs, and CSDs necessary to establish a competitive internal market in post-trade services. Noting***

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[1] "European Code of Conduct for Clearing and Settlement" signed by FESE (Federation of European Securities Exchanges), EACH (European Association of Clearing Houses) and ECSDA (European Central Securities Depositories Association) on 7 November 2006.

[2] ***OJ L 201, 27.7.2012, p. 1.***

that there are areas in financial services where commercial and intellectual property rights may also exist, where these relate to products or services which have become or impact upon industry standards, such as benchmarks and trade feeds, these shall be made available on fair reasonable and non-discriminatory (FRAND) terms. ESMA and the Commission should continue to closely monitor the evolution of post-trade infrastructure and should, where necessary, intervene in order to prevent competitive distortions from occurring in the internal market.

(40) A sound prudential and conduct of business framework for the finanical sector should rest on strong supervisory and sanctioning regimes. To this end, supervisory authorities should be equipped with sufficient powers to act and should be able to rely on deterrent sanctioning regimes to be used against any unlawful conduct. A review of existing sanctioning powers and their practical application aimed at promoting convergence of sanctions across the range of supervisory activities has been carried out in the Communication of 8 December 2010 from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on reinforcing sanctioning in the financial services sector.

(41) Therefore, in order to ensure effective compliance by CSDs, credit institutions designated as settlement agents, the members of their management bodies and any other persons who effectively control their business or any other persons with the requirements of this Regulation, competent authorities should be able to apply administrative sanctions and measures which are effective, proportionate and dissuasive.

(42) In order to provide deterrence and consistent application of the sanctions across Member States, this Regulation should provide for a list of key administrative sanctions and measures that need to be available to the competent authorities, for the power to impose those sanctions and measures on all persons, whether legal or natural, responsible for a breach, for a a list of key criteria when determining the level and type of those sanctions and measures and for levels of administrative pecuniary sanctions. Administrative fines should take into account factors such as any identified financial benefit resulting from the breach, the gravity and duration of the breach, any aggravating or mitigating factors, the need for fines to have a deterrent effect and, where appropriate, include a discount for cooperation with the competent authority. The adoption and publication of sanctions should respect fundamental rights as laid down in the Charter of Fundamental Rights of the European Union, in particular the rights to respect for private and family life (Article 7), the right to the protection of personal data (Article 8) and the right to an effective remedy and to a fair trial (Article 47).

(43) In order to detect potential breaches, effective mechanisms to encourage reporting of potential or actual breaches of this Regulation to the competent authorities should be put in place. These mechanisms should include adequate safeguards for the persons who report potential or actual breaches of this Regulation and the persons accused of such breaches. Appropriate procedures should be established to comply with the accused person's right to protection of personal data, with the right of defence and to

be heard before the adoption of a final decision affecting that person as well as with the right to seek effective remedy before a tribunal against any decision or measure affecting that person.

(44) This Regulation should be without prejudice to any provisions in the law of Member States relating to criminal sanctions.

(44a) In accordance with Article 114(2) TFEU, the power to adopt measures under Article 114(1) does not apply to fiscal provisions. In Case C-338/01, the Court of Justice of the European Union held that the words 'fiscal provisions' are to be interpreted as "covering not only the provisions determining taxable persons, taxable transactions, the basis of imposition, and rates of and exemptions from direct and indirect taxes, but also those relating to arrangements for the collection of such taxes." This Regulation cannot therefore be used as the basis for tax collection of any kind as this must be done under a separate legal basis.

(45) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[1] governs the processing of personal data carried out in the Member States pursuant to this Regulation. Any exchange or transmission of personal data by competent authorities of the Member States should be undertaken in accordance with the rules on the transfer of personal data as laid down in Directive 95/46/EC. Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data[2] governs the processing of personal data carried out by ESMA pursuant to this Regulation. Any exchange or transmission of personal data carried out by ESMA should be in accordance with the rules on the transfer of personal data as laid down in Regulation (EC) No 45/2001.

(46) This Regulation complies with the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, notably the rights to respect for private and family life, the right to the protection of personal data, the right to an effective remedy or to a fair trial, the right not to be tried or punished twice for the same offence, the freedom to conduct a business, and has to be applied in accordance with those rights and principles.

(46a) When applying this Regulation to solve the issues raised by any conflict of law, it is important that this Regulation does not seek to determine the law applicable to the treatment in insolvency proceedings of financial instruments recorded on an account maintained by a CSD or the effect with respect to such financial instruments of death, dissolution, inheritance or succession, divorce, mental health, incapacity or criminal proceedings.

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1 OJ L 281, 23.11.1995, p.31.

2 OJ L 8, 12.1.2001, p. 1.

(47) *ESMA*, should play a central role in the application of this Regulation by ensuring consistent application of Union rules by national competent authorities and by settling disagreements between them. ***When preparing draft technical standards and delegated acts, ESMA should follow the principle of an open market economy with free competition in accordance with Article 119(1) and (2) TFEU.***

(47a) ESMA should closely monitor, and report annually report to the Commission on, access to financial market infrastructure licensing arrangements and any negative impacts on the establishment of a competitive internal market in post-trade financial services, in particular where the use of such licences may be used to prevent competition from other trading venues and CCPs. Where those reports demonstrate ongoing barriers to competition in post-trade financial services in such a way that poses systemic risk and an implicit taxpayer guarantee to financial market infrastructure the Commission should put forward legislative proposals.

(48) As a body with highly specialised expertise regarding securities and securities markets, it is efficient and appropriate to entrust ESMA with the elaboration of draft regulatory and implementing technical standards which do not involve policy choices, for submission to the Commission. Whenever specified, ESMA should also involve closely the members of the ESCB and *EBA*.

(49) The Commission should be empowered to adopt regulatory technical standards in accordance with Article 290 *TFEU* and with the procedure set out in Articles 10 to 14 of Regulation (EU) No 1095/2010 with regard to the detailed elements of the settlement discipline measures; the information and other elements to be included by a CSD in its application for authorisation; the information that different authorities shall supply each other when supervising the CSDs; the details of the cooperation arrangements between home and host authorities; the elements of the governance arrangements for CSDs; the ***criteria under which the operations of a CSD in a host Member State should be considered of substantial importance for that Member State; the*** details of the records to be kept by CSDs; the ***risks which may justify a refusal by a CSD of access to participants and the elements of the procedure available for requesting participants; the*** details of the measures to be taken by CSDs so that the integrity of the issue is maintained; the protection of the participants' securities; the timely achievement of settlement; the mitigation of the operational risks and of the risks derived from the CSD links; the details of the capital requirements for CSDs; the details of the prudential requirements on credit and liquidity risks for the designated credit institutions. ***The draft regulatory technical standards addressing the information that different authorities should supply to each other when supervising the CSDs and the details of the cooperation arrangements between home and host Member State competent authorities should be established by ESMA in close cooperation with the members of the ESCB.***

(50) The Commission should also be empowered to adopt implementing technical standards by means of implementing acts pursuant to Article 291 *TFEU* and in accordance with the procedure set out in Article 15 of Regulation (EU) No 1095/2010 with regard to standard forms and templates for the application for authorisation by CSDs; for the provision of information between different competent authorities for the

purposes of supervision of CSDs; for the relevant cooperation arrangements between home and host authorities; for formats of records to be kept by CSDs; for the procedures in cases when a participant or an issuer is denied access to a CSD, CSDs are denied access between themselves or between CSDs and other market infrastructures; for the consultation of different authorities prior to granting authorisation to a settlement agent.

(51) The Commission should be empowered to adopt delegated acts in accordance with Article 290 *TFEU*. In particular, the delegated acts should be adopted in respect of specific details concerning definitions; the criteria under which the operations of a CSD in a host Member State should be considered of substantial importance for that Member State; the services for which a third country CSD shall seek for recognition by ESMA and the information that the applicant CSD shall provide ESMA in its application for recognition; the risks which may justify a refusal by a CSD of access to participants and the elements of the procedure available for requesting participants; the assessment of situations when settlement in central bank money is not practical and available; the elements of the procedure for access of issuers to CSDs, access between CSDs and between CSDs and other market infrastructures.

(52) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to take decisions on the assessment of rules from third countries for the purposes of recognition of third country CSDs ▌. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers[1].

(53) Since the objectives of this Regulation, namely to lay down uniform requirements for settlement as well as for CSDs, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(1) (54) It is necessary to amend Directive 98/26/EC to bring it in line with the Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 [2], whereby designated securities settlement systems are no longer notified to the Commission but to ESMA.

(54a) Market making activities play a crucial role in providing liquidity to markets within the Union and market makers need to take short positions to perform that role, particularly in less liquid securities and those admitted to SME growth markets.

1 OJ L 55, 28.2.2011, p. 13.
2 OJ L 331, 15.12.2010, p. 120.

(55) The application of the authorisation and recognition requirements of this Regulation should be deferred in order to provide CSDs established in the Union or in third countries with sufficient time to seek authorisation and recognition provided for in this Regulation.

(56) It is also necessary to defer the application of the requirements of recording certain transferable securities in book-entry form and settling obligations in securities settlement systems no later than on the second business day after the trading in order to provide market participants, holding securities in paper form or using longer settlement periods, with sufficient time to comply with those requirements.

HAVE ADOPTED THIS REGULATION:

TITLE I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter and scope

1. This Regulation lays down uniform requirements for the settlement of financial instruments ***specified in [points 1, 2, 3 and 11 of] Section C of Annex I to Directive 2012/.../EU [new MiFID]*** in the Union and rules on the organisation and conduct of central securities depositories to promote safe, ***transparent, efficient*** and smooth settlement.

2. This Regulation applies to the settlement of ***such*** financial instruments and activities of CSDs unless otherwise specified in the provisions of this Regulation.

3. This Regulation is without prejudice to provisions of Union *law* concerning specific financial instruments, in particular Directive 2003/87/EC.

4. Articles 9 to 18 and 20 as well as the provisions of Title IV do not apply to the members of the European System of Central Banks (ESCB), other Member States' national bodies performing similar functions***, the Union's*** or Member States' public bodies charged with or intervening in the management of the public debt.

Article 2

Definitions

1. For the purposes of this Regulation, the following definitions apply:

   (1) ‘central securities depository’ *or 'CSD'* means a legal person that operates a securities settlement system listed in point 3 of Section A of the Annex and performs at least one other core service listed in Section A of the Annex;

   (2) 'settlement' means the completion of a securities transaction ***wherever it is concluded*** with the aim of discharging the obligations of ***parties to a transaction*** through the transfer of funds or securities***, or both;***

   (3) 'securities settlement system' means a system under the first and second indents of point (a) of Article 2 of Directive 98/26/EC ***that is not operated by a central counterparty*** whose ***activity*** consists of the execution of transfer orders as defined in the second indent of point (i) of Article 2 of Directive 98/26/EC;

   (3a) 'settlement internaliser' means a credit institution or investment firm or

third-party firm authorised in accordance with Directive 2006/48/EC or with Directive.../..../EU [new MiFID] which executes transfer orders on behalf of clients or on its own account other than through a securities settlement system;

(4) 'settlement period' means the time period between the trade date and the intended settlement date;

(5) 'business day' means business day as defined in point (n) of Article 2 of Directive 98/26/EC;

(6) 'settlement fail' means the non-occurrence of settlement ***or only partial settlement*** of a securities transaction on the intended settlement date, ▌ regardless of the underlying cause;

(7) 'intended settlement date' means the date on which the parties to a securities transaction agree that settlement is to take place;

(8) 'central counterparty' *or ' CCP'* means ***a CCP as defined in point (1) of Article 2 of Regulation (***EU***) No 648/2012***;

(9) 'competent authority' means the authority designated by each Member State in accordance with Article 10;

(10) 'participant' means any participant, as defined in point (f) of Article 2 of Directive 98/26/EC, including a CCP, to a securities settlement system;

(11) ‘participation’ means participation within the meaning of the first sentence of Article 17 of Directive 78/660/EEC, or the ownership, direct or indirect, of 20 % or more of the voting rights or capital of an undertaking;

(12) ‘home Member State’ means the Member State in which a CSD has been authorised;

(13) ‘host Member State’ means the Member State, other than the home Member State, in which a CSD has a branch or provides CSD services;

(14) ‘branch’ means a place of business other than the head office which is a part of a CSD, which has no legal personality and which provides CSD services for which the CSD has been authorised;

(15) ‘control’ means the relationship between two undertakings as *described* in Article 1 of Directive 83/349/EEC;

(16) 'participant's default' means a situation where insolvency proceedings, as defined in point (j) of Article 2 of Directive 98/26/EC, are opened against a participant;

(17) 'delivery versus payment' or 'DVP' means a securities settlement mechanism which links a transfer of securities with a transfer of funds in a way that the

delivery of securities occurs only if the corresponding payment occurs;

(18) 'securities account' means an account on which securities may be credited or debited;

(19) 'CSD link' means an arrangement between CSDs whereby one CSD opens an account in the securities settlement system of another CSD in order to facilitate the transfer of securities from its participants to the participants of that CSD. CSD links include standard link access, customised link access and interoperable links;

(20) 'standard link access' means a CSD link whereby a CSD is connected to another CSD as any other participant to the securities settlement system operated by the latter;

(21) 'customised link access' means a CSD link whereby a CSD provides specific services to another CSD distinct from the services provided to other participants to its securities settlement system;

(21a) 'international open communication procedures and standards' means open and transparent communication procedures and formats which are non-profit and freely available to all industry participants;

(22) 'interoperability links' means CSD links whereby the securities settlement systems operated by CSDs become interoperable as defined in point (o) of Article 2 of Directive 98/26/EC;

(23) 'transferable securities' means transferable securities as defined in point (18) of Article 4 of Directive 2004/39/EC;

(24) 'money-market instruments' means money-market instruments as defined in point (19) of Article 4 of Directive 2004/39/EC;

(25) 'units in collective investment undertakings' means units in collective investment undertakings as referred to in point (3) of Section C of Annex I of Directive 2004/39/EC;

(26) 'emission allowances' means any units recognised for compliance with the requirements of Directive 2003/87/EC;

(27) 'regulated market' means *regulated market* as defined in point (14) of Article 4 of Directive 2004/39/EC;

(28) 'multilateral trading facility*' or 'MTF'* means multilateral trading facility as defined in point (15) of Article 4 of Directive 2004/39/EC;

(29) 'organised trading facility*' or 'OTF*' means any system or facility, which is not a regulated market or MTF, operated by an investment firm or a market operator, in which multiple third-party buying and selling interests in financial instruments are able to interact in the system in a way that results in a contract

in accordance with the provisions of Title II of Directive 2004/39/EC;

(30) 'subsidiary' means a subsidiary undertaking within the meaning of Article 1 of Directive 83/349/EEC;

(31) 'settlement agent' means settlement agent as defined in point (d) of Article 2 of Directive 98/26/EC.

(31a) 'omnibus account' means a securities account which holds securities that belong to multiple parties;

(31 b) 'segregated securities account' means a securities account held on behalf of a single party;

(31c) 'end investor' means a natural or legal person that holds securities with a securities account provider for its own account, and not as a consequence of the provision of securities account services to a third party;

(31d) 'financial instrument' means those instruments specified in Section C of Annex I of Directive.../.../EU [new MiFID].

(31e) 'trading venue' means a trading venue within the meaning of Article [25(2)] of Regulation (EU) No..../... [MiFIR].

(31f) 'SME growth market' means an MTF that is registered as an SME growth market in accordance with Article 35 of Directive .../../EU [new MiFID].

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 64 concerning measures to ***further*** specify the technical elements of the definitions in points (17), (20), (21) and (22) of paragraph 1, and to ***further*** specify the ancillary services set out in points (1) to (4) of Section B of the Annex and the services set out in points (1) and (2) of Section C of the Annex.

TITLE II

SECURITIES SETTLEMENT

CHAPTER I

BOOK-ENTRY FORM

Article 3

Book-entry form

1. Any ***legal person established in the Union*** that issues transferable securities which are admitted to trading on regulated markets ***or traded on an MTF or OTF,*** shall

arrange for such securities to be represented in book-entry form as immobilisation through the issuance of a global note, which represents the whole issue, or subsequent to a direct issuance of the securities into a dematerialised form.

2. Where the securities referred to in paragraph 1 are traded on regulated markets, traded on multilateral trading facilities (MTFs) or organised trading facilities (OTFs) or are transferred following a financial collateral arrangement as defined in point (a) of Article 2 of Directive 2002/47/EC, those securities shall be recorded in book-entry form in a CSD ***on or before*** the ***intended settlement*** date, unless they have already been so recorded.

2a. Member States shall ensure that the obligations under paragraph 2 do not lead to a loss of rights for the holders of securities and that procedures are in place to ensure that holders can verify at any time their ownership of their securities holdings.

Article 4

Enforcement

1. The authorities of the Member State where the ***legal person*** that issues securities is established shall be competent for ensuring that Article 3(1) is applied.

2. The authorities competent for the supervision of the regulated markets, MTFs and OTFs ***as well as the competent authorities of the issuer's home Member State designated in accordance with Article 21(1) of Directive 2003/71/EC,*** shall ensure that Article 3(2) is applied when the securities referred to in Article 3(1) are traded on regulated markets, MTFs or OTFs.

3. Member States' authorities responsible for the application of Directive 2002/47/EC shall be competent for ensuring that Article 3(2) of this Regulation is applied when the securities referred to in Article 3(1) of this Regulation are transferred following a financial collateral arrangement as defined in point (a) of Article 2 of Directive 2002/47/EC.

CHAPTER II

SETTLEMENT *PROVISIONS*

Article 5

Intended settlement dates

1. Any participant to a securities settlement system ***settling on*** a securities settlement system ▌ on its own account or on behalf of a third party transferable securities, money-market instruments, units in collective investment undertakings ***or*** emission allowances shall settle its obligation on the intended settlement date ***using a standardised settlement process and report their activities to the competent***

authorities.

2. As regards ***transactions in*** transferable securities referred to in paragraph 1 which are ***executed*** on ***a trading venue within the meaning of Article 2(1)(25) of Regulation (EU) No .../... [MIFIR]***, the intended settlement date shall be no later than on the second business day after ***execution unless the securities concerned are subject to initial recording in book-entry form pursuant to Article 3(2).***

This Article shall not apply to contracts which are executed bilaterally but are still reported to a regulated market, an MTF or an OTF.

3. The relevant ***authorities*** of the Member State whose law applies to the securities settlement system operated by a CSD shall be competent for ensuring that paragraphs 1 and 2 are applied ***and implemented. Those authorities shall cooperate in this regard with the competent authorties responsible for oversight of the relevant trading venue in accordance with Directive .../.../EU [new MiFID].***

3a. ESMA shall, after consulting the members of the ESCB, develop draft regulatory technical standards to specify the details of the standardised trade process to settle the obligations of participants referred to in paragraph 1.

3b. ESMA shall submit those draft regulatory technical standards to the Commission by [six months from the date of entry into force of this Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

3c. ESMA shall develop draft implementing technical standards to determine format and timing of the reporting referred to in paragraph 1 reflecting the regulatory technical standards referred to in paragraph 3.

ESMA shall submit those draft implementing technical standards to the Commission by [6 months from the entry into force of the regulatory technical standards].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

CHAPTER III

SETTLEMENT DISCIPLINE

Article 6

Measures to prevent settlement fails

1. Any regulated market, MTF or OTF shall establish procedures that enable the confirmation of relevant details of transactions in financial instruments referred to in Article 5 (1) on the date ***of receipt of*** orders. ***ESMA shall develop guidelines regarding those procedures.***

Notwithstanding the requirement set out in the first subparagraph, investment firms authorised pursuant to Article 5 of Directive .../.../EU [new MiFID] and professional clients within the meaning of Article 4(8) and Annex II of that Directive shall agree and take such measures as are necessary to limit the number of settlement fails. Such measures shall include, in the case of the client:

(a) where applicable, the prompt communication of an allocation by the client of the transaction to the investment firm no later than the end of the day on which the trade is executed and the issuance of a corresponding confirmation by the investment firm;

(b) subject to timely receipt of a confirmation under point (a), an affirmation or rejection of their terms in good time prior to the intended settlement date.

The means by which such measures shall be performed shall be agreed between the parties and shall include use of a standardised messaging protocol.

2. For each securities settlement system it operates, a CSD shall establish ***standardised*** procedures that facilitate the settlements of transactions in financial instruments referred to in Article 5(1) on the intended settlement date. It shall promote early settlement on the intended settlement date through appropriate mechanisms, such as a progressive tariff structure.

3. For each securities settlement system it operates, a CSD shall establish monitoring tools that allow ***participants in that system*** to identify transactions in financial instruments referred to in Article 5(1) that ***contain an increased risk of failure*** and ***the CSD and those participants*** shall ***inform each other about such transactions as early as possible. The CSD and those*** participants ***shall have in place procedures to ensure they or their clients are able*** to settle such transactions on the intended settlement date.

4. *ESMA* shall develop*, after consulting* the members of the *ESCB* draft regulatory technical standards to specify the details of the procedures facilitating settlement referred to in ***paragraph*** 2 and the details of the monitoring tools identifying likely settlement fails referred to in paragraph 3.

ESMA shall submit those draft regulatory technical standards to the Commission by *[*six months from the date of entry into force of this Regulation*]*.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 7

Measures to address settlement fails

1. For each securities settlement system it operates, a CSD shall establish a system that monitors settlement fails of transactions in financial instruments referred to in Article 5(1). It shall provide regular reports to the competent authority***, the authorities referred to in Article 11*** and to any person with a legitimate interest as to the number and details of settlement fails and any other relevant information***, which shall be made public in an aggregated and anonymised form on an annual basis***. The competent authorities shall share with ESMA any relevant information on settlement fails.

2. For each securities settlement system it operates, a CSD***, after consulting the relevant regulated markets, MTFs, OTFs and CCPs in respect of which it provides settlement services,*** shall establish procedures that facilitate settlement of transactions in financial instruments referred to in Article 5(1) ***excluding repurchase agreements*** that are not settled on the intended settlement date. These procedures shall provide for a ▌ penalty mechanism ***which will serve as an effective deterrent*** for participants ***other than CCPs,*** that cause the settlement fails ***and be reviewed regularly to ensure that they are not designed to be revenue- generating, or creating improper incentives.***

3. ***At the request of the receiving*** participant***, a participant*** to ***a trading venue*** that fails to deliver the financial instruments referred to in Article 5(1) to the receiving participant on the intended settlement date shall be subject to a buy-in whereby those instruments shall be bought in the market no later than four days after the intended settlement date and delivered to that receiving participant and other measures in accordance with paragraph 4.

4. The measures referred to in paragraph 3 shall specify at least the following:

(a) the daily penalty paid by the defaulting participant for each business day between the intended settlement date and the actual settlement date ***whether or not it is requested by the receiving participant***;

(b) the notice period given to the defaulting participant before the execution of a

buy-in;

(c) the pricing and costs of a buy-in;

(d) where relevant, the party that executes the buy-in;

(e) the amount of compensation for the receiving participant in case the execution of the buy-in is not possible.

5. The measures referred to in paragraph 3 shall ensure that:

(a) the receiving participant receives at least the price of the financial instruments agreed at the time of the trade;

(b) the daily penalty paid by the defaulting participant is sufficiently deterrent for the defaulting participant;

(c) where the execution of the buy-in is not possible, the amount of cash compensation paid to the receiving participant is higher than the price of the financial instruments agreed at the time of the trade and the last publicly available price for such instruments on the trading venue where the trade took place, and is sufficiently deterrent for the defaulting participant;

(d) the parties referred to in paragraph 7, including CCPs, who execute the buy-in disclose to participants the fees charged for this service;

(e) if a party other than the failing participant executes the buy-in, the failing participant reimburse all amounts paid by the executing party in accordance with paragraphs 3 and 4.

6. CSDs, CCPs, regulated markets, MTFs and OTFs shall establish procedures that enable them to suspend any participant that fails systematically to deliver the financial instruments referred to in paragraph 1 or cash on the intended settlement date and to disclose to the public its identity only after giving that participant the opportunity to submit its observations.

7. Paragraphs 2 to 6 shall apply to all transactions of the instruments referred to in Article 5 (1) ***where they are executed*** on regulated markets, traded on MTFs or OTFs or cleared by a CCP.

For transactions cleared by a CCP before being settled within a securities settlement system,

(a) the measures referred to in paragraph 3 to 5 shall be executed by the CCP,

(b) the CCP shall be deemed to be a receiving party for the purposes of paragraph 3 and shall always request that the buy-in arrangements specified in paragraph 3 apply.

For transactions not cleared by a CCP, the regulated markets, MTFs and OTFs shall include in their internal rules an obligation on their participants to be subject to the

measures referred to in paragraph 3 to 5.

7a. ***Where the transaction relates to a financial instrument that is admitted to trading on an SME growth market, this Article shall not come into effect until 15 days after the intended settlement date unless the SME growth market notifies participants before the transaction is executed that a shorter period applies.***

8. ESMA shall develop, *after consulting* the members of the ESCB draft regulatory technical standards to specify the details of the system monitoring settlement fails and the reports on settlement fails referred to in paragraph 1, of the procedures facilitating settlement of transactions following settlement fails referred to in paragraph 2 and the measures referred to in paragraphs 3 to 5. ***The procedures referred to in paragraph 2 and the daily penalty payment referred to in paragraph 4, shall be commensurate to the scale, nature and seriousness of the offence.***

ESMA shall submit those draft regulatory technical standards to the Commission by *[*six months from the date of entry into force of this Regulation*]*.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 8

Enforcement

1. The relevant authority of the Member State whose law applies to the securities settlement system operated by a CSD shall be competent for ensuring that Articles 6 and 7 are applied and for monitoring the penalties imposed, in close cooperation with the authorities competent for the supervision of the regulated markets, MTFs, OTFs, and CCPs referred to in Article 7. In particular, the authorities shall monitor the application of penalties referred to in Article 7 (2) and (4) and of the measures referred to in Article 7(6).

2. In order to ensure consistent, efficient and effective supervisory practices within the Union in relation to Articles 6 and 7 of this Regulation, ESMA may***, after consulting the members of the ESCB***, issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010.

CHAPTER IIIA

INTERNALISED SETTLEMENT

Article 8a

Settlement internalisers

1. ***Settlement internalisers shall report to the competent authorities the aggregated***

volume and value of all transactions settled outside a securities settlement system on a quarterly basis.

Competent authorities shall inform ESMA regarding any perceived systemic risk from this activity.

2. ESMA shall, after consulting the members of the ESCB, develop draft regulatory technical standards further specifying the content and scope of such reporting.

ESMA shall submit those draft regulatory technical standards to the Commission by [six months from the date of entry into force of this Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

3. ESMA shall develop draft implementing technical standards to determine format and timing of the communications and the publication referred to in paragraph 1 reflecting the regulatory technical standards referred to in paragraph 2.

ESMA shall submit those draft implementing technical standards to the Commission by [12 months from the entry into force of the regulatory technical standards].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

TITLE III

CENTRAL SECURITIES DEPOSITORIES

CHAPTER I

AUTHORISATION AND SUPERVISION OF CSDS

SECTION 1

AUTHORITIES RESPONSIBLE FOR AUTHORISATION AND SUPERVISION OF CSDS

Article 9

Competent authority

Without prejudice to the monitoring tasks of the ESCB and of the Eurosystem in relation to the TARGET2-Securities, a CSD shall be authorised and supervised by the competent authority of the Member State where it is established.

Article 10

Designation of the competent authority

1. Each Member State shall designate the competent authority responsible for carrying out the duties under this Regulation for the authorisation and supervision of CSDs established in its territory and shall inform ESMA ***and the ESCB*** thereof.

   Where a Member State designates more than one competent authority, it shall determine their respective roles and shall designate a single authority to be responsible for cooperation with other Member States' competent authorities, the relevant authorities referred to in Article 11, ESMA, and EBA whenever specifically referred to in this Regulation.

2. ESMA shall publish on its website a list of the competent authorities designated in accordance with paragraph 1.

3. The competent authorities shall have the supervisory and investigatory powers necessary for the exercise of their functions.

Article 11

Relevant authorities

1. The following authorities shall be involved in the authorisation and supervision of CSDs whenever specifically referred to in this Regulation:

(a) 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;

(b) where applicable, the central bank in the Union in whose books the cash leg of a securities settlement system operated by the CSD is settled or, in case of settlement through a credit institution in accordance with Title IV, the central bank in the Union of issue of the relevant currency.

(ba) where applicable, the central bank or competent authorities of the Member State to which market the CSD provides services of substantial importance as determined in accordance with Article 22(6).

2. ESMA shall publish on its website the list of the relevant authorities referred to in paragraph 1.

Article 12

Cooperation between authorities

1. The authorities referred to in Articles 9 and 11 and ESMA shall cooperate closely for the application of this Regulation, in particular in emergency situations referred to in Article 13. Whenever appropriate and relevant, such cooperation shall include other public authorities and bodies, in particular those established or appointed under Directive 2003/87/EC.

In order to ensure consistent, efficient and effective supervisory practices within the Union, including cooperation between authorities referred to in Articles 9 and 11 in the different assessments necessary for the application of this Regulation, ESMA may***, after consulting the members of the ESCB,*** issue guidelines addressed to authorities referred to in Article 9 in accordance with Article 16 of Regulation (EU) No 1095/2010.

2. The competent authorities shall, in the exercise of their general duties, duly consider the potential impact of their decisions on the stability of the financial system in all other Member States concerned, in particular in the emergency situations referred to in Article 13, based on the available information.

Article 13

Emergency situations

Without prejudice to the notification referred to in Article 6 of Directive 98/26/EC, the authorities referred to in Articles 9 and 11 shall immediately inform ESMA***, the ESRB*** and each other of any emergency situation relating to a CSD, including of any developments in financial markets, which may have an adverse effect on market liquidity***, the stability of a currency in which settlement takes place the ability of central banks to carry out their monetary policy operations*** and ▌ the stability of the financial system in any of the Member States where the CSD or one of its participants

are established.

SECTION 2

CONDITIONS AND PROCEDURES FOR AUTHORISATION OF CSDS

Article 14

Authorisation of a CSD

1. Any legal person that falls within the definition of CSD shall obtain an authorisation from the competent authority of the Member State where it is established before commencing its activities.

2. The authorisation shall ***cover all*** the services set out in Sections A and B of the Annex, which the CSD is authorised to provide, ***and specify which services the CSD intends to provide. Whenever a CSD intends to offer a new service not provided at the time of the initial authorisation, it shall notify the competent authority with a view to updating the ESMA register in accordance with Article 19. Where this new service is not explicitly listed in Section B of the Annex, it shall request prior authorisation from the competent authority.***

3. A CSD shall comply at all times with the conditions necessary for the authorisation.

   A CSD shall, without undue delay, inform the competent authority of any material changes affecting the conditions for authorisation.

Article 15

Procedure for granting authorisation

1. The applicant CSD shall submit an application for authorisation to its competent authority.

2. The application for authorisation shall be accompanied by all information necessary to enable the competent authority to satisfy itself that the applicant CSD has established, at the time of the authorisation, all the necessary arrangements to meet its obligations set out in this Regulation. The application for authorisation shall contain a programme of operations setting out the types of business envisaged and the structural organisation of the CSD.

3. Within 20 working days from the receipt of the application, the competent authority shall assess whether the application is complete. If the application is not complete, the competent authority shall set a time limit by which the applicant CSD has to provide additional information. The competent authority shall inform the applicant CSD when the application is considered to be complete.

4. As from the moment when the application is considered to be complete, the competent

authority shall transmit all information included in the application to the relevant authorities referred to in Article 11 and consult those authorities concerning the features of the securities settlement system operated by the applicant CSD.

5. The competent authority shall, before granting authorisation to the applicant CSD, consult the competent authorities of the other Member State involved in the following cases:

(a) the CSD is a subsidiary of a CSD authorised in another Member State;

(b) the CSD is a subsidiary of the parent undertaking of a CSD authorised in another Member State;

(c) the CSD is controlled by the same natural or legal persons who control a different CSD authorised in another Member State.

The consultation referred to in the first subparagraph shall cover the following:

(a) the suitability of the shareholders and participants referred to in Article 25(4) and the reputation and experience of persons who effectively direct the business of the CSD whenever those shareholders, participants and persons are common to both the CSD and a CSD authorised in another Member State;

(b) whether the relations referred to in paragraph 5 between the CSD authorised in another Member State and the applicant CSD do not affect the ability of the latter to comply with the requirements of this Regulation.

6. Within ***three*** months from the submission of a complete application, the competent authority shall inform the applicant CSD in writing with a fully reasoned decision whether the authorisation has been granted or refused.

7. ESMA shall develop, *after consulting* the members of the ESCB draft regulatory technical standards to specify the information that the applicant CSD shall provide to the competent authority in the application for authorisation.

ESMA shall submit those draft regulatory technical standards to the Commission by six months from the date of entry into force of this Regulation.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

8. ESMA shall develop, *after consulting* the members of the ESCB draft implementing technical standards to establish standard forms, templates and procedures for the application for authorisation.

ESMA shall submit those draft implementing technical standards to the Commission by six months from the date of entry into force of this Regulation.

Power is conferred on the Commission to adopt the implementing technical standards

referred to in the first subparagraph in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1095/2010.

Article 16

Effects of the authorisation

1. The activities of the authorised CSD shall be limited to the provision of services covered by its authorisation.

2. Securities settlement systems operated ▌ by ***an entity other than an*** authorised CSD, ***CCP or a*** central ***bank, shall report the aggregated volume and value of all transactions settled to the competent authorities on an annual basis***.

3. An authorised CSD shall not be exposed to any risks related to the provision of banking type of ancillary services by the credit institution designated to provide such services in accordance with Title IV.

4. 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 Annex.

Article 17

Extension and outsourcing of activities and services

1. An authorised CSD shall submit a request for authorisation to the competent authority of the Member State where it is established whenever it wishes to outsource a core service to a third party under Article 28 or extend its activities to one or more of the following:

   (a) additional core and ancillary services ***not explicitly*** set out in the Sections A and B of the Annex not covered by the initial authorisation;

   (b) the operation of another securities settlement system;

   (c) the settlement of all or part the cash leg of its securities settlement system in the books of another central bank;

   (d) setting up any ***interoperable link or any customised*** CSD link ***which involves the transfer of risk between CSDs***.

2. The granting of authorisation under paragraph 1 shall follow the procedure set out in Article 15.

   The competent authority shall inform the applicant CSD whether the authorisation has been granted or refused within three months of the submission of a complete application.

2a. An authorised CSD shall notify the competent authority of the home Member State when it wishes to set up a standard CSD link.

2b. ESMA shall develop draft regulatory technical standards to specify the criteria for determining when a customised CSD link implies a transfer of risk between CSDs.

ESMA shall submit those draft regulatory technical standards to the Commission by [12 months after the date of entry into force of this Directive].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 18

Withdrawal of authorisation

1. The competent authority of the Member State where the CSD is established shall withdraw the authorisation in any of the following circumstances:

   (a) where the CSD has not made use of the authorisation during 12 months, expressly renounces the authorisation or has provided no services or performed no activity during preceding six months;

   (b) where the CSD has obtained the authorisation by making false statements or by any other unlawful means;

   (c) where the CSD no longer complies with the conditions under which authorisation was granted and has not taken the remedial actions requested by the competent authority within a set time frame;

   (d) where the CSD has seriously and systematically infringed the requirements set out in this Regulation.

2. As from the moment it becomes aware of one of the circumstances referred to in paragraph 1, the competent authority shall immediately consult the relevant authorities referred to in Article 11 on the necessity to withdraw the authorisation except where such a decision is required urgently.

3. ESMA and any relevant authority referred to in Article 11 may, at any time, request that the competent authority of the Member State where the CSD is established examines whether the CSD still complies with the conditions under which the authorisation was granted.

4. The competent authority may limit the withdrawal to a particular service, activity, or financial instrument.

Article 19

CSD Register

1. Decisions taken by competent authorities under Articles 14, 17 and 18 shall be immediately communicated to ESMA.

2. Central banks shall immediately inform ESMA of any CSD that they operate.

3. The name of each CSD operating in compliance with this Regulation and to which authorisation or recognition has been granted under Articles 14, 17 and 23 shall be entered in a list specifying the services and classes of financial instruments for which the CSD has been authorised. The list shall include branches operated by the CSD in other Member States ▌ CSD links ***and Member States where Article 28a on shared services has been utilised***. ESMA shall publish the list on its dedicated website and keep it up to date.

4. The competent authorities referred to in Article 9 shall communicate to ESMA those institutions that operate as CSDs within 90 days from the date of entry into force of this Regulation.

SECTION 3

SUPERVISION OF CSDS

Article 20

Review and evaluation

1. The competent authority shall, at least on an annual basis, review the arrangements, strategies, processes and mechanisms implemented by a CSD with respect to compliance with this Regulation and evaluate the risks to which the CSD is, or might be, exposed ***to or with which the CSD is or might be associated***.

2. The competent authority shall establish the frequency and depth of the review and evaluation referred to in paragraph 1 having regard to the size, systemic importance, nature, scale and complexity of the activities of the CSD concerned. The review and evaluation shall be updated at least on an annual basis.

3. The competent authority ***shall*** subject the CSD to on-site inspections.

4. When performing the review and evaluation referred to in paragraph 1, the competent authority shall consult at an early stage the relevant authorities referred to in Article 11 concerning the functioning of the securities settlement systems operated by the CSD.

5. The competent authority shall regularly ***discuss*** and at least once a year, inform the relevant authorities referred to in Article 11 of the results, including any remedial actions or penalties, of the review and evaluation referred to in paragraph 1.

6. When performing the review and evaluation referred to in paragraph 1, the competent authorities responsible for supervising CSDs which maintain the types of relations referred to in points (a), (b) and (c) of the first subparagraph of Article 15(5) shall supply one another with all relevant information that is likely to facilitate their tasks.

7. The competent authority shall require the CSD that does not meet the requirements of

this Regulation to take at an early stage the necessary actions or steps to address the situation.

8. ESMA shall develop, *after consulting* the members of the ESCB draft regulatory technical standards to specify the following:

(a) the information that the CSD shall provide to the competent authority for the purposes of the review referred to in paragraph 1;

(b) the information that the competent authority shall supply to the relevant authorities referred to in paragraph 5;

(c) the information that the competent authorities referred to in paragraph 6 shall supply one another.

ESMA shall submit those draft regulatory technical standards to the Commission by six months from the date of entry into force of this Regulation.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

9. ESMA shall develop, *after consulting* the members of the ESCB draft implementing technical standards to determine standard forms, templates and procedures for the provision of information referred to in the first subparagraph of paragraph 8.

ESMA shall submit those draft implementing technical standards to the Commission by six months from the date of entry into force of this Regulation.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1095/2010.

SECTION 4

PROVISION OF SERVICES IN ANOTHER MEMBER STATE

Article 21

Freedom to provide services in another Member State

1. An authorised CSD may carry out its activities within the territory of the Union, ***including through*** the establishment of a branch ▌ provided that the types of activities concerned are covered by the authorisation ***or notification procedure set out in Article 17***.

2. Any CSD wishing to ***establish a branch*** within the territory of another Member State for the first time, or to change the range of services provided ***by that branch,*** shall communicate the following information to the competent authority of the Member

State where it is established ***and to relevant authorities referred to in Article 11***

(a) the Member State in which it intends to operate;

(b) a programme of operations stating in particular the services which it intends to provide ***and the currency or currencies it processes***;

(c) the organisational structure of the branch and the names of those responsible for the management of the branch.

3. Within three months from the receipt of the information referred to in paragraph 2, the competent authority shall communicate that information to the ***authorities referred to in Article 11 and the*** competent authority of the host Member State unless, by taking into account the provision of services envisaged, it has reasons to doubt the adequacy of the administrative structure or the financial situation of the CSD wishing to provide its services in the host Member State.

4. Where the competent authority ***of the CSD decides in accordance with paragraph 3 not*** to communicate ***all*** information ***referred to in paragraph 2*** to the competent authority of the host Member State it shall ***nevertheless do so upon request from the host Member State competent authority. Where information is shared in response to such a request the host Member State competent authority shall not issue the communication referred to in paragraph 5(a).***

5. The CSD may ***establish a branch*** in the host Member State under the following conditions:

(a) on receipt of a communication from the competent authority in the host Member State acknowledging receipt by the latter of the communication referred to in paragraph 3;

(b) in the absence of any receipt of a communication, after two months from the date of transmission of the communication referred to in paragraph 3.

5a. Where a CSD wishes to provide services within the territory of another Member State for the first time without establishing a branch, or to change the range of services provided, it shall communicate the information in paragraphs 2(a) and (b) to the competent authority of the Member State where it is established. The competent authority shall, within one month of receiving the information, forward it to the competent authority of the host Member State. The CSD may then start to provide the investment service or services concerned in the host Member State.

6. In the event of a change in any of the information communicated in accordance with paragraph 2, a CSD shall give written notice of that change to the competent authority of the home Member State at least one month before implementing the change. The competent authority of the host Member State shall also be informed of that change ***without delay*** by the competent authority of the home Member State.

Article 22

Cooperation between home and host *Member States´* authorities ***and peer review process***

1. Where a CSD authorised in one Member State has established a branch in another Member State, the competent authority of the home Member State of the CSD, in the exercise of its responsibilities and after informing the competent authority of the host Member State, may carry out on-site inspections in that branch.

2. The competent authorities from the ***home or*** host Member States may require CSDs which provide services in accordance with Article 21 to report to them periodically on their activities in those host Member States, in particular for the purpose of collecting statistics. ***The competent authorities of the host Member State shall, on request from the competent authorities of the home Member State, provide those periodic reports to the home Member State competent authorities.***

3. The competent authority of the home Member State of the CSD shall, on the request of the competent authority of the host Member State and ***without delay***, communicate the identity of the issuers and participants to the securities settlement systems operated by the CSD which provides services in that host Member State and any other relevant information concerning the activities of that CSD in the host Member State ***in particular information concerning adverse developments, results of risks assessments, remedial measures, in order to coordinate oversight and supervision activities with the competent authorities of the host Member State***.

4. When, taking into account the situation of the securities markets in the host Member State, the activities of a CSD that has established a branch or interoperability links with other CSDs or security settlement systems in that host Member State have become of substantial importance for the functioning of the securities markets and the protection of the investors in that host Member State, the home and host competent authorities shall establish cooperation arrangements for the supervision of the activities of that CSD in the host Member State.

5. Where the competent authority of the host Member State has clear and demonstrable grounds for believing that a CSD providing services within its territory in accordance with Article 21 is in breach of the obligations arising from the provisions of this Regulation, it shall refer those findings to the competent authority of the home Member State.

   Where, despite measures taken by the competent authority of the home Member State or because such measures prove inadequate, the CSD persists in acting in breach of the obligations arising from the provisions of this Regulation, after informing the competent authority of the home Member State, ***in close cooperation with relevant authorities as referred to in Article 11 of the host Member State,*** the competent authority of the host Member State shall take all the appropriate measures needed in order to ensure compliance with the provisions of this Regulation within the territory of the host Member State. ESMA shall be informed of such measures without delay.

   The competent authority of the host Member State may refer the matter to ESMA,

which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

5a. ***In accordance with Article 8(1e) and with Article 30 of Regulation (EU) No 1095/2010, ESMA shall, after consulting the members of the ESCB, convene all interested competent authorities on an annual basis to conduct a peer review of the activities of all competent authorities in relation to the supervision of CSDs with cross-border activities or interoperability links. The Authority shall, where appropriate, also request opinions or advice from the Securities and Markets Stakeholder Group referred to in Article 37 of Regulation (EU) No 1095/2010.***

6. ***ESMA*** shall, ***after consulting the members of the ESCB, develop draft regulatory technical standards*** concerning measures for establishing the criteria under which the operations of a CSD in a host Member State could be considered of substantial importance for the functioning of the securities markets and the protection of the investors in that host Member State.

ESMA shall submit those draft regulatory technical standards to the Commission by [six months from the date of entry into force of this Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

7. ESMA shall develop draft implementing technical standards to establish standard forms, templates and procedures for the cooperation arrangements referred to in paragraphs 1, 3 and 5.

ESMA shall submit those draft implementing technical standards to the Commission by six months from the date of entry into force of this Regulation.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1095/2010.

SECTION 5

RELATIONS WITH THIRD COUNTRIES

Article 23

Third countries

1. A CSD established in a third country may provide CSD services either through a branch or by way of direct provision of services to issuers and participants established in the Union in relation to their activities in the Union and may establish ***customised links which involve the transfer of risk or interoperable*** links with a CSD established

in the Union, only where that CSD is recognised by ESMA.

1a. A CSD established and authorised in the Union may maintain or establish a link with a CSD in a third country in accordance with the procedures in Article 45.

2. After consultation with the authorities referred to in paragraph 3, ESMA shall recognise a CSD established in a third country that has applied for recognition to provide the services referred to in paragraph 1, where the following conditions are met:

(a) the Commission has adopted a decision in accordance with paragraph 6;

(b) the CSD is subject to effective authorisation, supervision ***or, if the securities settlement system is operated by a central bank, oversight,*** ensuring full compliance with the prudential requirements applicable in that third country;

(c) cooperation arrangements between ESMA and the ***relevant*** authorities in that third country have been established pursuant to paragraph 7.

3. When assessing whether the conditions referred to in paragraph 2 are met, ESMA shall consult with:

(a) the competent authorities of the Member States in which the third country CSD intends to provide CSD services;

(b) the competent authorities supervising CSDs established in the Union with whom a third country CSD has established links;

(c) the authorities referred to in point (a) of Article 11(1);

(d) the authority in the third country competent for authorising and supervising CSDs.

4. The CSD referred to in paragraph 1 shall submit its application for recognition to ESMA.

The applicant CSD shall provide ESMA with all information deemed necessary for its recognition. Within 30 working days from the receipt of the application, ESMA shall assess whether the application is complete. If the application is not complete, ESMA shall set a time limit by which the applicant CSD has to provide additional information.

The recognition decision shall be based on the criteria set out in paragraph 2.

Within six months from the submission of a complete application, ESMA shall inform the applicant CSD in writing with a fully reasoned decision whether the recognition has been granted or refused.

5. ESMA shall, *after consulting* the authorities referred to in paragraph 3, review the recognition of the CSD established in a third country in case of extensions by that

CSD in the Union of the services referred to in paragraph 1 under the procedure set out in paragraphs 1 to 4.

ESMA shall withdraw the recognition of that CSD where the conditions and requirements according to paragraph 2 are no longer met or in the circumstances referred to in Article 18.

6. The Commission may adopt a decision in accordance with the procedure referred to in Article 66, determining that the legal and supervisory arrangements of a third country ensure that CSDs authorised in that third country comply with legally binding requirements ***based on internationally agreed CPSS-IOSCO standards,*** which ***have an*** equivalent ***effect*** to the requirements set out in this Regulation ***and*** that those CSDs are subject to effective supervision and enforcement in that third country on an ongoing basis

7. In accordance with Article 33 (1) of Regulation (EU) No 1095/2010, ESMA shall establish cooperation arrangements with the relevant competent authorities of third countries whose legal and supervisory frameworks have been recognised as equivalent to this Regulation in accordance with paragraph 6. Such arrangements shall specify at least:

   (a) the mechanism for the exchange of information between ESMA and the competent authorities of third countries concerned, including access to all information regarding the CSDs authorised in third countries that is requested by ESMA;

   (b) the mechanism for prompt notification of ESMA where a third country competent authority deems a CSD it is supervising to be in breach of the conditions of its authorisation or other ***applicable law***;

   (c) the procedures concerning the coordination of supervisory activities including, where appropriate, onsite inspections.

   Where a cooperation agreement provides for transfers of personal data by a Member State, such transfers shall comply with the provisions of Directive 95/46/EC and where a cooperation agreement provides for transfers of personal data by ESMA, such transfers shall comply with the provisions of Regulation (EU) No 45/2001.

7a. Where a CSD established in a third country has been authorised to provide services within the Union, Article 21 shall apply.

8. The Commission shall be empowered to adopt delegated acts in accordance with Article 64 concerning measures to specify the services for which a CSD established in a third country shall apply for recognition by ESMA under paragraph 1 and the information that the applicant CSD shall provide ESMA in its application for recognition under paragraph 4.

CHAPTER II

REQUIREMENTS FOR CSDS

SECTION 1

ORGANISATIONAL REQUIREMENTS

Article 24

General provisions

1. A CSD shall have robust governance arrangements, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks to which it is or might be exposed, and adequate remuneration policies and internal control mechanisms, including sound administrative and accounting procedures.

2. A CSD shall adopt policies and procedures which are sufficiently effective so as to ensure compliance with this Regulation, including compliance of its managers and employees with all the provisions of this Regulation.

3. A CSD shall maintain and operate effective written organisational and administrative arrangements to identify and manage any potential conflicts of interest between itself, including its managers, employees, board members or any person directly or indirectly linked to them, and its participants or their clients. It shall maintain and implement adequate resolution procedures whenever possible conflicts of interest occur.

4. A CSD shall make its governance arrangements and the rules governing its activity available to the public.

5. A CSD shall have appropriate procedures for its employees to report potential violations internally through a specific channel.

6. A CSD shall be subject to frequent and independent audits. The results of these audits shall be communicated to the board and ***the user committee referred to in Article 26 and*** made available to the competent authority.

7. A CSD bound by capital links with another CSD, a holding company or with a credit institution referred to in Title IV shall adopt detailed policies and procedures specifying how the requirements set in this article apply to the group and to the different entities of the group.

8. ESMA shall develop, *after consulting* the members of the ESCB draft regulatory technical standards specifying the monitoring tools for the risks of the CSDs referred to in paragraph 1, and the responsibilities of the key personnel in respect of those

risks, the potential conflicts of interest referred to in paragraph 3 and the audit methods referred to in paragraph 6 at the CSD level as well as at the group level.

ESMA shall submit those draft regulatory technical standards to the Commission by six months from the date of entry into force of this Regulation.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 25

Senior management, board and shareholders

1. The senior management of a CSD shall be of sufficiently good repute and experience so as to ensure the sound and prudent management of the CSD.

2. A CSD shall have a board of which ▌ no less than two ▌ members are independent. ***The user committee referred to in Article 26 shall designate at least one of its user members as a member of the CSD's board.***

3. The compensation of the independent and other non-executive members of the board shall not be linked to the business performance of the CSD.

4. ***Competent authorities shall require the board and the nomination committees to take into account diversity as one of the criteria for selection of members of the board.*** The board shall be composed of suitable members with an appropriate mix of skills, experience and knowledge of the entity and of the market. ***In particular the board shall put in place a policy promoting gender, age, geographical, educational and professional diversity on the management body, as well as take concrete steps towards a balanced representation on the board. Such concrete measures may for example include training of nomination committees, the creation of rosters of competent candidates, and the introduction of a nomination process where at least one candidate of each sex is presented.***

5. A CSD shall clearly determine the roles and responsibilities of the board and shall make the minutes of the board meetings available to the competent authority ***and the auditor***.

6. The CSD shareholders and participants who are in a position to exercise, directly or indirectly, control over the management of the CSD shall be suitable to ensure the sound and prudent management of the CSD.

7. A CSD shall:

   (a) provide the competent authority with, and make public, information regarding the ownership of the 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;

   (b) inform the competent authority of and make public any transfer of ownership

which gives rise to a change in the identity of the persons exercising control over the operation of the CSD.

8. Within 60 working days from the receipt of the information referred to in paragraph 7, the competent authority shall take a decision on the proposed changes in the control of the CSD. The competent authority shall refuse to approve proposed changes in the control of the CSD where there are objective and demonstrable grounds for believing that they would pose a threat to the sound and prudent management of the CSD or to the ability of the CSD to comply with this Regulation.

Article 26

User committee

1. A CSD shall establish user committees for each securities settlement system it operates, which shall be composed of representatives of issuers and of participants to such securities settlement systems ***and different types of securities holders***. The advice of the user committee shall be independent from any direct influence by the management of the CSD.

2. A CSD shall define the 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. The governance arrangements shall be publicly available and shall ensure that the user committee reports directly to the board and holds regular meetings.

3. User committees shall advise the board of the CSD on key arrangements that impact their members, including the criteria for accepting issuers or participants to their respective securities settlement systems ***and*** service level ▌.

3a. User committees may submit an opinion to the board containing detailed reasons regarding the pricing structures of the CSD.

4. Without prejudice to the right of competent authorities to be duly informed, the members of the user committees shall be bound by confidentiality ***on the aspects that do not affect the settlement conditions***. Where the chairman of a user committee determines that a member has an actual or a potential conflict of interest on a particular matter, that member shall not be allowed to ***participate in discussion of or*** vote on that matter.

5. A CSD shall promptly inform the competent authority of any decision in which the board decides not to follow the advice of a user committee.

Article 27

Record keeping

1. A CSD shall maintain all the records on the services and activity provided so as to enable the competent authority to monitor the compliance with the requirements under

this Regulation. ***It shall do so for a period of at least five years. That period shall be automatically extended where a competent authority opens an investigation to ensure that affected records are maintained until such investigation has been concluded. Member States may require that period to exceed five years.***

2. A CSD shall make the records referred to in paragraph 1 available upon request to the competent authority and the relevant authorities referred to in Article 11 ***and any other Member State public authority with legal powers directly related to records,*** for the purpose of fulfilling their mandates.

3. ESMA shall develop, *after consulting* the members of the ESCB 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 submit those drafts to the Commission by six months from the date of entry into force of this Regulation.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

4. ESMA shall develop, *after consulting* the members of the ESCB 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.

ESMA shall submit those draft implementing technical standards to the Commission by six months from the date of entry into force of this Regulation.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1095/2010.

Article 28

Outsourcing

1. Where a CSD outsources services or activities to a third party, it shall remain fully responsible for discharging all of its obligations under this Regulation and shall comply at all times with the following conditions:

(a) outsourcing does not result in the delegation of its responsibility;

(b) the relationship and obligations of the CSD towards its participants or issuers are not altered;

(c) the conditions for the authorisation of the CSD do not effectively change;

(d) outsourcing does not prevent the exercise of supervisory and oversight

functions, including on site access to acquire any relevant information needed to fulfill those functions;

(e) outsourcing does not result in depriving the CSD from the necessary systems and controls to manage the risks it faces;

(f) the CSD retains 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;

(g) the CSD has direct access to the relevant information of the outsourced services;

(h) the service provider cooperates with the competent authority and the relevant authorities referred to in Article 11 in connection with the outsourced activities;

(i) the CSD ensures that the service provider meets the standards set down by the relevant data protection *law* which would apply if the service providers were established in the Union. The CSD is responsible for ensuring that those standards are set out in a contract between the parties and that those standards are maintained.

2. The CSD shall define in a written agreement its rights and obligations and those of the service provider. The outsourcing agreement shall include the possibility of the CSD to terminate the agreement.

3. A CSD shall make available upon request to the competent authority and the relevant authorities referred to in Article 11 all information necessary to enable them to assess the compliance of the outsourced activities with the requirements of this Regulation.

4. The outsourcing of a core service shall be subject to authorisation under Article 17 by the competent authority.

5. Paragraphs 1 to 4 shall not apply where a CSD outsources some of its services or activities to a public entity and where that outsourcing is governed by a dedicated legal, regulatory and operational framework which has been jointly agreed and formalised by the public entity and the relevant CSD and agreed by the competent authorities on the basis of the requirements established in this Regulation.

Article 28a

Shared services

1. Member States may provide for a person other than the CSD to be responsible for recording entries into securities accounts at the level of the CSD.

Where Member States provide for such shared services, the requirements of this Regulation shall apply, where relevant, also to that other person.

2. Where Member States provide for shared services pursuant to paragraph 1, they

shall specify the applicable requirements, including requirements pursuant to this Regulation, in their national law.

3. Where Member States provide for shared services pursuant to paragraph 1, they shall notify the Commission and ESMA accordingly. ESMA shall include information on shared services in the CSD register referred to in Article 19.

SECTION 2

CONDUCT OF BUSINESS RULES

Article 29

General provisions

1. A CSD shall be designed to meet the needs of its participants and the markets it serves.

2. A CSD shall have clearly defined goals and objectives that are measurable and achievable, such as in the areas of minimum service levels, risk-management expectations and business priorities.

3. A CSD shall have transparent rules for the handling of complaints.

Article 30

Participation requirements

1. For each securities settlement system it operates ***and for all other services it provides,*** a CSD shall have publicly disclosed criteria for participation which allow fair and open access. Such criteria shall be transparent, objective, ▌ and non-discriminatory so as to ensure fair and open access to the CSD ***with due regard to risks to financial stability and the orderliness of markets***. Criteria that restrict access shall only be permitted to the extent that ***they justifiably*** control the ***specified*** risk for the CSD. ***In regard to access to the securities settlement system, the criteria shall comply with Directive 98/26/EC.***

2. A CSD shall treat requests for access promptly by providing a response to such requests within one month at the latest and shall make the procedures for treating access requests publicly available.

3. A CSD may only deny access to a participant meeting the criteria referred to in paragraph 1 where it is duly justified in writing and based on a comprehensive risk analysis.

   In case of refusal, the requesting participant has the right to complain to the competent authority of the CSD that has refused access.

The responsible competent authority shall duly examine the complaint by assessing the reasons for refusal and shall provide the requesting participant with a reasoned reply.

The responsible competent authority shall consult the competent authority of the place of establishment of the requesting participant on its assessment of the complaint. Where the authority of the requesting participant disagrees with the assessment provided, the matter shall be referred to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

Where the refusal by the CSD to grant access to the requesting participant is deemed unjustified, the responsible competent authority shall issue an order requiring that CSD to grant access to the requesting participant.

4. A CSD shall have objective and transparent procedures for the suspension and orderly exit of participants that no longer meet the criteria for participation referred to in paragraph 1.

5. ***ESMA shall develop in close cooperation with the members of the ESCB draft regulatory technical standards*** concerning measures to specify the risks which may justify a refusal by a CSD of access to participants and the elements of the procedure referred to in paragraph 3.

ESMA shall submit those draft regulatory standards to the Commission by six months from the date of entry into force of this regulation.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first sub paragraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010 (EPP)

6. ESMA shall develop, *after consulting* the members of the ESCB draft implementing technical standards to establish standard forms and templates for the procedure referred to in paragraph 3.

ESMA shall submit those draft implementing technical standards to the Commission by six months from the date of entry into force of this Regulation.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1095/2010.

Article 31

Transparency

1. For each securities settlement system it operates, as well as for the each of the other services it performs, a CSD shall publicly disclose the ***detailed*** prices and fees associated with the services provided. It shall disclose the prices and fees of each service and function provided separately, including discounts and rebates and the

conditions to benefit from those reductions. It shall allow its customers separate access to the specific services provided.

2. A CSD shall publish its price list so as to facilitate the comparison of offers and to allow customers to anticipate the price they shall have to pay for the use of services.

3. A CSD shall be bound by its published pricing policy.

4. A CSD shall provide to its customers information that allows reconciling the invoice with the published price lists.

5. A CSD shall disclose to all participants the risks associated with the services provided.

6. A CSD shall account separately for costs and revenues of the services provided and shall disclose that information to the competent authority***, as well as to its users in order to avoid cross-subsidisation and to ensure no undue revenue generation from the settlement discipline process.***

Article 32

Communication procedures with participants and other market infrastructures

CSDs shall use in their communication procedures with participants of the securities settlement systems they operate, and with the market infrastructures they interface with***, international open*** communication procedures and standards for messaging and reference data in order to facilitate efficient recording, payment and settlement.

By [five years after the date of entry into force of this Directive] CSDs shall use for communication between CSDs, procedures, messaging and transaction standards established by ESMA, where they have not mutually agreed upon other communication solutions providing at least the same service level and data content. ESMA shall develop those standards in cooperation with the CSDs and the ESCB with the objective of supporting end-to-end straight-through processing within Union.

SECTION 3

REQUIREMENTS FOR CSD SERVICES

Article 33

General provisions

For each securities settlement system it operates a CSD shall have appropriate rules and procedures, including robust accounting practices and controls, to help ensure the integrity of securities issues, reduce and manage the risks associated with the safekeeping and settlement of transactions in securities.

Article 33a

Recording and storage of repurchase agreements and securities lending processed and seviced by a CSD

CSDs shall record and store, at least on an aggregate basis, all repurchase agreements and securities lending which they have processed and serviced. This shall include all forms of encumbrance and claw back arrangments.

The CSD shall allow competent authorities to access this information.

Article 34

Integrity of the issue

1. A CSD shall take appropriate reconciliation measures to verify that the number of securities making up a securities issue or part of a securities issue submitted to the CSD is equal to the sum of securities recorded on the securities accounts of the participants of the securities settlement system operated by the CSD ***and, where relevant, on owner accounts maintained by the CSD***. Such reconciliation measures shall be conducted intraday.

2. Where appropriate and if other entities are involved in the reconciliation process for a certain securities issue, such as the issuer, registrars, issuance agents, transfer agents, common depositories, other CSDs or other entities, the CSD shall require such entities to convene adequate cooperation and information exchange measures with the CSD so that the integrity of the issue is maintained.

3. Securities overdrafts, debit balances or securities creation shall not be allowed in a securities settlement system ▌.

4. ESMA shall develop, *after consulting* the members of the ESCB draft regulatory technical standards to specify the reconciliation measures a CSD shall take under paragraphs 1 to 3.

   ESMA shall submit those draft regulatory technical standards to the Commission by six months from the date of entry into force of this Regulation.

   Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 35

Protection of participants' and end investors' securities

1. For each securities settlement system it operates a CSD shall keep records and accounts that shall enable it, at any time and without delay, to distinguish ***and***

segregate in the accounts with the CSD the securities of a participant from the securities of any other participant and, if applicable, from the CSD's own assets.

2. A CSD shall keep records and accounts that enable a participant to distinguish ***or segregate*** the securities of that participant from those of that participant's clients.

3. A CSD shall ▌keep records and accounts enabling a participant to ***segregate*** the securities of each of that participant's clients, if and as required by that participant (‘individual client segregation’).

3a. A CSD shall allow its participants to open and to hold both omnibus securities accounts and segregated securities accounts concurrently. Those services shall be provided on reasonable commercial terms, including costs.

Member States shall not prevent CSDs from fulfilling the obligation in the first subparagraph.

4. A CSD shall publicly disclose the level of protection and the costs associated with the different levels of segregation it provides and shall offer these services under reasonable commercial terms.

5. A CSD shall not use the securities of a participant ***or an end-investor who holds a segregated account*** for any purpose unless it has ***previously*** obtained that participant***'s or end investor's written*** consent. ***Where this concerns a retail investor as defined in Regulation (EU) No .../... [new MiFID], this shall be on a case by case basis.***

6. ESMA shall develop, *after consulting* the members of the ESCB draft regulatory technical standards specifying the book-entry methods and the account structures enabling the distinction between the holdings referred under paragraphs 1 to 3 and the methods of assessment thereof.

ESMA shall submit those draft regulatory technical standards to the Commission by six months from the date of entry into force of this Regulation.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 36

Settlement finality

1. ***A CSD and any other operator of a*** securities settlement system (collectively "the securities settlement system operator") ***shall offer*** adequate protection to participants. The securities settlement system shall be designated and notified according to the procedures referred to in point (a) of Article 2 of Directive 98/26/EC.

2. ***The securities settlement system operator*** shall establish procedures for its securities settlement systems that allow for a timely achievement of settlement, a minimum exposure of their participants to counterparty risk and liquidity risk and a low rate of settlement fails.

3. ***The securities settlement system operator*** shall clearly define the point at which transfer orders in a securities settlement system are irrevocable, legally enforceable and binding on third parties.

4. ***The securities settlement system operator*** shall disclose the point in time at which transfers of funds and securities in a securities settlement system are irrevocable, legally enforceable and binding on third parties.

5. Paragraphs 3 and 4 shall apply without prejudice to the provisions applicable to links and common settlement IT infrastructure provided under Article 45.

6. ***The securities settlement system*** shall achieve settlement finality no later than by the end of the business day of the intended settlement date. Upon demand by its user committee, ***a CSD*** shall install ***operational procedures or*** systems that allow for intraday or real-time settlement.

7. The cash proceeds of securities settlements shall be available for recipients to use no later than by the end of the business day of the intended settlement date.

8. All securities transactions against cash between direct participants to the securities settlement systems operated by a CSD shall be settled on a DVP basis.

9. ESMA shall develop, *after consulting* the members of the ESCB draft regulatory technical standards specifying the elements of the procedures referred to in paragraph 2 allowing the timely achievement of settlement.

   ESMA shall submit those draft regulatory technical standards to the Commission by six months from the date of entry into force of this Regulation.

   Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 37

Cash settlement

1. For transactions denominated in the currency of the country where the settlement takes place, a CSD shall settle the cash payments of its respective securities settlement system through accounts opened with a central bank operating in such currency whenever practical and available.

2. When it is not practical and available to settle in central bank accounts, a CSD may offer to settle the cash payments for all or part of its securities settlement systems through accounts opened with a credit institution. If a CSD offers to settle in

accounts opened with a credit institution, it shall do so in accordance with the provisions of Title IV.

3. Where the CSD offers settlement both in central bank accounts and in accounts opened with a credit institution, its participants shall have the right to choose between these two options.

4. A CSD shall provide sufficient information to market participants to allow them to identify and evaluate the risks and costs associated with these services.

5. ***ESMA*** shall***, after consulting the members of the ESCB, develop draft regulatory technical standards*** defining the cases when the settlement of the cash payments in a specific currency through accounts opened with a central bank is not practical and available and the methods of assessment thereof.

ESMA shall submit those draft regulatory technical standards to the Commission by [six months after the date of entry into force of this Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 38

Participant default rules and procedures

1. For each securities settlement system it operates, a CSD shall have effective and clearly defined rules and procedures to manage the default of ***one or more participants*** ensuring that the CSD can take timely action to contain losses and liquidity pressures and continue to meet its obligations.

2. A CSD shall make its default rules and procedures available to the public.

3. A CSD shall undertake with its participants and other relevant stakeholders periodic testing and review of its default procedures to ensure that they are practical and effective.

4. In order to ensure consistent application of this article, ESMA may***, after consulting the members of the ESCB,*** issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010.

SECTION 4

PRUDENTIAL REQUIREMENTS

Article 39

General requirements

A CSD shall adopt a sound risk-management framework for comprehensively managing legal, business, operational and other ***direct or indirect*** risks***, including measures to mitigate fraud and negligence***.

Article 40

Legal risks

1. For the purpose of its authorisation and supervision, as well as for the information of its customers, a CSD shall have rules, procedures, and contracts that are clear and understandable including for all the securities settlement systems it operates.

2. A CSD shall design its rules, procedures and contracts so as they ***are enforceable*** in all relevant jurisdictions, including in the case of the default of the participant.

3. A CSD conducting business in different jurisdictions shall ***take all reasonable steps to*** identify and mitigate the risks arising from ▌potential conflicts of laws across jurisdictions.

Article 41

General business risk

A CSD shall have robust management and control ***systems as well as*** IT tools to identify, monitor and manage general business risks, including business strategy, cash flows, and operating expenses.

Article 42

Operational risks

1. A CSD shall identify all potential sources of operational risk, both internal and external, and minimise their impact through the deployment of appropriate IT tools, controls and procedures, including for all the securities settlement systems it operates.

2. A CSD shall maintain appropriate IT tools that ensure a high degree of security and operational reliability, and have adequate capacity. *IT* tools shall adequately deal with the complexity, variety and type of services and activities performed so as to

ensure high standards of security, the integrity and confidentiality of the information maintained.

3. For its notary and central maintenance services as well as for each securities settlement system it operates, a CSD shall establish, implement and maintain an adequate business continuity policy and disaster recovery plan to ensure the preservation of its services, the timely recovery of operations and the fulfilment of the CSD's obligations in the case of events that pose a significant risk of disrupting operations.

4. The plan referred to in paragraph 3 shall at a minimum provide for the recovery of all transactions at the time of disruption to allow the participants of a CSD to continue to operate with certainty and to complete settlement on the scheduled date. It shall include the setting up of a second processing site with the requisite level of key resources, capabilities and functionalities, including appropriately skilled and experienced staff.

5. The CSD shall plan and carry out a programme of tests of the arrangements referred to in paragraphs 1 to 4.

6. A CSD shall identify, monitor and manage the risks that key participants to the securities settlement systems it operates, as well as service and utility providers, and other CSDs or other market infrastructures might pose to its operations.

7. ESMA shall develop, *after consulting* the members of the ESCB draft regulatory technical standards to specify the operational risks referred to in paragraphs 1 and 6, the methods to test, address or 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.

ESMA shall submit those draft regulatory technical standards to the Commission by six months from the date of entry into force of this Regulation.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 43

Investment risks

1. A CSD shall hold its financial assets at central banks or authorised credit institutions that have robust accounting practices, safekeeping procedures and internal controls that fully protect these assets.

2. A CSD shall have prompt access to its assets, when required.

3. A CSD shall invest its financial resources only in cash or in highly liquid financial instruments with minimal market and credit risk. These investments shall be capable

of being liquidated rapidly with minimal adverse price effect.

4. A CSD shall take into account its overall ▌ risk exposures to individual institutions ***with which it holds its own assets and*** in making its investment ***decisions*** and shall ensure that its overall risk exposure to any ***such*** institution remains within acceptable concentration limits.

Article 44

Capital requirements

1. Capital, together with retained earnings and reserves of a CSD, shall be proportional to the risks stemming from the activities of the CSD. It shall be at all times sufficient to:

(a) ensure that the CSD is adequately protected against operational, legal, business, custody and investment risks;

(b) cover potential general business losses, so that the CSD can continue providing services as a going concern;

(c) ensure an orderly winding-down or restructuring of the CSD's activities over an appropriate time span in case of default;

(d) allow the CSD to meet its current and projected operating expenses for at least six months under a range of stress scenarios.

2. A CSD shall maintain a plan for the following:

(a) the raising of additional capital should its equity capital approach or fall below the requirements provided in paragraph 1;

(b) the achieving of an orderly wind down or reorganisation of its operations and services in case the CSD is unable to raise new capital.

This plan shall be approved by the board of directors or an appropriate board committee and updated regularly.

3. ESMA shall develop*, after consulting* the members of the ESCB ***and the ESRB*** draft regulatory technical standards to specify the capital, retained earnings and reserves of a CSD referred to in paragraph 1 and the features of the plan referred to in paragraph 2.

ESMA shall submit those draft regulatory technical standards to the Commission by six months from the date of entry into force of this Regulation.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

SECTION 5

REQUIREMENTS FOR CSD LINKS

Article 45

CSD links

1. Before establishing a CSD link and on an ongoing basis once the link is established, all CSDs concerned shall identify, assess, monitor and manage all potential sources of risk for themselves and for their participants arising from the link arrangement.

2. Link arrangements shall be submitted to authorisation as required under point (d) of Article 17(1) ***or notified to the competent authorities of both CSDs as required under Article 17(2a)***.

3. A link shall provide adequate protection to the linked CSDs and their participants, in particular as regards possible credits taken by CSDs and the concentration and liquidity risks as a result of the link arrangement.

   A link shall be supported by an appropriate contractual arrangement that sets out the respective rights and obligations of the linked CSDs and, where necessary, of the CSDs' participants. A contractual arrangement with cross-jurisdictional implications shall provide for an unambiguous choice of law that govern each aspect of the link's operations.

4. In case of a provisional transfer of securities between linked CSDs, retransfer of securities prior to the first transfer becoming final shall be prohibited.

5. A CSD that uses an intermediary to operate a link with another CSD shall measure, monitor, and manage the additional risks arising from the use of that intermediary.

6. Linked CSDs shall have robust reconciliation procedures to ensure that their respective records are accurate.

7. Links between CSDs shall permit DVP settlement of transactions between participants in linked CSDs, wherever practical and feasible. ***Detailed*** reasons for any ***CSD link not allowing for DVP*** settlement shall be notified to the competent authorities.

8. Interoperable securities settlement systems and CSDs that use a common settlement infrastructure shall establish identical moments of:

   (a) entry of transfer orders into the system;

   (b) irrevocability of transfer orders;

   (c) finality of transfers of securities and cash.

8a. By [*OJ please insert date five years after the date of entry into force of this Directive] all interoperable links between CSDs operating in Member States shall be DVP-settlement supporting links.

9. ESMA shall develop*, after consulting* the members of the ESCB draft regulatory technical standards to specify the conditions as provided in paragraph 3 under which each type of link arrangement provides for adequate protection of the linked CSDs and of their participants, in particular when 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 links is practical and feasible as provided in paragraph 7 and the methods of assessment thereof.

ESMA shall submit those draft regulatory technical standards to the Commission by six months from the date of entry into force of this Regulation.

Powers is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

CHAPTER III

CONFLICT OF LAWS

Article 46

Applicable law to proprietary aspects

1. ***Without prejudice to the law under which the securities are constituted,*** any question with respect to proprietary aspects in relation to financial instruments held by a CSD***, as set out in points (a) to (d),*** shall be governed by the law of the country where the account is maintained***, namely:***

(a) the legal nature and effects against the CSD and third parties of the rights arising from a credit of financial instruments onto the account and of the disposition of financial instruments credited to the account;

(b) the requirements for perfecting a disposition of financial instruments credited to the account, and more generally the completion of the steps necessary to render a disposition effective against the CSD and third parties;

(c) whether a person's title to or interest in financial instruments credited to the account is overridden by or subordinated to a competing title or interest, or a good faith acquisition has occurred.

(d) the steps required for the realisation of an interest in financial instruments

credited to the account which were created by way of collateral following the occurrence of an enforcement event.

The account shall be presumed to be maintained at the place where the CSD has its habitual residence in accordance with Article 19 of Regulation (EC) No 593/2008 of the European Parliament and the Council on the law applicable to contractual obligations (Rome I)[1] unless paragraph 2 of this Article applies.

2. Where the account is used for settlement in a securities settlement system, the applicable law shall be the one governing that securities settlement system.

3. Where the account ***cannot be*** used for settlement in a securities settlement system, that account shall be presumed to be maintained at the place where the CSD has its habitual residence ▌ .

4. The application of the law of any country specified in this Article shall comprise the application of the rules of law in force in that country other than its rules of private international law.

4a. This Article shall be without prejudice to Directive.../.../EU [establishing a framework for the recovery and resolution of credit institutions and investment firms].

4b. A CSD shall analyse and define the law applicable to each book-entry account it maintains and present the outcome to the competent authority for verification.

Article 47

Freedom to issue in a CSD authorised in the EU

1. Without prejudice to the ▌ law under which the securities are constituted, an issuer shall have the right to arrange for its securities to be recorded in any CSD established in any Member State.

2. When an issuer submits a request for recording its securities in a CSD, the latter shall treat such request promptly and provide a response to the requesting issuer within three months.

3. A CSD may refuse to provide services to an issuer. Such refusal may only be based on a comprehensive risk analysis ▌ .

4. Where a CSD refuses to provide services to an issuer, it shall provide the requesting issuer with full reasons for its refusal.

In case of refusal, the requesting issuer shall have a right to complain to the competent authority of the CSD that refuses to provide its services.

The competent authority of that CSD shall duly examine the complaint by assessing

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[1] ***OJ L 177, 4.7.2008, p. 6.***

the reasons for refusal provided by the CSD and shall provide the issuer with a reasoned reply.

The competent authority of the CSD shall consult the competent authority of the place of establishment of the requesting issuer on its assessment of the complaint. Where the authority of the place of establishment of the requesting issuer disagrees with that assessment, the matter shall be referred to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

Where the refusal by the CSD to provide its services to an issuer is deemed unjustified, the responsible competent authority shall issue an order requiring the CSD to provide its services to the requesting issuer.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 64 concerning measures to specify the risks which may justify a refusal by a CSD of access to issuers and the elements of the procedure referred to in paragraph 4.

6. ESMA shall develop, *after consulting* the members of the ESCB draft implementing technical standards to establish standard forms and templates for the procedure referred to in paragraph 2.

ESMA shall submit those draft implementing technical standards to the Commission by six months from the date of entry into force of this Regulation.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1095/2010.

SECTION 2

ACCESS BETWEEN CSDS

Article 48

Standard link access

A CSD shall have the right to become a participant of another CSD in accordance with Article 30 and subject to ***notification to the competent authorities*** of the CSD link provided under Article 17.

Article 49

Customised link access

1. Where a CSD requests another CSD to develop special functions for having access to the latter, the receiving CSD may reject such request only based on risk considerations. It may not deny a request on the grounds of loss of market share. ***The CSDs concerned shall make the request and the response publicly available.***

2. The receiving CSD may charge ***only a reasonable commercial*** fee from the requesting CSD for making customised link access available on a cost-plus basis, unless otherwise agreed by both parties.

Article 50

Procedure for CSD links

1. When a CSD submits a request for access to another CSD, the latter shall treat such request promptly and provide a response to the requesting CSD within three months. ***The CSDs concerned shall make the request and the response publicly available.***

2. A CSD may only deny acces to a requesting CSD where such access would affect the functioning of the financial markets and cause systemic risk. Such refusal can be based only on a comprehensive risk analysis.

   Where a CSD refuses access, it shall provide the requesting CSD with full reasons for its refusal.

   In case of refusal, the requesting CSD has the right to complain to the competent authority of the CSD that has refused access.

   The responsible competent authority shall duly examine the complaint by assessing the reasons for refusal and shall provide the requesting CSD with a reasoned reply.

   The responsible competent authority shall consult the competent authority of the requesting CSD ***and the relevant authorities referred to in Article 11*** on its assessment of the complaint. Where ***any of the authorities*** of the requesting CSD disagrees with the assessment provided, ***any one*** of the ▌ authorities may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

   Where the refusal by the CSD to grant access to the requesting CSD is deemed unjustified, the responsible competent authority shall issue an order requiring that CSD to grant access to the requesting CSD.

3. Where the CSDs agree to establish a link, they shall submit their decision for authorisation to their respective competent authorities in accordance with Article 17, which shall assess whether any potential risks resulting from the link arrangement such as credit, liquidity, operational or any other relevant risks are fully mitigated.

   The competent authorities of the respective CSDs shallrefuse to authorise a link when this could affect the functioning of the securities settlement systems operated by the applicant CSDs.

4. The competent ***and relevant*** authorities***, as referred to in Article 11*** of the respective CSDs shall consult each other regarding the approval of the link and may, if necessary in case of divergent decisions, refer the matter to ESMA which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 64 concerning measures to specify the elements of the procedures referred to in paragraphs 1 to 3.

6. ESMA shall develop*, after consulting* the members of the ESCB draft implementing technical standards to establish standard forms and templates for the procedures referred to in paragraphs 1 to 3.

ESMA shall submit those draft implementing technical standards to the Commission by six months from the date of entry into force of this Regulation.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1095/2010.

SECTION 3
ACCESS BETWEEN A CSD AND ANOTHER MARKET INFRASTRUCTURE

Article 51

Access between a CSD and another market infrastructure

1. A CCP and a trading venue shall provide transaction feeds on a non-discriminatory and transparent basis to a CSD upon request by the CSD and may charge a fee for such transaction feeds to the requesting CSD on a cost-plus basis, unless otherwise agreed by both parties.

A CCP and a trading venue shall provide transaction feeds on a non-discriminatory and transparent basis to a ***CSD upon request by the CSD*** on a ***free of charge*** basis, unless otherwise agreed by both parties. ***CSDs, CCPs and trading venues may charge a fee for extra services provided in connection with such transaction feeds to the requesting CSD on a cost-plus basis.***

2. When a party submits a request for access to another party in accordance with paragraph 1, such request shall be treated promptly and a response to the requesting party shall be provided within one month.

3. The receiving party may only deny access where such access would affect the functioning of the financial markets and cause systemic risk. It may not deny a request on the grounds of loss of market share.

A party that refuses access shall provide the requesting party with full reasons for such refusal based on a comprehensive risk analysis. In case of refusal, the requesting party has the right to complain to the competent authority of the party that has refused access.

The responsible competent authority ***and the relevant authorities referred to in Article 11*** shall duly examine the complaint by assessing the reasons for refusal and shall provide the requesting party with a reasoned reply.

The responsible competent authority shall consult the competent authority of the requesting party ***and the relevant authorities referred to in Article 11*** on its assessment of the complaint. Where ***any of the authorities*** of the requesting party disagrees with the assessment provided, ***any*** of ***them*** may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.Where the refusal by a party to grant access is deemed unjustified, the responsible competent authority shall issue an order requiring that party to grant access to its services.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 64 concerning measures to specify the elements of the procedure referred to in paragraphs 1 to 3.

5. ESMA shall develop, *after consulting* the members of the ESCB draft implementing technical standards to establish standard forms and templates for the procedure referred to in paragraphs 1 to 3.

ESMA shall submit those draft implementing technical standards to the *Commission* by six months from the date of entry into force of this Regulation.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the *second* subparagraph in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1095/2010.

TITLE IV

CREDIT INSTITUTIONS DESIGNATED TO PROVIDE BANKING TYPE OF ANCILLARY SERVICES FOR CSDS' PARTICIPANTS

Article 52

Authorisation ***and designation*** to provide banking type of ancillary services

1. A CSD shall not ***itself*** provide any banking type of ancillary services set out in Section C of the Annex ***unless it has obtained an additional authorisation to provide such services in accordance with this Article.***

2. ***A CSD that intends to settle the cash leg of all or part of its securities settlement system in accordance with Article 37(2) or otherwise wishes to provide any banking type of ancillary services set out in Section C of the Annex shall be authorised either:***

(a) to designate for that purpose one or more authorised credit institutions as provided in Title II of Directive 2006/48/EC; or

(b) to offer such services under the conditions specified in this Article.

3. ***Where a CSD seeks to provide any banking type of ancillary services from within the same legal entity as the legal entity operating the securities settlement system the authorisation referred to in paragraph 2 shall be granted only where the following conditions are met:***

(a) the CSD shall be authorised as a credit institution as provided in Title II of Directive 2006/48/EC;

(b) the authorisation referred to in point a shall be used only to provide the banking type of ancillary services referred to in Section C of the Annex and not to carry out any other activities;

(c) the CSD meets the prudential requirements as set out under Article 57(1), (3) and (4) and supervisory requirements set out under Article 58;

(d) the competent authority imposes an additional capital surcharge to reflect the systemic importance of the CSD in accordance with paragraph 9;

(e) the CSD reports at least monthly to the competent authority and annually in its public Pillar 3 disclosure as required under Directive 2006/48/EC on the extent and management of intra-day liquidity risk in accordance with paragraph 9; and

(f) the CSD has submitted to the competent authority an adequate recovery and resolution plan to ensure continuity of its critical operations, including in situations where liquidity or credit risk crystallises as a result of the provision of banking ancillary services;

(g) the CSD has informed the competent authority of all the costs that it would incur to use a separate legal entity for the provision of banking type of ancillary services.

4. ***Where a CSD seeks to provide any banking type of ancillary services from within a separate legal entity which is part of the same group of undertakings ultimately controlled by the same parent undertaking, the authorisation referred to in paragraph 2 shall be granted only where the following conditions are met:***

(a) the separate legal entity shall be authorised as a credit institution as provided in Title II of Directive 2006/48/EC;

(b) the separate legal entity meets the prudential requirements as set out under Article 57(1), (3) and (4) and supervisory requirements set out under Article 58;

(c) the separate legal entity shall not itself carry out any of the core services referred to in Section A of the Annex; and

(d) the authorisation referred to in point a) shall be used only to provide the banking type of ancillary services referred to in Section C of the Annex and

not to carry out any other activities;

5. ***Where a CSD seeks to designate a credit institution which does not fall within the scope of paragraphs 3 or 4, the authorisation referred to in paragraph 2 shall be granted only where the following conditions are met:***

(a) the credit institution shall be authorised as a credit institution as provided in Title II of Directive 2006/48/EC;

(b) the credit institution shall not itself carry out any of the core services referred to in Section A of the Annex; and

(c) the authorisation referred to in point a shall be used only to provide the banking type of ancillary services referred to in Section C of the Annex and not to carry out any other activities.

6. ***The competent authority referred to in Article 53(1) may require a CSD to designate more than one credit institution, or to designate a credit institution in addition to providing services itself in accordance with paragraph 2(b) where it considers that the exposure of one credit institution to the concentration of risks under Article 57(3) and the (4) is not sufficiently mitigated. The designated credit institutions shall be considered as settlement agents.***

6a. A CSD authorised to provide any banking type of ancillary services and a credit institution designated in accordance with paragraph 2(a) shall comply at all times with the conditions necessary for authorisation under this Regulation and shall, without delay, notify the competent authorities of any material changes affecting the conditions for authorisation.

6b. EBA shall, after consulting ESMA, develop draft regulatory technical standards for an additional capital surcharge to reflect the systemic importance of CSDs and to further specify the reports required to enable effective monitoring of intra-day liquidity risk. Those draft regulatory technical standards shall reflect the internationally agreed capital surcharges for systemic financial institutions and monitoring indicators for intra-day liquidity management.

EBA shall submit those draft regulatory technical standards to the Commission by six months afer the entry into force of this Regulation.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first sub-paragraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 52 a

Ongoing monitoring of access requirements

ESMA shall closely monitor and annually report to the Commission on access to financial market infrastructure licensing arrangements and any negative impacts

on the establishment of a competitive single market in post trade financial services, in particular where the use of such licences may be used to prevent competition from other trading venues and CCPs.

Where these reports demonstrate ongoing barriers to competition in post trade financial services in such a way that poses systemic risk and an implicit taxpayer guarantee to financial market infrastructure the Commission may intervene to remove these barriers or shall put forward legislative proposals.

Article 53

Procedure for granting and refusing authorisation

1. The CSD shall submit its application for authorisation to designate a credit institution ***or to provide any banking type of ancillary service***, as required under Article 52, to the competent authority of the Member State where it is established.

2. The application shall contain all the information that is necessary to enable the competent authority to satisfy itself that the CSD and ***where applicable*** the designated credit institution have established, at the time of the authorisation, all the necessary arrangements to meet their obligations set out in this Regulation. It shall contain a programme of operations setting out the banking type of ancillary services envisaged, the structural organisation of the relations between the CSD and the designated credit institutions ***where applicable*** and how that credit institution intends to meet the prudential requirements as set out under Article 57(1), (3) and (4) ***and the other conditions set out in Article 52***.

3. The competent authority shall apply the procedure under Article 15(3) and (6).

4. ***Where a CSD seeks authorisation to designate a credit institution in accordance with Article 52(2)(a), the*** competent authority shall, before granting authorisation to the CSD, consult the following authorities:

   (a) The relevant ***authorities*** referred to in ▌ Article 11 on whether the envisaged provision of services by the designated credit institution will not affect the functioning of the securities settlement system operated by the applicant CSD;

   (b) The competent authority referred to in Article 58(1) on the ability of the credit institutions to comply with the prudential requirements under Article 57.

4a. Where a CSD seeks authorisation to provide banking ancillary services in accordance with Article 52(4) [separate legal entity], the competent authority shall, before granting authorisation to the CSD, consult the following authorities:

   (a) The relevant authorities referred to in Article 11(1)(a) and (b) and

   (b) with the relevant competent authority referred to in Article 4(4) of Directive 2006/48/EC;

4b. Where the CSD seeks authorisation to provide banking ancillary servcies in

accordance with Article 52(3) [same legal entity], the competent authority shall, before granting authorisation to the CSD, consult the authorities referred to in the paragraph 4a and in the following:

(a) the relevant authorities referred to in Article 11(1)(a);

(b) the relevant authorities to in Article 11(b) issuing the most relevant Union currencies in which settlement takes place;

(c) the relevant competent authority referred to in Artivle 4 (4) of the Directive 2006/48/EC;

(d) the competent authorities in the Member State(s) where the CSD has established interoperability links or customised links which entail a transfer of risk with another CSD in accordance with Article 50;

(e) the competent authorities in the host Member State where the activities of the CSD are of substantial importance for the functioning of the securities markets and the protection of investors within the meaning of Article 22(4);

(f) the competent authorities responsible for the supervision of the participants of the CSD that are established in the three Member States with the largest settlement volumes in the CSD's securities settlement system on an aggregate basis over a one-year period;

(g) ESMA and EBA.

The authorities referred to in points (a) to (f) of the first sub-paragraph and the authorities (a) and (b) of paragraph 4a shall issue a reasoned opinion on the authorisation within 30 days of receipt of the information referred to in the first sub-paragraph. Where an authority does not provide an opinion within that deadline it shall be deemed to have a positive opinion. Where at least one of the authorities referred to in points (a) to (f) issues a negative opinion and the competent authority wishes to grant the authorisation the matter shall be referred to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010 .

5. ESMA shall develop, *after consulting* the members of the ESCB draft regulatory technical standards to specify the information that the applicant CSD shall provide to the competent authority.

ESMA shall submit those draft regulatory technical standards to the Commission by six months from the date of entry into force of this Regulation.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

6 ESMA shall develop, *after consulting* the members of the ESCB 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.

ESMA shall submit those draft implementing technical standards to the Commsssion by six months from the date of entry into force of this Regulation.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1095/2010.

Article 54

Extension of the banking type of ancillary services

1. A CSD that intends to extend the banking type of ancillary services for which it designates a credit institution ***or which it wishes to provide*** shall submit a request for extension to the competent authority of the Member State where that CSD is established.

2. The request for extension shall be subject to the procedure under Article 53.

Article 55

Withdrawal of authorisation

1. The competent authority of the Member State where the CSD is established shall withdraw the authorisation in any of the following circumstances:

   (a) where the CSD has not made use of the authorisation within 12 months, expressly renounces the authorisation or where the designated credit institution has provided no services or performed no activity for the preceding six months;

   (b) where the CSD has obtained the authorisation by making false statements or by any other unlawful means;

   (c) where the CSD ***or*** the designated credit institution are no longer in compliance with the conditions under which authorisation was granted and have not taken the remedial actions requested by the competent authority within a set time frame;

   (d) where the CSD ***or*** the designated credit institution have seriously and systematically infringed the requirements set out in this Regulation.

2. Before withdrawing authorisation, the competent authority shall consult the relevant authorities under point (a) of Article 11(1) and the authorities referred to in Article 58(1) on the necessity to withdraw the authorisation except where such a decision is required urgently.

3. ESMA, any relevant authority under point (a) of Article 11(1) and any authority referred to in Article 58(1) may, at any time, request that the competent authority of the Member State where the CSD is established examine whether the CSD and ***where applicable*** the designated credit institution are still in compliance with the conditions under which the authorisation is granted.

4. The competent authority may limit the withdrawal to a particular service, activity, or financial instrument.

Article 56

CSD Register

1. Decisions taken by competent authorities under Articles 52, 54 and 55 shall be notified to ESMA.

2. ESMA shall introduce in the list that it is required to publish on its dedicated website in accordance with Article 19(3), the following information:

   (a) the name of each CSD which was subject to a decision under Articles 52, 54 and 55;

   (b) the name of each designated credit institution;

   (c) the list of banking type of ancillary services that a ***CSD or*** designated credit institution is authorised to provide for CSD's participants.

3. The competent authorities shall notify to ESMA those institutions that provide banking type of ancillary services according to requirements of national law 90 days from the entry into force of this Regulation.

Article 57

Prudential requirements applicable to credit institutions designated to provide banking type of ancillary services 1. A ***CSD authorised or a*** credit institution designated to provide banking type of ancillary services shall ***only*** provide the services set out in Section C of the Annex that are covered by the authorisation.

2. A ***CSD authorised or a*** credit institution designated to provide banking type of ancillary services shall comply with any present or future *legislative acts* applicable to credit institutions.

3. A ***CSD authorised or a*** credit institution designated to provide banking type of ancillary services shall comply with the following specific prudential requirements for the credit risks related to these services in respect of each securities settlement system:

(a) it shall establish a robust framework to manage the corresponding credit risks;

(b) it shall identify the sources of such credit risk, frequently and regularly, measure and monitor corresponding credit exposures and use appropriate risk-management tools to

control these risks;

(c) it shall fully cover corresponding credit exposures to individual borrowers using collateral and other equivalent financial resources;

(d) if collateral is required to manage its corresponding credit risk, it shall accept only ***highly liquid*** collateral ***as defined in Article 46 of Regulation (EU) No 648/*** and ***the regulatory technical standards adopted pursuant thereto***;

(e) it shall set and enforce appropriately conservative haircuts and concentration limits on collateral values constituted to cover the credit exposures referred to in point (c);

(f) it shall put in place legally binding arrangements to allow collateral to be sold or pledged promptly, particularly in the case of cross-border collateral;

(g) it shall set limits on its corresponding credit exposures;

(h) it shall analyse and plan for how to address any potential residual credit exposures, adopt rules and procedures to implement such plans;

(i) it shall provide credit only to participants that have cash accounts with it;

(j) it shall provide for an automatic reimbursement procedure of intraday credit and discourage overnight credit through ***the application of an effective*** sanctioning ***rate to act as a suitable deterrent***.

4. A ***CSD authorised or a*** credit institution designated to provide banking type of ancillary services shall comply with the following specific prudential requirements for the liquidity risks related to these services in respect of each securities settlement system:

(a) it shall have a robust framework to measure, monitor, and manage its liquidity risks for each currency of the security settlement system for which it act as settlement agent;

(b) it shall monitor continuously the level of liquid assets it holds and determine the value of its available liquid assets taking into account appropriate haircuts on these assets;

(c) it shall measure continuously its liquidity needs and risks; in doing so, it shall take into account the liquidity risk generated by the default of the two participants to which it has the largest exposures;

(d) it shall mitigate the corresponding liquidity risks with immediately available resources such as prefunding arrangements and, failing this, shall seek to obtain the necessary credit lines or similar arrangements to cover the corresponding liquidity needs only with institutions with an adequate risk and market profile and it shall identify, measure and monitor its liquidity risk stemming from these institutions;

(e) it shall set and enforce appropriate concentration limits for each of the corresponding liquidity providers including its parent undertaking and subsidiaries ***ensuring that it can withstand the withdrawal of at least two of its liquidity providers at the same time;***

(ea) it shall monitor and report to the competent authority its intraday liquidity needs and how they are fulfilled including[1]:

(i) daily maximum liquidity requirement;

(ii) available intraday liquidity

(iii) total payments;

(iv) time-specific and other critical obligations;

(v) value of customer payments made on behalf of financial institution customers;

(vi) intraday credit lines extended to financial institution customers;

(vii) timing of intraday payments;

(viii) intraday throughput;

(f) it shall determine and test the sufficiency of the corresponding resources by regular and rigorous stress testing;

(g) it shall analyse and plan for how to address any uncovered liquidity shortfalls, and adopt rules and procedures to implement such plans;

(h) it shall base its intraday credit services on proportionate and at least same maturity resources, composed of capital, cash deposits, and borrowing arrangements;

(i) it shall deposit the corresponding cash balances on dedicated accounts with central banks, where practical and available;

(j) it shall ensure that it can re-use ***and re-hypothecate collateral only following written*** consent of the customer, ***except where the*** customer ***defaults and that all fees earned are publicly disclosed;***

5. EBA, *after consulting* ESMA and the members of the ESCB, shall develop draft regulatory technical standards to specify the following:

(a) the frequency of the credit exposure measuring and monitoring framework referred to in point (b) of paragraph 3 and the types of risk-management tools

[1] ***Basel Committee on Banking Supervision, Consultative Document, "Monitoring Indicators for Intraday Liquidity Management" July 2012***.

that shall be used to control the risks derived from these exposures;

(b) what constitutes equivalent financial resources for the purpose of point (c) of paragraph 3;

(c) the type of collateral that can be considered as having low credit, liquidity and market risk for the purpose of point (d) of paragraph 3;

(d) what constitutes appropriate haircuts for the purposes of point (e) of paragraph 3 and point (b) of paragraph 4;

(e) the concentration limits on collateral values referred to in point (e) of paragraph 3, on credit exposures referred to in point (g) of paragraph 3 and on liquidity providers referred to in point (e) of paragraph 4;

(f) what constitutes deterrent sanctioning rates for the purpose of point (j) of paragraph 3;

(g) the details of the monitoring framework referred to in point (b) of paragraph 4 and the methodology for calculating the value of available liquid assets for the purpose of point (b) of paragraph 4 and for measuring the liquidity needs and risks referred to in point (c) of paragraph 4;

(h) what constitutes immediately available resources and an adequate risk and market profile for the purpose of point (d) of paragraph 4;

(i) the frequency, the type and the time horizons of the stress tests for the purpose of point (f) of paragraph 4;

(j) the criteria for assessing when it is practical and available to deposit cash balances on accounts with central banks for the purposes of point (i) of paragraph 4.

(ja) the full set of indicators identified under point (ea) of paragraph 4.

EBA shall submit those draft regulatory technical standards to the Commission by six months from the date of entry into force of this Regulation.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.

Article 58

Supervision of credit institutions designated to provide banking type of ancillary ***services and CSDs authorised as a credit institution***

1. The competent authority referred to in Directive 2006/48/EC is responsible for the authorisation and supervision under the conditions provided in that directive of the credit institutions designated to provide banking type of ancillary services and as

regards their compliance with Article 57(3) and (4) of this Regulation.

2. The competent authority referred to in Article 9, *after consulting* the competent authority referred to paragraph 1 shall review and evaluate at least on an annual basis whether the designated credit institutions comply with Article 57(1), and whether all the necessary arrangements between the designated credit institutions and the CSD allow them to meet their obligations set out in this Regulation.

3. In view of the protection of the participants to the securities settlement systems it operates, a CSD shall ensure that it has access from ***any*** credit institution it designates to all necessary information for the purpose of this Regulation and it shall report any breaches thereof to the competent authorities referred to in paragraph 1 and in Article 9.

4. In order to ensure consistent, efficient and effective supervision within the Union of credit institutions designated to provide banking type of ancillary services, EBA, in ***close cooperation*** with ESMA and the members of the ESCB, may issue guidelines addressed to competent authorities in accordance with Article 16 of Regulation (EU) No 1093/2010.

TITLE V

SANCTIONS

Article 59

Administrative sanctions and measures

1. ***Without prejudice to the right of Member States to provide for and impose criminal sanctions,*** Member States shall lay down rules on the administrative sanctions and measures applicable in the circumstances defined in Article 60 to the persons responsible for breaches of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. Those sanctions and measures shall be effective, proportionate and dissuasive.

   By 24 months after the entry into force of this Regulation, the Member States shall notify the rules referred to in the first subparagraph to the Commission and ESMA. They shall notify the Commission and ESMA without delay of any subsequent amendments thereto.

2. The competent authorities shall be able to apply administrative sanctions and measures to CSDs, designated credit institutions, the members of their management bodies and any other persons who effectively control their business as well as to any other legal or natural person who is held responsible for a breach.

3. In the exercise of their sanctioning powers in the circumstances defined in Article 60 competent authorities shall cooperate closely to ensure that the administrative

sanctions and measures produce the desired results of this Regulation and coordinate their action in order to avoid possible duplication and overlap when applying administrative sanctions and measures to cross border cases in accordance with Article 12.

3a. A CSD shall be liable for the losses suffered by its members and or participants arising from the loss of a financial instrument caused by the CSD unless it can prove that the loss is the result of an external event beyond its control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary. Criteria for liability and restitution requirements for losses or damages attributable to CSDs, negligence or failure shall be transparent, risk-based, and consistent with applicable laws and subject to oversight by the competent authority.

ESMA shall, after consulting the members of the ESCB, develop draft regulatory technical standards to specify such liability, taking into account where Member States provide for shared services, and including arrangements for a contractual limit to a CSD's liability.

ESMA shall submit those draft regulatory technical standards to the Commission by [six months after the date of entry into force of this Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 60

Sanctioning powers

1. This article shall apply to the following provisions of this Regulation:

(a) provision of services set out in Sections A, B and C of the Annex in breach of Articles 14, 23 and 52;

(b) obtaining the authorisations required under Articles 14 and 52 by making false statements or by any other unlawful means as provided in point (b) of Article 18(1), and point (b) of Article 55(1);

(c) failure of CSDs to hold the required capital in breach of Article 44(1);

(d) failure of CSDs to comply with the organisational requirements in breach of Articles 24 to 28;

(e) failure of CSDs to comply with the conduct of business rules in breach of Articles 29 to 32;

(f) failure of CSDs to comply with the requirements for CSD services in breach of Articles 34 to 38;

(g) failure of CSDs to comply with the prudential requirements in breach of Articles 40 to 44;

(h) failure of CSDs to comply with the requirements for CSD links in breach of Article 45;

(i) abusive refusals by CSDs to grant different types of access in breach of Articles 47 to 51;

(j) failure of designated credit institutions to comply with the specific prudential requirements related to credit risks in violation of Article 57(3);

(k) failure of designated credit institutions to comply with specific prudential requirements related to liquidity risks in violation of Article 57(4).

2. Without prejudice to the supervisory powers of competent authorities, in case of a breach referred to in paragraph 1, the competent authorities shall, in conformity with national law, have the power to impose at least the following administrative sanctions and measures:

(a) a public statement which indicates the person responsible for the breach and the nature of the breach;

(b) an order requiring the person responsible for the breach to cease the conduct and to desist from a repetition of that conduct;

(c) withdrawal of the authorisations granted under Articles 14 and 52, in accordance with Articles 18 and 55;

(d) dismissal of the members of the management bodies of the institutions responsible for a breach;

(e) administrative pecuniary sanctions of up to twice the amounts of the profit gained as a result of a breach where those amounts can be determined;

(f) in respect of a natural person, administrative pecuniary sanctions of up to EUR 5 million or up to 10 % of the total annual income of that person in the preceding calendar year;

(g) in respect of a legal person, administrative pecuniary sanctions of up to 10 % of the total annual turnover of that person in the preceding business year; where the undertaking is a subsidiary of a parent undertaking, the relevant total annual turnover shall be the total annual turnover resulting from the consolidated account of the ultimate parent undertaking of the group in the preceding business year.

3. Competent authorities may have other sanctioning powers in addition to those referred in paragraph 2 and may provide for higher levels of administrative pecuniary sanctions than those established in that paragraph.

4. Every administrative sanction or measure imposed for breaches of this Regulation shall be published without undue delay, including at least information on the type and nature of the breach and the identity of persons responsible for it, unless such disclosure would seriously jeopardise the stability of financial markets. Where publication would cause a disproportionate damage to the parties involved, competent authorities shall publish the measures and sanctions on an anonymous basis.

The publication of sanctions shall comply with fundamental rights as laid down in the Charter of Fundamental Rights of the European Union, in particular with the right to respect of private and family life and the right to the protection of personal data.

Article 61

Effective application of sanctions

1. When determining the type and level of administrative sanctions or measures, the competent authorities shall take into account the following criteria:

(a) the gravity and the duration of the breach;

(b) the degree of responsibility of the responsible person;

(c) the size and the financial strength of the responsible person, as indicated by the total turnover of the responsible legal person or the annual income of the responsible natural person;

(d) the importance of the profits gained, losses avoided by the responsible person or the losses for third parties derived from the breach, insofar as they can be determined;

(e) the level of cooperation of the responsible person with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;

(f) previous breaches by the responsible person.

2. Additional factors may be taken into account by competent authorities, if such factors are specified in national law.

Article 62

Reporting of violations

1. Member States shall put in place effective mechanisms to encourage reporting of breaches of this Regulation to competent authorities.

2. The mechanisms referred to in paragraph 1 shall include at least:

(a) specific procedures for the receipt and investigation of reports of breaches;

(b) appropriate protection for persons who report potential or actual breaches;

(c) protection of personal data concerning both the person who reports the potential or actual breaches and the accused person in compliance with the principles laid down in Directive 95/46/EC;

(d) appropriate procedure to ensure the rights of defence and to be heard of the accused person before the adoption of a final decision affecting that person and the right to seek effective remedy before a tribunal against any decision or measure affecting that person.

Article 63

Delegation of powers

The Commission shall be empowered to adopt delegated acts in accordance with Article 64 concerning Articles 2(2), 22(6), 23(1), 23(4), 30(1), 30(3), 37(1), 50(1), 50(2), 50(3), 51(2) and 51(3).

Article 64

Exercice of the delegation

1. The power to adopt delegated acts is conferred to the Commission subject to the conditions laid down in this Article.

2. The delegation of power referred to in Article 63 shall be conferred for an indeterminate period of time from the date of entry into force of this Regulation.

3. The delegation of powers referred to in Article 63 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 63 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

Article 65

Implementing powers

The Commission shall be empowered to adopt implementing acts under Article 23(6) and the third subparagraph of Article 52(2). Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 66(2).

Article 66

Committee procedure

1. The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC[1]. That Committee shall be a committee in the meaning of Regulation (EU) No 182/2011.

2. Article 5 of Regulation (EU) No 182/2011 shall apply when the Commission exercises the implementing powers conferred by this Regulation.

TITLE VI

DELEGATED ACTS, TRANSITIONAL PROVISIONS, AMENDMENT TO DIRECTIVE 98/26/EC AND FINAL PROVISIONS

Article 67

Transitional provisions

1. Institutions that have been ***providing services listed in the Annex before [OJ please insert the date of entry into force of this Regulation] and that have*** notified to ESMA as CSDs under the conditions set out under Article 19(4) shall ***obtain*** all authorisations that are necessary for the purposes of this Regulation ***by 31 December 2014***.

2. ***By 1 January 2015, a CSD providing*** CSD ***services as listed in Annex 1*** established in a third country shall ***obtain*** either ***all authorisations*** from the competent authority of the Member State in which the CSD provides its services where it intends to establish and provide its services on the basis of Article 14, or recognition from ESMA where it intends to provide its services on the basis of Article 23.

3. Where, on the date of entry into force of this Regulation, a CSD established in a third country, already provides services in a Member State in accordance with the national law of that Member State, that CSD shall be permitted to continue to provide services until such time as the authorisation referred to in Article 14 or ***one year after*** the recognition referred to in Article 23 is granted or rejected.

[1] OJ L 191, 13.7.2001, p. 45.

4. Links between a CSD established in a third country and CSDs authorised in the Member States shall be accepted until such time as the authorisation referred to in Article 14 or the recognition referred to in Article 23 is granted or rejected.

Article 68

Amendment to Directive 98/26/EC

1. The third indent of the first subparagraph of point (a) of Article 2 of Directive 98/26/EC is replaced by the following:

"- designated, without prejudice to other more stringent conditions of general application laid down by national law, as a system and notified to the European Securities and Markets Authority by the Member State whose law is applicable, after that Member State is satisfied as to the adequacy of the rules of the system.".

2. *By [six months after the entry into force of this Regulation]*, Member States shall adopt, publish and communicate to the Commission measures necessary to comply with the provisions of paragraph 1.

Article 69

Reports and review

1. ESMA, in cooperation with EBA and the authorities referred to in Articles 9 and 11, shall submit annual reports to the Commission providing assessments of trends, potential risks and vulnerabilities, and, where necessary, recommendations of preventative or remedial action in the markets for services covered by this Regulation. *Those reports* shall include at least *an assessment of the following*:

(a) ▌ settlement efficiency for domestic and cross-border operations for each Member State based on the number and volume of settlement fails, amount of penalties referred to in Article 7(4), number and volumes of buy-in transactions referred to in Article 7(4) and any other relevant criteria;

(b) ▌ measuring settlement which does not take place in the securities settlement systems operated by CSDs based on the number and volume of transactions and any other relevant criteria ***based on the information received under Article 16(2)***;

(c) ▌ the cross-border provision of services covered by this Regulation based on the number and types of CSD links, number of foreign participants to the securities settlement systems operated by CSDs, number and volume of transactions involving such participants, number of foreign issuers recording their securities in a CSD in accordance with Article 47 and any other relevant criteria***;***

(ca) the functioning of the peer review process for cross-border supervision in

Article 22(5a) and whether a move to formal colleges of supervisors would be appropriate given the changes in the post-trade competitive landscape including the emergence of any new entrants, as well as any consolidation in the number of CSDs and the results of the other assessments carried out under this Article;

(cb) the need for additional penalties for settlement failures in relation to repos accompanied, if appropriate, by a legislative proposal;

(cc) the need for additional flexibility in relation to penalties for settlement failures in relation to illiquid transferable securities accompanied, if appropriate, by a legislative proposal.

2. The reports referred to in paragraph 1 covering a calendar year shall be communicated to the Commission before 30 April of the *following* calendar year.

2a. By [OJ please insert date three years after entry into force] ESMA and the EBA shall prepare a report, after consulting the ESCB, assessing whether CSDs should continue to be allowed to operate ancillary banking services within the same legal entity as referred to in Article 52 and whether that activity constitutes a risk to financial stability and competitiveness in settlement services in the Union. The Commission may put forward a legislative proposal based on that report to limit this activity within the same legal entity if deemed appropriate.

2b. By [OJ please insert date three years after entry into force] the Commission shall publish an assessment of the feasibility and desirability of including UCITS or certain UCITS within the scope of some or all of the provisions of this Regulation and consider putting forward legislative proposals if appropriate.

Article 70

Entry into force and application

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

2. Article 5 shall apply from 1 January 2015.

3. Article 3(1) shall apply from 1 January ***2015 to transferable securities issued after that date and from 1 January 2020 to all transferable securities.***

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

ANNEX

LIST OF SERVICES

SECTION A
CORE SERVICES OF CENTRAL SECURITIES DEPOSITORIES

1. Initial recording of securities in a book-entry system ('notary service');

2. Maintaining securities accounts at the top tier level ('central maintenance service');

3. Operating a securities settlement system ('settlement service').

SECTION B

NON-BANKING TYPE OF ANCILLARY SERVICES OF CENTRAL SECURITIES DEPOSITORIES ***NOT INVOLVING CREDIT OR LIQUIDITY RISK***

Services provided by the CSDs that contribute to enhancing the safety, efficiency and transparency of the securities markets, including:

1. Services related to the settlement service, such as:

   (a) Organising a securities lending mechanism, as agent among participants of a securities settlement system;

   (b) Providing collateral management services, as agent for participants of a securities settlement system;

   (c) Settlement matching, ***instruction*** routing, trade confirmation, trade verification.

2. Services related to the notary and central maintenance services, such as:

   (a) Services related to shareholders' registers;

   (b) ▌ Processing of corporate actions, including tax, general meetings and information services;

(c) New issue services, including ***issuance and admittance of securities into the securities settlement system,*** allocation and management of ISIN codes and similar codes;

(d) ***Instruction*** routing and processing***, distribution of payment orders***, fee collection and processing and related reporting;

3. ***Providing,*** maintaining ***or operating*** securities accounts in relation to the settlement service, collateral management***,*** other ancillary services ***and related asset servicing services***.

4. Any other services, such as:

(a) Providing general collateral management services as agent;

(b) Providing regulatory reporting;

(c) Providing ***information,*** data and statistics to market/census bureaus ***or other governmental or inter-governmental entities***;

(d) Providing IT ***and operational*** services.

SECTION C
BANKING TYPE OF ANCILLARY SERVICES

1. ***Services provided to support the provision of core or ancillary services listed in Sections A and B as follows:***

(a) 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 1 of Directive .../.../EU [new CRD]***;

(b) ▌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 1 of Directive .../.../EU [new CRD]***

(c) ***Payment services involving processing of cash and foreign exchange transactions, within the meaning of point 3 of Annex 1 of Directive .../.../EU [new CRD];***

(ca) Guarantees and commitments related to securities lending and borrowing, within th meaning of point 6 of Annex 1 of Directive .../.../EU [new CRD];

(cb) 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 1 of Directive .../.../EU [new CRD].

EXPLANATORY STATEMENT

In the years since the financial crisis began in 2008 the EU has conducted a systematic assessment of every stage of the trading cycle in the attempt to strengthen our financial structures and prevent further crises occurring in the future. With the Commission's proposal for a regulation in the area of securities settlement and central securities depositories (CSDs) we are able to address the final stage of this process which includes post-trade infrastructure and services.

In the past, the main focus was reducing costs for investors and increasing efficiency, however post-crisis, financial regulators and policy makers have widened their interest in the post trade environment to ensuring that our financial infrastructure mitigates counterparty risk where possible, is resilient, and serves the needs of the end investor.

The completion of the single market is a key priority for all EU institutions as we strive to increase competitiveness, growth and financial stability. In the interests of both risk mitigation and ensuring a competitive environment for post trade services, it is necessary to look closely at existing models for CSDs across the EU. We need to assess whether the existing models are appropriate for the future developments of the single market. One of the most immediate developments is the introduction of the ECB's Target2Securities (T2S) system, due to go live in 2015. While historically there has been a single CSD for each member state, with the introduction of T2S it is now possible to see how a more streamlined and integrated model may develop.

In this report the Rapporteur has looked closely at the current post-trade settlement systems to assess where improvements can be made to best serve the needs of all investors. Further objectives of this legislation include the encouragement of new entrants so as to foster a competitive environment, a reduction of cross-border settlement costs and the mitigation of counterparty risk which are all addressed in the report.

Settlement Cycles and Settlement discipline

In order for the real benefits of Target2Securities to be felt it is necessary to harmonise settlement cycles. Many member states and other international markets are already converging around T+2, meaning that the intended settlement date shall be not later than on the second day of business after the trade takes place. This therefore seems an appropriate first step that could perhaps be shortened in the future.

Currently there is no common definition across the EU of what constitutes a settlement fail, therefore it is very difficult to measure what effect this is having upon the market. All settlement fails should be reported to the regulated and disclosed publicly in an aggregated format on a regular basis.

In order to reduce the problems caused by settlement fails it is appropriate that sanctions be imposed upon offending market participants and for receiving parties to be able to initiate a buy-in procedure four days after the intended settlement date should their counterparty have failed to deliver the securities. Further to this.

SME Growth Markets
All EU markets legislation should be properly tailored for SME Growth Markets, so as to encourage more SMEs into the capital markets, particularly so as to reduce companies' reliance upon bank lending. Given the often less liquid nature of SME securities it is therefore appropriate to allow venues to exclude SME Growth markets from the sanctions for settlement fails for a period up until 15 days after the intended settlement date when a buy-in procedure can also be initiated to ensure delivery. While T+2 should still be the expectation, some flexibility should be allowed by the operators of these markets.

Supervision
Responsibility for authorising and supervising CSDs should remain primarily with the Member States. However, in order to facilitate the efficient development and then coordinate the supervision of a single European post-trade infrastructure, ESMA should conduct a specialised peer review of the national competent authorities of CSDs offering cross border services regularly. Information concerning the operation of CSDs should be shared upon request with all competent authorities.

Banking Services
In order for CSDs to be as resilient as possible, and maintain a level playing field across the entire EU, if it seems appropriate that a CSD wants to provide banking services to perform its primary function, it is required to establish a separate legal entity constituted under the relevant banking legislation (CRD IV) to provide these services. As more stress is being put on market infrastructure via central counterparties and increased collateral management needs, it is important that institutions providing these services are regulated to the highest possible standard. Should the settlement arm of a CSD fail due to the collapse of one of its intraday liquidity providers for example, then it should be possible for another settlement agent bank to be able to take its place without the complete failure of the CSD. Separation of the activities within a group should ensure it is simpler, in an emergency situation, to ensure client access to their securities at all times. A similar situation in an integrated model would require legal resolution by administrators. The CPSS IOSCO guidelines and the recent consultation document released by the Basel Committee on Banking Supervision, Consultative Document, *"Monitoring Indicators for Intraday Liquidity Management"* July 2012 show the concerns of international regulators in this regard. It would seem that any loss of efficiency by operating the cash and securities businesses of a CSD as separate legal entities is fully compensated by a reduction in systemic risk to the end investor by avoiding more complex resolution procedures.
If a separation of the banking services from the settlements services were not to be included in this regulation, a specialised regime would need to developed to encompass the activities of the International CSDs (ICSDs) given their role as systemically important financial institutions.

CSD Links
In order to achieve a more integrated post trade landscape across the EU, it is appropriate to reduce the administrative burden of CSDs linking to one another in the case of standard links that do not involve the transfer of risk. Target2Securities will make these links safer and more useful to market participants. While other types of links should also be encouraged, they require closer supervision and should be subject to explicit authorisation procedures.

Internalisation
There are no indicators for the proportion of settlement activities taking place outside of the settlement systems operated by CSDs and Central Banks in the EU. While this activity could provide positive competitive pressure upon market infrastructure and reduce costs for investors, the Rapporteur believes that all settlement should take place in a regulated environment. Given the lack of information on this kind of activity it is important that this regulation set up a framework for the reporting of internalised settlement so it can be better understood and the regulation can be tailored if necessary.

Segregation
Investors should be able to choose the level of protection required for their assets throughout the entire chain of trade to post trade. This should entail CSDs offering fully segregated client accounts and omnibus type accounts, should this be an investor preference, at a reasonable cost. National law that prevents this should be modified so costs can be reduced for the end investor choosing this level of segregated account.

Rehypothecation
As regulations such as EMIR and CRD IV place higher collateral demands upon financial institutions it is very important that regulators are able to monitor how collateral is being re-used and rehypothecated. While detailed guidelines will be developed for work on Shadow Banking, the key role that is played by CSDs via securities lending activities as well as their notary function means they are well placed to provide evidence to regulators of how best to proceed in this area. Notwithstanding this, end investors should always be required to give their informed consent should their assets be used by anyone else in the chain of post trade services for other purposes, and any fees earned in relation to rehypothecation should be transparent

Dematerialisation
Those member states that have not fully dematerialised should be given a deadline to do so in order to ensure that the benefits of the single market in financial services can be felt by all investors. Retail investors should be given comprehensive information regarding the process from certificated shared to dematerialised ones and be made aware of the benefits and safety of electronic records as opposed to paper share certificates. In order for shareholders to play a more active role exercising their rights over companies it is necessary that central registers be kept that will facilitate the use of these rights. Given the need to change investor culture, a suitably long period of adjustment needs to be allowed, although the transition to dematerialisation at the point of settlement of trade, rather than at the point of trade itself, should aid the transfer to electronic formats.

Securities Law and Conflict of Laws
A common understanding to overcome the conflicting laws of different member states governing securities is required to make the provisions of this regulation fully operational. Tying each issuer to the CSD of their own member state is not inline with the single market, therefore it is important that this issue is solved. Above all else legal certainty for all market participants should be guaranteed in this regulation and should be further strengthened by Securities Law legislation as soon as practical.

28.11.2012

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on Economic and Monetary Affairs

on the proposal for a regulation 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/EC
(COM(2012)0073 – C7-0071/2012 – 2012/0029(COD))

Rapporteur: Dimitar Stoyanov

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following amendments into its report:

Amendment 1

Proposal for a regulation
Article 3 – paragraph 1

Text proposed by the Commission	*Amendment*
1. Any ***company*** that issues transferable securities which are admitted to trading on regulated markets shall arrange for such securities to be represented in book-entry form as immobilisation through the issuance of a global note, which represents the whole issue, or subsequent to a direct issuance of the securities into a dematerialised form.	1. Any ***legal entity*** that issues transferable securities which are admitted to trading on regulated markets shall arrange for such securities to be represented in book-entry form as immobilisation through the issuance of a global note, which represents the whole issue, or subsequent to a direct issuance of the securities into a dematerialised form.

Justification

Transferable securities can be issued by companies and by other legal entities, such as Member States, Member States' regional or local authorities, or public international bodies. It is proposed to broaden the scope of Article 3(1) of the proposed regulation to include issuers other than companies, by replacing the term "company" with "legal entity". If this proposal is accepted, Article 4(1) of the proposed regulation should be amended accordingly.

Amendment 2

Proposal for a regulation
Article 4 – paragraph 1

Text proposed by the Commission	*Amendment*
1. The authorities of the Member State where the ***company*** that issues securities is established shall be competent for ensuring that Article 3(1) is applied.	1. The authorities of the Member State where the ***legal entity*** that issues securities is established shall be competent for ensuring that Article 3(1) is applied.

Justification

See justification of Amendment 1.

Amendment 3

Proposal for a regulation
Article 7 – paragraph 2

Text proposed by the Commission	*Amendment*
2. For each securities settlement system it operates, a CSD shall establish procedures that facilitate settlement of transactions in financial instruments referred to in Article 5(1) that are not settled on the intended settlement date. These procedures shall provide for a sufficiently deterrent penalty mechanism for participants that cause the settlement fails.	2. For each securities settlement system it operates, a CSD shall establish procedures that facilitate settlement of transactions in financial instruments referred to in Article 5(1) that are not settled on the intended settlement date. These procedures shall provide for a ***uniform***, sufficiently deterrent penalty mechanism for participants that cause the settlement fails.

Amendment 4

Proposal for a regulation
Article 7 – paragraph 3

Text proposed by the Commission	*Amendment*
3. A participant to a securities settlement system that fails to deliver the financial instruments referred to in Article 5(1) to the receiving participant on the intended settlement date shall be subject to a buy-in whereby those instruments shall be bought in the market ***no later than*** four days ***after the intended*** settlement ***date*** and delivered to that receiving participant and ***other*** measures in accordance with paragraph 4.	3. A participant to a securities settlement system that fails to deliver the financial instruments referred to in Article 5(1) to the receiving participant on the intended settlement date shall be subject to a buy-in whereby those instruments shall be bought in the market ***within*** four days ***of the date on which*** settlement ***was due*** and delivered to that receiving participant and ***shall comply with the binding*** measures in accordance with paragraph 4.

Amendment 5

Proposal for a regulation
Article 7 – paragraph 5 – point c

Text proposed by the Commission	*Amendment*
(c) where the execution of the buy-in is not possible, the amount of cash compensation paid to the receiving participant is higher than the price of the financial instruments agreed at the time of the trade and the last publicly available price for such instruments on the trading venue where the trade took place, and is sufficiently deterrent for the defaulting participant;	(c) where the execution of the buy-in is not possible, the amount of cash compensation paid to the receiving participant is ***substantially*** higher than the price of the financial instruments agreed at the time of the trade and the last publicly available price for such instruments on the trading venue where the trade took place, and is ***thus*** sufficiently deterrent for the defaulting participant;

Amendment 6

Proposal for a regulation
Article 16 – paragraph 4

Text proposed by the Commission	*Amendment*
4. 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 Annex***.	4. An authorised CSD may have a participation in ***any*** legal person ***irrespective of the industry. Such participation shall be subject to approval by the competent authority***.

Justification

There could be legitimate reasons for a CSD to own a participation in other legal entities or to operate subsidiaries in different but related business (e.g. IT). In order to avoid that such activities pose a risk to the CSD core services, the approval of the national regulator should be required whenever a new participation is acquired.

Amendment 7

Proposal for a regulation
Article 18 – paragraph 1 – point d

Text proposed by the Commission	*Amendment*
(d) where the CSD has seriously ***and*** systematically infringed the requirements set out in this Regulation.	(d) where the CSD has seriously ***or*** systematically infringed the requirements set out in this Regulation.

Amendment 8

Proposal for a regulation
Article 26 – paragraph 3 a (new)

Text proposed by the Commission	*Amendment*
	3a. User committees may submit an opinion to the board containing detailed reasons regarding the pricing structures of the CSD. When there is a conflict of interests on the part of a member of the user committees, he or she shall refrain from influencing in any way the opinion concerned.

Justification

Given that some banks are users of the CSD while offering competing services at the same time, it is important to avoid conflicts of interest when making a recommendation on the CSD's pricing structure.

Amendment 9

Proposal for a regulation
Article 31 – paragraph 6

Text proposed by the Commission	*Amendment*
6. A CSD shall account separately for costs and revenues of the services provided and shall disclose that information to the competent authority.	6. A CSD shall account separately for costs and revenues of the ***core and ancillary*** services provided***, as they are defined in section A and Section B of the Annex,*** and shall disclose that information to the competent authority.

Justification

It does not make sense for depositories to disclose revenues and costs for each individual service and this information could be sensitive from a competition law point of view. It is more reasonable to limit the disclosure requirement to distinguishing between costs and revenues for core services, on the one hand, and ancillary services, on the other hand.

Amendment 10

Proposal for a regulation
Article 46 – paragraph 1

Text proposed by the Commission	*Amendment*
1. Any question with respect to proprietary aspects in relation to financial instruments held by a CSD shall be governed by the law of the country where the account is maintained.	1. Any question with respect to proprietary aspects in relation to financial instruments held by a CSD shall be governed by the law of the country where the account is maintained***, except if the financial instrument is issued in another country, in which case the applicable law is the law of that country***.

Justification

As stressed in the opinion of the European Central Bank, more clarity is needed as to which law applies to securities holdings.

PROCEDURE

Title	Securities settlement in the EU and central securities depositories (CSDs), and amendment of Directive 98/26/EC
References	COM(2012)0073 – C7-0071/2012 – 2012/0029(COD)
Committee responsible Date announced in plenary	ECON 15.3.2012
Opinion by Date announced in plenary	JURI 15.3.2012
Rapporteur Date appointed	Dimitar Stoyanov 25.4.2012
Discussed in committee	10.10.2012
Date adopted	27.11.2012
Result of final vote	+: 17 –: 2 0: 0
Members present for the final vote	Raffaele Baldassarre, Sebastian Valentin Bodu, Françoise Castex, Christian Engström, Marielle Gallo, Giuseppe Gargani, Sajjad Karim, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Alajos Mészáros, Evelyn Regner, Rebecca Taylor, Alexandra Thein, Cecilia Wikström
Substitute(s) present for the final vote	Sergio Gaetano Cofferati, Eva Lichtenberger, Angelika Niebler, József Szájer, Axel Voss

PROCEDURE

Title	Securities settlement in the EU and central securities depositories (CSDs), and amendment of Directive 98/26/EC
References	COM(2012)0073 – C7-0071/2012 – 2012/0029(COD)
Date submitted to Parliament	7.3.2012
Committee responsible Date announced in plenary	ECON 15.3.2012
Committee(s) asked for opinion(s) Date announced in plenary	JURI 15.3.2012
Rapporteur(s) Date appointed	Kay Swinburne 10.5.2011
Discussed in committee	19.9.2012 18.12.2012
Date adopted	4.2.2013
Result of final vote	+: 39 –: 3 0: 3
Members present for the final vote	Burkhard Balz, Elena Băsescu, Jean-Paul Besset, Sharon Bowles, Udo Bullmann, Nikolaos Chountis, George Sabin Cutaş, Leonardo Domenici, Derk Jan Eppink, Diogo Feio, Markus Ferber, Elisa Ferreira, Ildikó Gáll-Pelcz, Jean-Paul Gauzès, Sven Giegold, Sylvie Goulard, Liem Hoang Ngoc, Gunnar Hökmark, Wolf Klinz, Jürgen Klute, Werner Langen, Astrid Lulling, Hans-Peter Martin, Ivari Padar, Alfredo Pallone, Anni Podimata, Antolín Sánchez Presedo, Olle Schmidt, Peter Simon, Peter Skinner, Theodor Dumitru Stolojan, Ivo Strejček, Sampo Terho, Marianne Thyssen, Ramon Tremosa i Balcells, Corien Wortmann-Kool, Pablo Zalba Bidegain
Substitute(s) present for the final vote	Sophie Auconie, Jean-Pierre Audy, Pervenche Berès, Lajos Bokros, Herbert Dorfmann, Danuta Maria Hübner, Sophia in ‘t Veld, Krišjānis Kariņš, Olle Ludvigsson, Thomas Mann, Emilie Turunen, Roberts Zīle
Date tabled	14.2.2013