

2014 No. 2879

FINANCIAL SERVICES AND MARKETS

The Central Securities Depositories Regulations 2014

Made - - - - 29th October 2014

Laid before Parliament 30th October 2014

Coming into force - - 21st November 2014

The Treasury are designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to financial services.

The Treasury in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 make the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Central Securities Depositories Regulations 2014 and come into force on 21st November 2014.

(2) In these Regulations—

“the Act” means the Financial Services and Markets Act 2000(c);

“the Bank” means the Bank of England;

“banking-type ancillary services” means the services set out in Section C of the Annex to the CSD regulation;

“CSD regulation” means Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories(d);

“recognised body” has the meaning given in section 313(1) of the Act.

(3) Any expression used in these Regulations which is defined for the purposes of the CSD regulation has the meaning given by the CSD regulation, and any other expression used in these Regulations which is defined for the purposes of the Act has the meaning given by the Act.

Designation of competent authorities

2.—(1) The FCA(e) is the competent authority responsible for—

(a) the supervision of trading venues(f) for the purposes of the CSD regulation;

(a) S.I. 2012/1759.

(b) 1972 c.68; section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 (c. 7).

(c) 2000 c.8.

(d) OJ No L257, 28.8.2014, p1.

(e) Defined in section 417(1) of the Act.

(f) Defined in Article 2(1)(42) of the CSD regulation.

- (b) the functions referred to in Article 4(3) of the CSD regulation.
- (2) The Bank is the competent authority responsible for—
- (a) authorisation and supervision of CSDs(a) established in the United Kingdom referred to in the first sub-paragraph of Article 11(1) of the CSD regulation, except as provided in paragraph (4);
 - (b) oversight of securities settlement systems(b) in the United Kingdom referred to in Article 12(1)(a) of the CSD Regulation; and
 - (c) authorisation of a CSD under Article 54 of the CSD regulation for the provision of banking-type ancillary services—
 - (i) by a CSD under paragraph (2)(a) of that Article, or
 - (ii) by a designated credit institution under paragraph (2)(b) of that Article.
- (3) The Bank is responsible for the purposes of the second sub-paragraph of Article 11(1) of the CSD regulation for cooperation with other Member States’ competent authorities, relevant authorities, ESMA and EBA(c).
- (4) The PRA(d) is the competent authority responsible for—
- (a) authorisation of a CSD referred to in Article 54(2)(a) of the CSD regulation as a credit institution; and
 - (b) supervision in accordance with Article 60 of the CSD regulation—
 - (i) of the provision of banking-type ancillary services authorised under Article 54 of the CSD regulation by a CSD referred to in Article 54(2)(a) of that Regulation and a credit institution referred to in Article 54(2)(b) of that Regulation, and
 - (ii) of compliance with the prudential requirements referred to in Article 59 of the CSD regulation by a CSD referred to in Article 54(2)(a) of that Regulation and a credit institution referred to in Article 54(2)(b) of that Regulation.

Power of FCA to require information from a person who is not authorised

3.—(1) In this regulation and in regulation 4, a “non-authorised counterparty” is a person, other than an authorised person(e) or a recognised body, who is a party to a financial collateral arrangement referred to in the second sub-paragraph of Article 3(2) of the CSD regulation.

- (2) Paragraph (3) applies where—
- (a) a non-authorised counterparty is subject to an obligation under the CSD regulation; or
 - (b) it is necessary for the FCA to determine whether a person is a non-authorised counterparty.
- (3) The FCA may, by notice in writing, require the counterparty or person—
- (a) to provide specified information or information of a specified description; or
 - (b) to produce specified documents or documents of a specified description,
- so that it can verify whether the non-authorised counterparty has complied with the CSD regulation or whether the person is a non-authorised counterparty.
- (4) The information or documents must be provided or produced—
- (a) before the end of such reasonable period as may be specified;
 - (b) at such place as may be specified.

(a) Defined in Article 2(1)(1) of the CSD regulation.
 (b) Defined in Article 2(1)(10) of the CSD regulation.
 (c) “Competent authority” is defined in Article 2(1)(17) of the CSD regulation; “relevant authority” is defined in Article 2(1)(18) of the CSD regulation; “EBA” and “ESMA” are defined in section 417(1) of the Act.
 (d) Defined in section 417(1) of the Act.
 (e) Defined in section 417(1) of the Act.

(5) This regulation applies only to information and documents reasonably required in connection with the exercise by the FCA of its functions under the CSD regulation.

(6) The FCA may require any information provided under this regulation to be provided in such a form as it may reasonably require.

(7) The FCA may require—

(a) any information provided, whether in a document or otherwise, to be verified in such a manner, or

(b) any document produced to be authenticated in such a manner,
as it may reasonably require.

(8) A requirement imposed under this regulation is a “relevant requirement” for the purposes of sections 380(a) (injunctions) and 382(b) (restitution orders) of the Act.

(9) In this regulation, “specified” means specified in the notice.

Penalties and statements

4.—(1) If the FCA considers that—

(a) a non-authorized counterparty or any other person has contravened a relevant requirement imposed on it; or

(b) a non-authorized counterparty has contravened a requirement imposed by or under the CSD regulation,

the FCA may publish a statement to that effect or impose on it a penalty, in respect of the contravention, of such amount as the FCA considers appropriate.

(2) If the FCA considers that a non-authorized counterparty or any other person has in purported compliance with a relevant requirement knowingly or recklessly given the FCA information which is false or misleading in a material particular, the FCA may publish a statement to that effect or impose on it a penalty of such amount as it considers appropriate.

(3) Where the FCA has published a statement or imposed a penalty under paragraph (1) or (2), it must comply with the requirements of Article 62 of the CSD regulation.

(4) A penalty under paragraph (1) or (2) is payable to the FCA.

(5) The FCA must in respect of each of its financial years pay to the Treasury any amounts received by it during the year by way of penalties imposed under this regulation.

(6) The Treasury may give directions to the FCA as to how the FCA is to comply with its duty under paragraph (5).

(7) The directions may in particular—

(a) specify the time when any payment is required to be made to the Treasury, or

(b) require the FCA to provide the Treasury at specified times with information relating to penalties that the FCA has imposed under this regulation.

(8) The Treasury must pay into the Consolidated Fund any sums received by them under this regulation.

(9) In this regulation, a “relevant requirement” means a requirement imposed under regulation 3.

Procedure in relation to regulation 4

5.—(1) If the FCA proposes to take action against a person under regulation 4, it must give the person concerned a warning notice.

(a) Section 380 was amended by paragraph 19 of Schedule 9 to the Financial Services Act 2012 (c.21), paragraph 3 of Schedule 10 to the Financial Services (Banking Reform) Act 2013 (c.33), and S.I. 2013/1773.

(b) Section 382 was amended by paragraph 21 of Schedule 9 to the Financial Services Act 2012, paragraph 3 of Schedule 10 to the Financial Services (Banking Reform) Act 2013, and S.I. 2013/1773.

- (2) A warning notice about a proposal to impose a penalty must state the amount of the penalty.
- (3) A warning notice about a proposal to publish a statement must set out the terms of the proposed statement.
- (4) If, having considered any representations made in response to the warning notice, the FCA decides to take action against a person under regulation 4, it must without delay give the person concerned a decision notice.
- (5) A decision notice about the imposition of a penalty must state the amount of the penalty.
- (6) A decision notice about the publication of a statement must set out the terms of the statement.
- (7) If the FCA decides to take action against a person under regulation 4, the person may refer the matter to the Tribunal(a).
- (8) Sections 210(b) (statements of policy) and 211(c) (statements of policy: procedure) of the Act apply in respect of the imposition of penalties under regulation 4 and the amount of such penalties as they apply in respect of the imposition of penalties under Part 14 of the Act (disciplinary measures) and the amount of penalties under that Part.
- (9) After a statement under regulation 4 is published, the FCA must send a copy of it to the person concerned and to any person to whom a copy of the decision notice was given under section 393(4)(d) of the Act (as applied by paragraph (10)).
- (10) Sections 387(1), (2) and (3)(e) (warning notices), 388(f) (decision notices), 389(g) (notices of discontinuance), 390(h) (final notices), 393(i) (third party rights) and 394(j) (access to FCA or PRA material) of the Act apply in relation to a warning notice or decision notice under this regulation.
- (11) Section 391 of the Act(k) (publication) applies in relation to a warning notice, decision notice or final notice under this regulation subject to Article 62 of the CSD regulation.
- (12) Part 9 of the Act (hearings and appeals) applies to references to the Tribunal under this regulation as it applies to references to the Tribunal under the Act as if a decision to publish a statement or impose a penalty under regulation 4 was a “disciplinary reference” for the purposes of section 133 of the Act(l).

Amendments to the Financial Services and Markets Act 2000

6.—(1) The Act is amended as follows.

- (2) In section 391 (publication of notices), after subsection (8) insert—
- “(8A) Where a decision notice or final notice relates to any decision or action under a provision of this Act in relation to the contravention of a requirement imposed by the CSD regulation or any directly applicable regulation made under the CSD regulation, this section has effect subject to Article 62 of the CSD regulation (publication of decisions).”.
- (3) In section 417 (definitions), in subsection (1) at the appropriate place insert—

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- (a) Defined in section 417(1) of the Act.
- (b) Section 210 was amended by paragraph 20 of Schedule 2 to the Financial Services Act 2010 (c.28) and paragraph 17 of Schedule 9 to the Financial Services Act 2012.
- (c) Section 211 was amended by paragraph 18 of Schedule 9 to the Financial Services Act 2012.
- (d) Section 393(4) was amended by paragraph 32 of Schedule 9 to the Financial Services Act 2012.
- (e) Section 387(1), (2) and (3) was amended by paragraph 26 of Schedule 9 to the Financial Services Act 2012.
- (f) Section 388 was amended by paragraph 27 of Schedule 9 to the Financial Services Act 2012 and paragraph 13 of Schedule 3 to the Financial Services (Banking Reform) Act 2013.
- (g) Section 389 was amended by paragraph 28 of Schedule 9 to the Financial Services Act 2012.
- (h) Section 390 was amended by paragraph 29 of Schedule 9 to the Financial Services Act 2012 and S.I. 2010/22.
- (i) Section 393 was amended by paragraph 32 of Schedule 9 to the Financial Services Act 2012.
- (j) Section 394 was amended by paragraph 11 of Schedule 4 to the Regulation of Investigatory Powers Act 2000 (c.23) and paragraph 33 of Schedule 9 to the Financial Services Act 2012.
- (k) Section 391 was amended by sections 13 and 24 of the Financial Services Act 2010, section 24 of and paragraph 30 of Schedule 9 to the Financial Services Act 2012, section 4 of the Financial Services (Banking Reform) Act 2013 and S.I. 2012/916, 2013/1388 and 2013/3115.
- (l) Section 133 was substituted by S.I. 2010/22, and amended by section 23 of the Financial Services Act 2012, section 4 of the Financial Services (Banking Reform) Act 2013, paragraph 83 of Schedule 9 to the Crime and Courts Act 2013 (c.22), and S.I. 2013/1388.

““the CSD regulation” means Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories;”.

(4) In Schedule 17A(a) (further provision in relation to the exercise of Part 18 functions by the Bank of England)—

- (a) in paragraph 11(2)(d) after “the EMIR regulation” insert “, the CSD regulation or any directly applicable regulation made under the CSD regulation”;
- (b) in paragraph 23 after “the EMIR regulation” insert “, the CSD regulation or any directly applicable regulation made under the CSD regulation”.

Amendments to the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001

7. In Schedule 1 to the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(b) (disclosure of confidential information whether or not subject to single market restrictions), in Part 1, in the entry relating to the Bank of England, the European Central Bank and other central banks, for “and clearing and settlement systems” substitute “, clearing and settlement systems and central securities depositories within the meaning of the CSD regulation”.

Amendment to the Payment to Treasury of Penalties (Enforcement Costs) Order 2013

8. In article 2 of the Payment to Treasury of Penalties (Enforcement Costs) Order 2013(c) (enforcement powers), after paragraph (k) insert—

“(l) regulation 4 of the Central Securities Depositories Regulations 2014.”.

Amendments to the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013

9.—(1) The Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013(d) is amended as follows.

(2) In article 2 (qualifying EU provisions: general)—

- (a) after paragraph (2)(g) insert—

“(h) the CSD regulation and any directly applicable regulation made under that Regulation.”;
- (b) after paragraph (6)(c) insert—

“(d) the CSD regulation and any directly applicable regulation made under that Regulation.”;
- (c) after paragraph (8)(d) insert—

“(e) the CSD regulation and any directly applicable regulation made under that Regulation.”.

(3) In article 3 (qualifying EU provisions: disciplinary measures)—

- (a) after paragraph (2)(g) insert—

“(h) the CSD regulation and any directly applicable regulation made under that Regulation.”;
- (b) after paragraph (3)(e) insert—

(a) Schedule 17A was inserted by Schedule 7 to the Financial Services Act 2012; paragraphs 11 and 23 were amended by S.I. 2013/504.

(b) S.I. 2001/2188, amended by S.I. 2012/916 and 2013/472; there are other amendments but none is relevant.

(c) S.I. 2013/418, amended by S.I. 2013/504.

(d) S.I. 2013/419, amended by S.I. 2013/1773.

“(f) in relation to a contravention of a requirement imposed by the CSD regulation or any directly applicable regulation made under the CSD regulation—

(i) if the authorised person concerned is a PRA-authorised person, either the PRA or the FCA;

(ii) in any other case, the FCA.”.

(4) In article 4 (qualifying EU provisions etc.: recognised investment exchanges and clearing houses)—

(a) after paragraph (3)(d) insert—

“(e) the CSD regulation and any directly applicable regulation made under that Regulation.”;

(b) after paragraph (5)(d) insert—

“(e) the CSD regulation and any directly applicable regulation made under that Regulation.”;

(c) after paragraph (7)(c) insert—

“(d) the CSD regulation and any directly applicable regulation made under that Regulation.”;

(d) after paragraph (9)(b) insert—

“(c) the CSD regulation and any directly applicable regulation made under that Regulation.”.

(5) In article 5 (qualifying EU provisions: injunctions and restitution)—

(a) after paragraph (2)(g) insert—

“(h) the CSD regulation and any directly applicable regulation made under that Regulation.”;

(b) after paragraph (5)(f) insert—

“(g) in relation to a contravention of the CSD regulation or any directly applicable regulation made under the CSD regulation—

(i) if the authorised person concerned is a PRA-authorised person, the PRA or the FCA;

(ii) in any other case, the FCA.”;

(c) after paragraph (6)(b) insert—

“(c) the CSD regulation and any directly applicable regulation made under that Regulation.”.

(6) In article 6 (qualifying EU provisions: fees)—

(a) after paragraph (2)(i) insert—

“(j) the CSD regulation and any directly applicable regulation made under that Regulation.”;

(b) after paragraph (4)(c) insert—

“(d) the CSD regulation and any directly applicable regulation made under that Regulation.”;

(c) after paragraph (6)(b) insert—

“(c) the CSD regulation and any directly applicable regulation made under that Regulation.”.

Review

10.—(1) The Treasury must from time to time—

(a) carry out a review of regulations 2 to 9,

(b) set out the conclusions of the review in a report, and

(c) publish the report.

(2) In carrying out the review the Treasury must, so far as is reasonable, have regard to how the CSD regulation (which is implemented in part by means of regulations 2 to 9) is implemented in other Member States.

(3) The report must in particular—

(a) set out the objectives intended to be achieved by the regulatory system established by regulations 2 to 9;

(b) assess the extent to which those objectives are achieved, and

(c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before 21st November 2019.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

29th October 2014

Gavin Barwell
David Evennett
Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement in part certain Articles of Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories (“CSDs”) (OJ No L257, 28.8.2014, p1) (“the CSD regulation”).

Regulation 2 designates the Financial Conduct Authority (“FCA”) as the competent authority responsible for the supervision of trading venues (which include investment exchanges and multi-lateral trading facilities) and the functions referred to in Article 4(3) of the CSD regulation (supervision of requirement to record transactions in transferable securities in book entry form following a financial collateral arrangement). It designates the Bank of England (“the Bank”) as the competent authority responsible for matters including the authorisation and supervision of CSDs and oversight of securities settlement systems in the United Kingdom. The Prudential Regulation Authority (“PRA”) is designated as the competent authority responsible for matters including the supervision of banking-type ancillary services provided by a CSD or a credit institution designated for the purpose.

Regulation 3 grants powers to the FCA to obtain information from persons who are not authorised or recognised under the Financial Services and Markets Act 2000 (“the Act”). Regulation 4 gives the FCA the power to impose penalties and publish statements of censure, in particular for contravening regulation 3. Regulation 5 sets out the procedure that the FCA must follow if it proposes to take action under regulation 4.

Regulation 6 amends the Act to extend the Bank’s disclosure of information, information gathering and investigatory powers to functions under the CSD regulation and to secure that provision for publication of notices is compatible with the CSD regulation. Regulation 7 amends Schedule 1 to the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (S.I. 2001/2188) to extend the purposes in connection with which information can be disclosed to the Bank, and the Bank can disclose information, to include its functions in connection with CSDs.

Regulation 8 amends the Payment to Treasury of Penalties (Enforcement Costs) Order 2013 (S.I. 2013/418) to enable the FCA to deduct its enforcement costs under these Regulations from penalty receipts paid to the Treasury.

Regulation 9 amends the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013 (S.I. 2013/419) to apply provisions of the Act conferring functions on the FCA, PRA and Bank for purposes connected with the CSD regulation. These include sections 1A and 2A of the Act (the functions of the FCA and PRA); section 168 of the Act (power of the regulators to appoint an investigator); disciplinary measures imposed under Part 14 of the Act; powers to obtain injunctions or provide for restitution under Part 25 of the Act, and fee-raising powers of the FCA, PRA and Bank.

Regulation 10 requires the Treasury to review the operation and effect of these Regulations and publish a report by 21st November 2019 and within every five years after that. Following a review it will fall to the Treasury to consider whether the Regulations should remain as they are, or be revoked or amended. A further instrument would be needed to revoke or amend the Regulations.

An impact assessment has not been produced for this instrument as no significant impact on the costs of business or the voluntary sector is foreseen.

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