
STATUTORY INSTRUMENTS

2016 No. 0000

FINANCIAL SERVICES AND MARKETS

The Central Securities Depositories Regulations 2016

<i>Made</i>	- - - -	... 2016
<i>Laid before Parliament</i>		... 2016
<i>Coming into force</i>	- - 2016

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 make the following Regulations in exercise of:

- (a) the powers conferred by section 2(2) of the European Communities Act 1972;
- (b) the powers conferred by sections 155(4) and (5), 186(1) and 187(3) of the Companies Act 1989(c) and now vested in them(d);
- (c) the powers conferred by sections 286 and 428(3) of the Financial Services and Markets Act 2000(e).

The Treasury and the Secretary of State make the following Regulations in exercise of the powers conferred by sections 158(4) and (5), 174(2) to (4), 185 and 186(1) of the Companies Act 1989(f) and now vested in them jointly(g).

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- (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) 1989 c.40.
 - (d) The powers originally vested in the Secretary of State under sections 155(4) and (5), and 187(3) were transferred to the Treasury by the Transfer of Functions (Financial Services) Order 1992 (S.I. 1992/1315). Powers originally vested in the Secretary of State under section 186(1) were transferred to the Treasury insofar as they relate to functions under those sections.
 - (e) 2000 c.8; section 286 was amended by section 30 of, and paragraph 2 of Schedule 8 to, the Financial Services Act 2012 and S.I. 2006/2975 and 2007/126.
 - (f) Section 185 was amended by S.I. 2001/3649.
 - (g) The powers originally vested in the Secretary of State under sections 158(4) and (5), 174(2) to (4), and 185 of the Companies Act 1989 are now exercisable by the Secretary of State jointly with the Treasury: see the Transfer of Functions (Financial Services) Order 1992. Powers originally vested in the Secretary of State under section 186(1) are now exercisable by the Secretary of State jointly with the Treasury insofar as they relate to functions under those sections.

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Central Securities Depositories Regulations 2016 and come into force on [] 2016.

PART 2

Amendments to the Financial Services and Markets Act 2000

Amendments to the Financial Services and Markets Act 2000

2.—(1) The Financial Services and Markets Act 2000 is amended as follows.

(2) In section 3A(a) (meaning of “regulator”), in subsection (3)(b) for “recognised investment exchanges and clearing houses” substitute “recognised investment exchanges, clearing houses and CSDs”. [*consequential*]

(3) In section 55G(b) (giving permission: special cases), in subsection (3)(a) omit “any of subsections (2) to (3C) of”. [*consequential*]

(4) In section 128(c) (suspension of investigations)— [*consequential*]

(a) in subsection (1) for “or recognised clearing house” substitute “, recognised clearing house or recognised CSD”;

(b) in subsections (1)(a) and (b) and (2)(a) for “or clearing house” substitute “, clearing house or central securities depository”.

(5) In section 133(d) (proceedings before Tribunal: general provision)—

(a) after subsection (1) insert—

“(1A) For the purposes of this section, in the case of a reference to the Tribunal under section 290(4A) (which relates to an application by a central securities depository under section 288A), the failure by the Bank of England to make a decision is treated as a decision to refuse the application (and accordingly is treated as falling within subsection (1)(b)).”; [*consequential on amendments to section 290*]

(b) in subsection (7A)(m), after “312E” insert “or 312FA” and after “312F” insert “or 312FA”.

(6) In section 192B(e) (meaning of “qualifying parent undertaking”), in subsection (3) for “or a recognised clearing house” substitute “, a recognised clearing house or a recognised CSD”. [*consequential*]

(7) In section 192F (consultation between regulators), in subsection (3) after “recognised clearing house” insert “or a recognised CSD”. [*consequential*]

(8) For the heading of Part 18 substitute “Recognised investment exchanges, clearing houses and CSDs”. [*consequential*]

(9) In section 285(f) (exemption for recognised investment exchanges and clearing houses)— [*Arts 16, 17, 23 and 25*]

(a) Section 3A was inserted by section 6 of the Financial Services Act 2012 (c.21) and amended by section 135 of the Financial Services (Banking Reform) Act 2013 (c.33).

(b) Section 55G was inserted by section 11 of the Financial Services Act 2012 and amended by S.I. 2013/504.

(c) Section 128 was amended by paragraph 9 of Schedule 9 to the Financial Services Act 2012.

(d) Section 133 was substituted by S.I. 2010/22; subsection (7A) was inserted by section 23 of the Financial Services Act 2012.

(e) Sections 192B and 192F were inserted by section 27 of the Financial Services Act 2012.

(f) Section 285 was amended by section 28 of the Financial Services Act 2012, and S.I. 2013/504.

- (a) for the heading substitute “Exemption for recognised bodies etc.”;
- (b) in subsection (1)—
 - (i) omit “and” after paragraph (c);
 - (ii) after paragraph (d) insert—
 - “(e) “recognised CSD” means a central securities depository in relation to which a recognition order is in force;
 - (f) “EEA CSD” means a person established in an EEA State other than the United Kingdom who has been authorised by the competent authority of that State as a central securities depository pursuant to Article 16 of the CSD regulation(a); and
 - (g) “third country CSD” means a central securities depository established in a State which is not an EEA State which has been recognised by ESMA pursuant to Article 25 of the CSD regulation.”;

- (c) after subsection (3C) insert—
 - “(3D) A recognised CSD is exempt from the general prohibition as respects any regulated activity which is carried on for the purposes of, or in connection with—
 - (a) the core services listed in Section A of the Annex to the CSD regulation which the central securities depository is authorised to provide pursuant to Article 16 of that regulation,
 - (b) any non-banking-type ancillary services listed in or permitted under Section B of that Annex which the central securities depository is authorised to provide, including services notified under Article 19(8) of the CSD regulation, or
 - (c) any investment service or activity referred to in the second sub-paragraph of Article 73 of the CSD regulation which the central securities depository is authorised to provide.

(3E) An EEA CSD is exempt from the general prohibition as respects any regulated activity which is carried on for the purposes of, or in connection with, the services and activities covered by its authorisation granted pursuant to Article 16 of the CSD regulation.

(3F) But where Article 23(2) of the CSD regulation applies to an EEA CSD, the EEA CSD is exempt from the general prohibition as mentioned in subsection (3E) only if Article 23(6) of that regulation is complied with.

(3G) A third country CSD is exempt from the general prohibition as respects any regulated activity which is carried on for the purposes of, or in connection with, the services and activities covered by its recognition by ESMA pursuant to Article 25 of the CSD regulation.

(3H) But a recognised CSD, an EEA CSD or a third country CSD is not exempt from the general prohibition as respects any regulated activity which is carried on for the purposes of, or in connection with, any banking-type ancillary service listed in or permitted under Section C of the Annex to the CSD regulation.”.

(10) In section 285A(b) (powers exercisable in relation to recognised investment exchanges and clearing houses)— [*consequential*]

- (a) for the heading substitute “Powers exercisable in relation to recognised bodies”;
- (b) in subsection (2), after “recognised clearing houses” insert “, recognised CSDs and EEA CSDs”;
- (c) in subsection (3)—
 - (i) in paragraph (a) for “investment exchanges and clearing houses” substitute “bodies”;
 - (ii) in paragraph (c) after “recognised clearing houses” insert “and recognised CSDs”.

(a) OJ No L257, 28.8.2014, p1.

(b) Section 285A was inserted by section 29 of the Financial Services Act 2012 and amended by S.I. 2013/504.

- (11) In section 286 (qualification for recognition)— [*consequential*]
- (a) in subsection (1)(a) for “or clearing house” substitute “, clearing house or central securities depository”;
 - (b) in subsection (2) for “or clearing house” substitute “, clearing house or central securities depository”;
 - (c) in subsection (3) for “or clearing house”, in both places, substitute “, clearing house or central securities depository”.
- (12) After section 288(a) (application by a clearing house) insert—[*Art 17*]

“Application by a central securities depository

288A. Where a legal person which is established in the United Kingdom intends—

- (a) to operate a securities settlement system referred to in point (3) of Section A of the Annex to the CSD regulation, and
- (b) to provide at least one other core service listed in Section A of that Annex,

it may apply to the Bank of England in accordance with Article 17 of the CSD regulation and any directly applicable EU regulation made under that Article for an order granting authorisation for the purposes of Article 16 of that regulation and declaring it to be a recognised CSD for the purposes of this Act.”

- (13) In section 289(b) (applications: supplementary), after subsection (4) insert— [*Art 17 consequential*]

“(5) In relation to an application under section 288A, this section applies only in relation to information which the Bank of England may require in connection with recognition requirements which do not derive from the CSD regulation or any directly applicable EU regulation made under the CSD regulation.”

- (14) In section 290(c) (recognition orders)— [*Arts 16 and 17; Art 19; Art 73*]

- (a) in subsection (1)—
 - (i) omit “or” at the end of paragraph (b);
 - (ii) after paragraph (c) insert—
 - “; or
 - (d) where the application is made under section 288A, make a recognition order (a “CSD recognition order”) granting authorisation for the purposes of Article 16 of the CSD regulation and declaring the applicant to be a recognised CSD.”;
- (b) after subsection (1D) insert—
 - “(1E) A CSD recognition order must specify—
 - (a) the core services listed in Section A of the Annex to the CSD regulation which the applicant is authorised to provide pursuant to Article 16 of that regulation,
 - (b) any non-banking-type ancillary services listed in or permitted under Section B of that Annex which the applicant is authorised to provide, including services notified under Article 19(8) of the CSD regulation,
 - (c) any investment service or activity referred to in the second sub-paragraph of Article 73 of the CSD regulation which the applicant is authorised to provide,
 - (d) the outsourcing of a core service under Article 30 of the CSD regulation for which the applicant is authorised under Article 19(1) of that regulation, and

(a) Section 288 was amended by paragraph 4 of Schedule 8 to the Financial Services Act 2012 and S.I. 2013/504.
 (b) Section 289 was amended by paragraph 5 of Schedule 8 to the Financial Services Act 2012 and S.I. 2013/504.
 (c) Section 290 was amended by paragraph 6 of Schedule 8 to the Financial Services Act 2012 and S.I. 2007/126 and 2013/504.

- (e) any CSD link referred to in Article 48 of the CSD regulation which the applicant is authorised to provide pursuant to Article 19(1) of that regulation or notifies under Article 19(5) of that regulation.”;
- (c) after subsection (4) insert— [*Arts 17 and 66*]
 “(4A) If the Bank of England has not made a decision in relation to an application under section 288A within six months of that application being complete, the applicant may refer the matter to the Tribunal.
 (4B) For the purposes of subsection (4A), an application is “complete” when the Bank of England informs the applicant that it is complete pursuant to Article 17(3) of the CSD regulation.”;
- (d) after subsection (5) insert— [*Arts 17 and 66*]
 “(5A) Section 298 has effect in relation to a decision to refuse an application under section 288A—
 (a) as it has effect in relation to a decision to make a revocation order under section 297(1B); and
 (b) as if references to a recognised body were references to the applicant.”.
- (15) After section 290ZA(a) (variation of central counterparty recognition order) insert— [*Arts 19, 20*]

“Variation of CSD recognition order

290ZB.—(1) On an application made to it in accordance with Article 19(1) of the CSD regulation, the Bank of England may in accordance with the procedure specified in Article 17 of that regulation and any directly applicable EU regulation made under that Article vary a CSD recognition order.

(2) On receiving a notification under Article 19(5) or (8) of the CSD regulation (notification of CSD link or non-banking-type ancillary services), the Bank of England may vary a CSD recognition order.

(3) The Bank of England may vary a CSD recognition order by adding or removing an investment service or activity referred to in the second sub-paragraph of Article 73 of the CSD regulation.

(4) The Bank of England may, in accordance with Article 20 of the CSD regulation, vary a CSD recognition order by removing a service, activity or financial instrument from the order (see paragraph (4) of that Article).

(5) The Bank of England may at any time vary a CSD recognition order for the purpose of correcting an error in, or omission from, the order.

(6) Where the Bank of England refuses an application under Article 19(1) of the CSD regulation, or varies a CSD recognition order under subsection (3) or (4), the recognised CSD may refer the matter to the Tribunal.”. [*Art 66*]

(16) In section 290A(b) (refusal of recognition on ground of excessive regulatory provision), in subsection (6) for “or a recognised central counterparty” substitute “, a recognised central counterparty or a recognised CSD”. [*Art 17*]

(17) In section 293(c) (notification requirements), after subsection (5) insert— [*consequential*]

“(5A) In relation to a recognised CSD, in subsection (5), “guidance” means guidance issued, or any recommendation made, in writing or other legible form and intended to have continuing effect, by the recognised CSD to—

(a) Section 290ZA was inserted by S.I. 2013/504.
 (b) Section 290A was inserted by section 4 of the Investment Exchanges and Clearing Houses Act 2006(c.55) and amended by paragraph 7 of Schedule 8 to the Financial Services Act 2012 and S.I. 2013/504.
 (c) Section 293 was amended by paragraph 10 of Schedule 8 to the Financial Services Act 2012.

- (a) all or any class of its members, or
 - (b) persons using or seeking to use its services,
- with respect to any of the services or activities specified in its recognition order.”.
- (18) In section 293A(a) (information: compliance with EU requirements)— [Art 24(2)]
- (a) the existing text becomes subsection (1);
 - (b) after subsection (1) insert—
 - “(2) The Bank of England may require an EEA CSD which provides any services referred to in the Annex to the CSD regulation in the United Kingdom to give the Bank reports on those services and statistical information relating to those services, at such times or in respect of such periods as may be specified by the Bank.”.
- (19) After section 295(b) (notification: overseas investment exchanges and overseas clearing houses) insert—

“On-site inspection of EEA CSDs [Article 24(1) of CSDR]

295A.—(1) For the purposes of Article 24(1) of the CSD regulation (co-operation in relation to branches of EEA CSDs), the Bank of England may, on giving reasonable notice and at any reasonable time, carry out an on-site inspection of any branch maintained by an EEA CSD in the United Kingdom.

(2) Before carrying out an on-site inspection under subsection (1), the Bank of England must inform the competent authority of the EEA State in which the EEA CSD is established.

(3) The Bank of England’s power under subsection (1) is enforceable, on the application of the Bank of England, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988(c).”.

- (20) In section 296(d) (appropriate regulator’s power to give directions)—
- (a) in subsection (1A)—
 - (i) for “applies” substitute “applies—”;
 - (ii) the text from “if it appears” to the end becomes paragraph (a);
 - (iii) after paragraph (a) insert—
 - “(b) in the case of a complaint to the appropriate regulator under Article 33(3), 49(4), 52(2) or 53(3) of the CSD regulation, if it appears to the appropriate regulator that a recognised body has failed, unjustifiably, to grant the access sought by the complainant.”; [Arts 33, 49, 52 and 53]
 - (b) after subsection (1A) insert—
 - “(1B) This section also applies in the circumstances described in the second subparagraph of Article 24(5) of the CSD regulation if it appears to the Bank of England that it is appropriate to give a direction to an EEA CSD in relation to any services referred to in the Annex to the CSD regulation which the EEA CSD provides in the United Kingdom, in order to ensure its compliance with obligations arising from the CSD regulation or any directly applicable EU regulation made under the CSD regulation.”. [Art 24(5)]
 - (c) for subsection (2) substitute—
 - “(2) The regulator concerned may direct the recognised body or EEA CSD to take specified steps—
 - (a) for the purpose of securing the body’s compliance with—

(a) Section 293A was inserted by S.I. 2007/126 and substituted by paragraph 11 of Schedule 8 to the Financial Services Act 2012.
 (b) Section 295 was amended by paragraph 13 of Schedule 8 to the Financial Services Act 2012.
 (c) 1988 c.36.
 (d) Section 296 was amended by paragraph 14 of Schedule 8 to the Financial Services Act 2012 and S.I. 2007/126.

- (i) the recognition requirements; or
 - (ii) any obligation of the kind in question; or
- (b) in the case mentioned in subsection (1A)(b), for the purpose of securing that the access sought by the complainant is granted.”;
- (d) in subsection (2A), in paragraph (a)(ii) for “purpose” substitute “purposes”;
- (e) after subsection (2A) insert— [**Art 24(5)**]

“(2B) In the case of an EEA CSD, the steps mentioned in subsection (2) may include—

 - (a) the granting to the Bank of England of access to any premises of the EEA CSD situated in the United Kingdom for the purpose of inspecting—
 - (i) those premises; or
 - (ii) any documents on the premises which appear to the Bank of England to be relevant for the purpose mentioned in subsection (2)(a)(ii);
 - (b) the suspension of the carrying on of any regulated activity in the United Kingdom by the EEA CSD for the period specified in the direction.”.
- (21) In section 297(a) (revoking recognition)— [**Art 20**]
 - (a) after subsection (1A) insert—

“(1B) A CSD recognition order may be revoked by an order made by the Bank of England in accordance with Article 20 of the CSD regulation.”;
 - (b) in subsections (2) and (2A) after “recognised central counterparty” insert “or a recognised CSD”.
- (22) In section 298(b) (directions and revocation: procedure)— [**Arts 20 and 66**]
 - (a) in subsection (1), for “297(2) or (2A)” substitute “297(1B), (2) or (2A)”;
 - (b) in subsection (6), after paragraph (a) insert—

“and

 - (aa) in the case of a direction under section 296 given to a recognised CSD or an EEA CSD or a revocation order under section 297(1B), give the recognised CSD or EEA CSD reasons for its decision.”;
 - (c) after subsection (6) insert—

“(6A) If the appropriate regulator gives a direction under section 296 to a recognised CSD or an EEA CSD or makes a revocation order under section 297(1B), the recognised CSD or EEA CSD may refer the matter to the Tribunal.”;
 - (d) after subsection (7) insert—

“(7A) Subsection (7) does not apply in relation to a direction given to a recognised CSD or EEA CSD under section 296.”;
 - (e) after subsection (8) insert—

“(9) In this section, “recognised body” includes an EEA CSD.”. [**consequential to section 296 amendments**]
- (23) In section 300 (extension of functions of Tribunal)— [**consequential**]
 - (a) in subsection (1)—
 - (i) omit “or” at the end of paragraph (a);
 - (ii) after paragraph (b) insert—

“or

(a) Section 297 was amended by paragraph 15 of Schedule 8 to the Financial Services Act 2012 and S.I. 2007/126, 2012/916 and 2013/504.

(b) Section 298 was amended by section 32 of, paragraph 16 of Schedule 8 to, Financial Services Act 2012 and S.I. 2007/126.

- (c) of one or more central securities depositories in relation to which a recognition order under that section is in force or of such central securities depositories generally.”;
 - (b) in subsection (4), for “or clearing house” substitute “, clearing house or central securities depository”.
- (24) In section 300E(a) (power to disallow excessive regulatory provision: supplementary), in subsection (3) for “or recognised central counterparty” substitute “, recognised central counterparty or recognised CSD”. [*consequential*]
- (25) In section 312E(b) (public censure), in subsection (3)(a), after “recognised clearing house” insert “or a recognised CSD”. [*Art 63*]
- (26) After section 312F (financial penalties) insert— [*Art 61(2), Art 63(2)(d) – based on section 83ZR of Banking Act 2009*]

“Central securities depositories: further disciplinary measures

312FA.—(1) If the Bank of England considers that a contravention by a recognised CSD of a relevant requirement occurred with the consent or connivance of, or was attributable to any neglect on the part of, a member of the management body or other person who effectively controls the business of the recognised CSD, the Bank of England may do one or both of the following—

- (a) publish a statement to that effect;
- (b) impose on that person a penalty, in respect of the contravention, of such amount as it considers appropriate.

(2) If the Bank of England considers that a member of the management body or other person who effectively controls the business of a recognised CSD is responsible for a contravention by the central securities depository of a relevant requirement, it may do one or more of the following—

- (a) publish a statement to that effect;
- (b) impose on that person a penalty, in respect of the contravention, of such amount as it considers appropriate;
- (c) prohibit that person from holding an office or position involving responsibility for taking decisions about the management of the recognised CSD.

(3) A prohibition under subsection (2)(c) may apply—

- (a) for a specified period,
- (b) until further notice, or
- (c) for repeated serious contraventions, permanently.

(4) The Bank of England may, on the application of the person subject to a prohibition under subsection (2)(c), vary or revoke the prohibition.”.

(27) In section 312G (proposal to take disciplinary measures)— [*Art 61(2), Art 63(2)(d)*]

(a) for subsection (1) substitute—

“(1) If the appropriate regulator proposes to impose a sanction—

- (a) on a recognised body under section 312E or 312F, or
- (b) on a person under section 312FA,

it must give the body or person (as the case may be) a warning notice.”;

(b) after subsection (3) insert—

(a) Section 300E was inserted by section 2 of the Investment Exchanges and Clearing Houses Act 2006 and amended by S.I. 2013/504.

(b) Sections 312E to 312K were inserted by section 33 of the Financial Services Act 2012.

“(4) A warning notice about a proposal to impose a prohibition must specify the extent of the prohibition.”.

(28) In section 312H (decision notice)— [*Art 61(2), Art 63(2)(d)*]

(a) for subsection (1) substitute—

“(1) If the appropriate regulator decides to impose a sanction—

(a) on a recognised body under section 312E or 312F, or

(b) on a person under section 312FA,

it must give the body or person (as the case may be) a decision notice.”;

(b) after subsection (3) insert—

“(3A) In the case of a prohibition, the decision notice must specify the extent of the prohibition.

(3B) The sanction which the appropriate regulator decides to impose may differ from that proposed in the warning notice.”;

(c) for subsection (4) substitute—

“(4) If the appropriate regulator decides to impose a sanction—

(a) on a recognised body under section 312E or 312F, or

(b) on a person under section 312FA,

the body or person (as the case may be) may refer the matter to the Tribunal.”.

(29) In section 312I (publication)— [*Art 61(2)*]

(a) after “section 312E” insert “or 312FA”;

(b) in paragraph (a) after “recognised body” insert “or person”.

(30) In section 312J (statement of policy)— [*Art 61(2)*]

(a) in subsection (1)—

(i) in paragraph (a) for “section 312F” substitute “sections 312F and 312FA and prohibitions under section 312FA”;

(ii) omit “and” after paragraph (a);

(iii) in paragraph (b) for “that section” substitute “those sections”;

(iv) after paragraph (b) insert—

“; and

(c) the period for which prohibitions under section 312FA are to have effect.”;

(b) in subsection (2)—

(i) after “penalty should be” insert “, or what the period for which a prohibition is to have effect should be,”;

(ii) omit “and” after paragraph (a);

(iii) after paragraph (b) insert—

“; and

(c) whether the person against whom action is to be taken is an individual.”;

(c) in subsection (5) after “section 312F” insert “or 312FA”.

(31) In section 313 (interpretation of Part 18)— [*consequential*]

(a) in subsection (1)—

(i) in the definition of “application”, for “or 288” substitute “, 288 or 288A”;

(ii) in the definition of “applicant”, for “body corporate or unincorporated association which” substitute “person who”;

(iii) in the definition of “recognised body”, for “or a recognised clearing house” substitute “, a recognised clearing house or a recognised CSD”;

- (iv) at the appropriate places insert—
 - ““CSD recognition order” means a recognition order made under section 290(1)(d);
 - “EEA CSD” has the meaning given in section 285;
 - “recognised CSD” has the meaning given in section 285;”;
- (b) after subsection (1) insert—
 - “(1A) For the purposes of this Part, a clearing house does not include a central securities depository, and a central securities depository does not provide clearing services.”; [consequential on amendments to section 285]
- (c) in subsection (2), after “clearing house”, in both places, insert “or central securities depository”.
- (32) In section 345(a) (disciplinary measures: FCA), in subsection (5) after “recognised clearing house” insert “or a recognised CSD”. [consequential]
- (33) In section 345A (disciplinary measures: PRA), in subsection (6) after “recognised clearing house” insert “or a recognised CSD”. [consequential]
- (34) In section 410(b) (international obligations), in subsection (4) after paragraph (d) insert—
 - “(da) any recognised CSD;”. [consequential]
- (35) In section 410A(c) (fees to meet certain expenses of the Treasury), in subsection (8)(c) after “recognised clearing houses” insert “and recognised CSDs”. [consequential]
- (36) In section 417(d)(definitions), in subsection (1)— [consequential]
 - (a) after the definition of the “capital requirements regulation” insert—
 - ““central securities depository” has the meaning given by point (1) of Article 2(1) of the CSD regulation;”;
 - (b) in the definition of “exempt person” omit “any of subsections (2) to (3C) of section”;
 - (c) in the definition of “recognised clearing house” and “recognised investment exchange” before ““recognised clearing house”” insert ““recognised CSD””.
- (37) In Schedule 17A(e) (further provision in relation to the exercise of Part 18 functions by the Bank of England)—
 - (a) in paragraph 7 after “recognised clearing house” insert “or a recognised CSD”; [consequential]
 - (b) in paragraph 10(2) after “recognised clearing house” insert “or a recognised CSD”; [consequential]
 - (c) in paragraph 11, in sub-paragraph (1)— [Art 24(5)/consequential amendment]
 - (i) after paragraph (a) insert—
 - “(aa) a recognised CSD;
 - (ab) an EEA CSD, in relation to any services referred to in the Annex to the CSD regulation which the EEA CSD provides in the United Kingdom, in the circumstances described in the second sub-paragraph of Article 24(5) of the CSD regulation;”;
 - (ii) in paragraph (b) after “recognised clearing house” insert “, a recognised CSD or an EEA CSD (as the case may be)”;

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- (a) Section 345 was substituted and section 345A was inserted by paragraph 7 of Schedule 13 to the Financial Services Act 2012.
 - (b) Section 410(4) was amended by section 16 of the Financial Services Act 2012.
 - (c) Section 410A was inserted by section 135 of the Financial Services (Banking Reform) Act 2013.
 - (d) In section 417(1), the definition of “capital requirements regulation” was inserted by S.I. 2013/3115 and the definition of “exempt person” was amended by S.I. 2013/504.
 - (e) Schedule 17A was inserted by Schedule 7 to the Financial Services Act 2012, and was amended by paragraph 5 of Schedule 10 to the Financial Services (Banking Reform) Act 2013 and S.I. 2013/504 and 2014/2879.

- (d) in paragraph 12, after “recognised clearing house” insert “or a recognised CSD”; [*Art 24(5)/consequential amendment*]
- (e) in paragraph 13— [*Art 24(5)/consequential amendment*]
 - (i) in sub-paragraph (1) after “overseas clearing house” insert “or to any recognised CSD”;
 - (ii) after sub-paragraph (1) insert—

“(1A) In relation to an EEA CSD, those powers are exercisable only in the circumstances described in the second sub-paragraph of Article 24(5) of the CSD regulation and in relation to any services referred to in the Annex to the CSD regulation which an EEA CSD provides in the United Kingdom.”;
- (f) in paragraph 14, in sub-paragraph (2)—[*Art 24(5)/consequential amendment*]
 - (i) in paragraphs (a) to (e) after “clearing house” insert “or a central securities depository”;
 - (ii) after paragraph (e) insert—

“(f) in the circumstances described in the second sub-paragraph of Article 24(5) of the CSD regulation, an EEA CSD providing any services referred to in the Annex to the CSD regulation in the United Kingdom may have contravened the CSD regulation.”;
- (g) in paragraph 17— [*consequential*]
 - (i) in sub-paragraph (2) after “overseas clearing house” insert “or to a recognised CSD”;
 - (ii) in sub-paragraph (3)(a) and (c) after “recognised clearing houses” insert “or recognised CSDs”;
 - (iii) in sub-paragraph (4) after “recognised clearing house” insert “or a recognised CSD”;
- (h) in paragraph 18— [*consequential*]
 - (i) after “recognised clearing house”, in each place, insert “or a recognised CSD”;
 - (ii) in sub-paragraph (2), for “or the EMIR regulation” substitute “, the EMIR regulation or the CSD regulation”;
- (i) in paragraph 19— [*consequential*]
 - (i) after “a recognised clearing house”, in each place, insert “or a recognised CSD”;
 - (ii) in sub-paragraph (2)(a), for “or the EMIR regulation” substitute “, the EMIR regulation or the CSD regulation”;
 - (iii) in sub-paragraph (2)(b), after “the recognised clearing house” insert “or the recognised CSD”;
- (j) in paragraph 20 after “recognised clearing house”, in each place, insert “or a recognised CSD”; [*consequential*]
- (k) in paragraph 21 after “recognised clearing house”, in both places, insert “or a recognised CSD”; [*consequential*]
- (l) in paragraph 22 after “recognised clearing house” insert “or a recognised CSD”; [*consequential*]
- (m) in paragraph 23 after “recognised clearing houses” insert “or recognised CSDs”; [*consequential*]
- (n) in paragraph 24(2) after “recognised clearing house” insert “or a recognised CSD”; [*consequential*]
- (o) in paragraph 25— [*consequential*]
 - (i) the existing text becomes sub-paragraph (1);
 - (ii) after sub-paragraph (1) insert—

“(2) In the case of any regulated activity which is carried on for the purposes of, or in connection with, the provision of any service or activity mentioned in section 285(3D), the reference to the FCA in section 375(1) is to be read as including a reference to the Bank.”.

- (p) in paragraph 26(2)(a), after “recognised clearing house” insert “, a recognised CSD or an EEA CSD (and for this purpose a prohibition imposed under section 312FA(2)(c) (prohibition on person holding office etc. with a central securities depository) is treated as a requirement)”; [*Art 24(5)/consequential amendment, Arts 61(2) and 63(2)(d)/consequential amendment*]
- (q) in paragraph 28— [*consequential*]
 - (i) in sub-paragraph (2) after the first “recognised clearing house” insert “or a recognised CSD”;
 - (ii) in sub-paragraph (2)(a) after “recognised clearing house” insert “or the recognised CSD”;
 - (iii) in sub-paragraph (4)(a) after “recognised clearing house” insert “or the recognised CSD”;
- (r) in paragraph 30(a) after “recognised clearing house” insert “or a recognised CSD”;
[*consequential*]
- (s) in paragraph 32 after “recognised clearing houses” insert “and recognised CSDs”;
[*consequential*]
- (t) in paragraph 33(a) after “recognised clearing houses” insert “and recognised CSDs”;
[*consequential*]
- (u) in paragraph 34— [*consequential*]
 - (i) after “a recognised clearing house”, in each place, insert “or a recognised CSD”;
 - (ii) in sub-paragraph (5)(c) after “the recognised clearing house” insert “or the recognised CSD”;
 - (iii) in sub-paragraph (8) after “recognised clearing house’s” insert “or a recognised CSD’s”;
- (v) in paragraph 35— [*consequential*]
 - (i) in sub-paragraph (1) after “recognised clearing house” insert “or a recognised CSD”;
 - (ii) in sub-paragraph (2)—
 - (aa) omit “and” at the end of paragraph (b);
 - (bb) at the beginning of paragraph (c) insert “in the case of a company which is, or has been, a recognised clearing house,”;
 - (cc) insert “and” at the end of paragraph (c);
 - (dd) after paragraph (c) insert—
 - “(d) in the case of a company which is, or has been, a recognised CSD, maintaining the continuity of the services and activities referred to in section 285(3D).”;
 - (iii) in sub-paragraph (3)(b) after “clearing house” insert “or central securities depository”;
- (w) in paragraph 36(1) for “or third country central counterparties” substitute “, third country central counterparties, recognised CSDs, EEA CSDs or settlement internalisers (as defined in point (11) of Article 2(1) of the CSD regulation)”. [*Art 9 and 24*]

PART 3

Amendments to Part 7 of the Companies Act 1989 and related secondary legislation

Amendments to Part 7 of the Companies Act 1989

- 3.—(1) The Companies Act 1989 is amended as follows. [*All consequential except as noted*]
- (2) For the italic heading before section 155 substitute “Recognised bodies”.
- (3) In section 155 (market contracts)—
- (a) in subsection (1)(d), for “(3)” substitute “(3ZA)”;
 - (b) in subsection (2), in paragraphs (b) and (c)—
 - (i) after “with a recognised clearing house” insert “or with a recognised CSD”;
 - (ii) for “or clearing house or other investment exchange” substitute “or recognised body”;
 - (c) in subsection (2B)(d)—
 - (i) after “with a recognised investment exchange” insert “or a recognised CSD”;
 - (ii) for “that exchange or clearing house” substitute “that recognised body”;
 - (d) in subsection (3), in paragraphs (a) and (b)—
 - (i) after “with a recognised investment exchange” insert “or with a recognised CSD”;
 - (ii) for “or investment exchange or other clearing house” substitute “or recognised body”;
 - (e) after subsection (3) insert—

“(3ZA) In relation to a recognised CSD, this Part applies to contracts entered into by the central securities depository with a member of the central securities depository or with a recognised investment exchange or a recognised clearing house or with another recognised CSD for the purpose of providing authorised central securities depository services to that member or recognised body.”;
 - (f) in subsection (3A)—
 - (i) in paragraph (b) for “a recognised investment exchange or to another recognised clearing house” substitute “a recognised body”;
 - (ii) in paragraph (c) for “a recognised clearing house or to another recognised investment exchange” substitute “a recognised body”;
 - (g) after subsection (3C) insert—

“(3D) In this Part “authorised central securities depository services” means, in relation to a recognised CSD—

 - (a) the core services listed in Section A of the Annex to the CSD regulation which that central securities depository is authorised to provide pursuant to Article 16 of the CSD regulation;
 - (b) the non-banking-type ancillary services listed in or permitted under Section B of that Annex which that central securities depository is authorised to provide, including services notified under Article 19(8) of the CSD regulation; and
 - (c) the banking-type ancillary services listed in or permitted under Section C of that Annex which that central securities depository is authorised to provide pursuant to Article 54(2)(a) of the CSD regulation.”;
 - (h) in subsection (4) for “a recognised investment exchange or recognised clearing house” substitute “a recognised body”;
 - (i) in subsection (5), for “(2) and (3)” substitute “(2), (3), (3ZA) and (3D)”.
- (4) In section 157 (change in default rules)—
- (a) in subsection (1)—

- (i) for “A recognised UK investment exchange or recognised clearing house” substitute “A recognised body”;
 - (ii) for “the exchange or clearing house” substitute “the recognised body”;
 - (b) in subsection (3) for “an exchange or clearing house” substitute “a recognised body”;
 - (c) in subsection (4)(b) after “recognised clearing house” insert “or a recognised CSD”.
- (5) In section 158 (modifications of the law of insolvency)—
- (a) in subsection (1)(b) for “a recognised investment exchange, or a recognised clearing house which is not a recognised central counterparty” substitute “a recognised body other than a recognised central counterparty”;
 - (b) in subsection (2)—
 - (i) omit “and” at the end of paragraph (aa);
 - (ii) after paragraph (aa) insert—
 - “(ab) proceedings in respect of a recognised CSD or a member of a recognised CSD, and”;
 - (iii) in paragraph (b) for “a recognised investment exchange or recognised clearing house” substitute “a recognised body”.
- (6) In section 159 (proceedings of exchange or clearing house take precedence over insolvency procedures)—
- (a) for the heading substitute “proceedings of recognised bodies take precedence over insolvency procedures”;
 - (b) in subsection (1)(b) for “a recognised investment exchange or recognised clearing house” substitute “a recognised body”;
 - (c) in subsection (1)(c) for “a recognised investment exchange, or of a recognised clearing house which is not a recognised central counterparty,” substitute “a recognised body other than a recognised central counterparty”;
 - (d) in subsection (2)(a) for “a recognised investment exchange, or recognised clearing house which is not a recognised central counterparty,” substitute “a recognised body other than a recognised central counterparty”;
 - (e) in subsection (2)(b) for “a recognised investment exchange, or clearing house which is not a recognised central counterparty” substitute “a recognised body other than a recognised central counterparty”.
- (7) In section 160 (duty to give assistance for purposes of default proceedings)—
- (a) in subsections (1) and (5) for “a recognised investment exchange or recognised clearing house” substitute “a recognised body”;
 - (b) in subsections (3), (4) and (5) for “the exchange or clearing house” substitute “the recognised body”.
- (8) In section 161 (supplementary provisions as to default proceedings)—
- (a) in subsection (2) for “the exchange or clearing house” substitute “the recognised body”;
 - (b) in subsection (4) for “an exchange or clearing house” substitute “a recognised body”.
- (9) In section 162 (duty to report on completion of default proceedings)—
- (a) in subsection (1) for “a recognised investment exchange or recognised clearing house” substitute “a recognised body”;
 - (b) in subsections (2) and (3) for “The exchange or clearing house” substitute “The recognised body”;
 - (c) in subsection (5) for “An exchange or clearing house” substitute “A recognised body”;
 - (d) in subsection (6) for “the exchange or clearing house”, in both places, substitute “the recognised body”;
 - (e) in subsection (7)(b) after “in relation to a” insert “recognised CSD, a”.

(10) In section 163 (net sum payable on completion of default proceedings), in subsections (1) and (5), for “a recognised investment exchange or recognised clearing house” substitute “a recognised body”.

(11) In section 164 (disclaimer of property, rescission of contracts, &c)—

- (a) in subsection (1)(b) for “the exchange or clearing house” substitute “the recognised body”;
- (b) in subsection (3) for “the exchange or clearing house”, in each place, substitute “the recognised body”;
- (c) in subsection (5)—
 - (i) for “a recognised investment exchange or recognised clearing house” substitute “a recognised body”;
 - (ii) for “an exchange or clearing house” substitute “a recognised body”.

(12) In section 165 (adjustment of prior transactions)—

- (a) in subsections (3)(a) and (5)(a), (b) and (c) for “recognised investment exchange or recognised clearing house” substitute “recognised body”;
- (b) in subsection (4)(b) and (c) for “the exchange or clearing house” substitute “the recognised body”.

(13) In section 166 (powers to give directions)—

- (a) in subsection (1) after “recognised clearing house” insert “or recognised CSD”;
- (b) in subsections (2) and (7) for “an exchange or clearing house” substitute “a recognised body”;
- (c) in subsections (3), (7A) and (7B) for “exchange or clearing house” substitute “recognised body”;
- (d) in subsection (8) for “an exchange, a clearing house” substitute “a recognised body”;
- (e) in subsection (9)(b) after “in relation to a” insert “recognised CSD, a”.

(14) In section 167 (application to determine whether default proceedings to be taken)—

- (a) in subsection (1)—
 - (i) omit “or” at the end of paragraph (b);
 - (ii) after paragraph (b) insert—
“(ba) a recognised CSD or a member of a recognised CSD, or”;
 - (iii) in the words after paragraph (c) for “The investment exchange, member, designated non-member clearing house or client” substitute “The person referred to in paragraphs (a) to (c)”;
- (b) in subsection (1B) for “a recognised investment exchange or a recognised clearing house” substitute “a recognised body”;
- (c) in subsections (1B), (2), (3), (4) and (5) for “the responsible exchange or clearing house”, in each place, substitute “the responsible recognised body”;
- (d) for subsection (6) substitute—
“(6) “The appropriate regulator”—
 - (a) in relation to a recognised investment exchange, means the FCA, and
 - (b) in relation to a recognised clearing house or recognised CSD, means the Bank of England.”.

(15) In section 169 (supplementary provisions)—

- (a) after subsection (2) insert—
“(2A) Section 296 of the Financial Services and Markets Act 2000 applies in relation to a failure by a recognised CSD to comply with an obligation under this Part as to a failure to comply with an obligation under that Act.”;

- (b) in subsection (3) for “an investment exchange or clearing house” substitute “an investment exchange, clearing house or central securities depository”;
- (c) in subsection (3A)—
 - (i) omit “and” at the end of paragraph (b);
 - (ii) after paragraph (c) insert—
 - “, and
 - (d) in the case of a central securities depository, the Bank of England.”.
- (16) After section 170B insert—

“EEA CSDs and third country CSDs

170C.—(1) This Part applies to transactions settled through an EEA CSD or a third country CSD by a UK member of the central securities depository as it applies to transactions settled through a recognised CSD, but subject to subsections (2), (3) and (4).

(2) The definition of “authorised central securities depository services” in section 155(3D) applies to third country CSDs as if it read—

““authorised central securities depository services” means, in relation to a third country CSD, those services which that central securities depository is authorised to provide that are equivalent to the services listed in the Annex to the CSD regulation.”.

(3) Section 157 does not apply to an EEA CSD or a third country CSD.

(4) Section 162 does not apply to an EEA CSD or a third country CSD unless it has been notified by the Bank of England that a report under that section is required for the purposes of insolvency proceedings in any part of the United Kingdom. Where an EEA CSD or a third country CSD has been so notified, the appropriate regulator for the purposes of section 162 shall be the Bank of England.

(5) In this section “UK member” means a member of an EEA CSD or a third country CSD to which the law of a part of the United Kingdom will apply for the purposes of an insolvent reorganisation or winding up.”.

(17) In section 172 (settlement arrangements provided by the Bank of England), in subsection (1), for “a recognised investment exchange or recognised clearing house” substitute “a recognised body”.

(18) In section 173 (market charges)—

- (a) in subsection (1)—
 - (i) omit “or” at the end of paragraph (b);
 - (ii) after paragraph (b) insert—
 - “(ba) in favour of a recognised CSD, for the purpose of securing debts or liabilities arising in connection with their ensuring the performance of market contracts, or”;
- (b) in subsections (2) and (4) after “(b)” insert “, (ba)”.

(19) In section 176 (power to make provision about certain other charges)—

- (a) in subsection (2), after paragraph (a) insert—
 - “(aa) an EEA CSD or a third country CSD,”;
- (b) in subsection (3)—
 - (i) after “clearing services” insert “or settlement arrangements”;
 - (ii) at the end insert “, or in connection with authorised central securities depository services (see section 155(3D)) provided by a recognised CSD”;
- (c) in subsection (6) after “clearing services” insert “or settlement arrangements”.

(20) In section 177 (application of margin or default fund contribution not affected by certain other interests)—

- (a) in subsection (1) for “a recognised investment exchange or recognised clearing house” substitute “a recognised body”;
 - (b) in subsections (1) (2), (3) and (4) for “the exchange or clearing house”, in each place, substitute “the recognised body”;
 - (c) in subsection (4) for “an exchange or clearing house” substitute “a recognised body”.
- (21) In section 180 (proceedings against market property by unsecured creditors), in subsection (1)—
- (a) for “a recognised investment exchange or recognised clearing house” substitute “a recognised body”;
 - (b) in paragraph (a) for “the investment exchange or clearing house” substitute “the recognised body”.
- (22) After section 182A insert— [*consequential/Article 38(1), (2) and (4)*]

“Recognised CSDs: disapplication of provisions on mutual credit and set-off

182B. Nothing in the law of insolvency shall enable the setting off against each other of—

- (a) securities and assets recorded in an account at a recognised CSD and held for the account of a member, a client of a member or a group of clients of a member in accordance with Article 38 of the CSD regulation; and
- (b) securities and assets recorded in an account at the recognised CSD and held for the account of any other member, client of a member or group of clients of a member.”

- (23) In section 184 (indemnity for certain acts, &c)—
- (a) in subsections (1), (2), (3) and (5) for “recognised investment exchange or recognised clearing house”, in each place, substitute “recognised body”;
 - (b) in subsection (4) for “the exchange or clearing house” substitute “the recognised body”.
- (24) In section 185 (power to make further provision by regulations), in subsection (2)(b) after “investment exchanges” insert “, central securities depositories”.
- (25) In section 188 (meaning of “default rules” and related expressions)—
- (a) in subsection (1)—
 - (i) for “recognised investment exchange or recognised clearing house”, in both places, substitute “recognised body”;
 - (ii) for “the exchange or clearing house” substitute “the recognised body”;
 - (b) after subsection (1A) insert—

“(1B) In the case of a recognised CSD, “default rules” includes the default rules and procedures referred to in Article 41 of the CSD regulation.”; [*consequential/Article 41(1)*]
 - (c) in subsections (2) and (3) for “a recognised investment exchange or recognised clearing house” substitute “a recognised body”;
 - (d) in subsection (3A)—
 - (i) for paragraph (c)(i) substitute—

“(i) is maintained by another recognised body (A) for the purpose of covering losses arising in connection with defaults by recognised bodies other than A or by any of their members, and”;
 - (ii) omit “or” at the end of paragraph (c);
 - (iii) for paragraph (d)(i) substitute—

“(i) is maintained by another recognised body (A) for the purpose of covering losses arising in connection with defaults by recognised bodies other than A or by any of their members, and”;

- (iv) after paragraph (d) insert—
- “(e) contribution by a member of a recognised CSD to a fund which—
- (i) is maintained by that central securities depository for the purpose of covering losses arising in connection with defaults by any of the members of the central securities depository, and
- (ii) may be applied for that purpose under the default rules of the central securities depository; or
- (f) contribution by a recognised CSD to a fund which—
- (i) is maintained by another recognised body (A) for the purpose of covering losses arising in connection with defaults by recognised bodies other than A or by any of their members, and
- (ii) may be applied for that purpose under A’s default rules.”;
- (e) in subsection (4) for “an exchange or clearing house” substitute “a recognised body”.
- (26) In section 190 (minor definitions), in subsection (1)—
- (a) insert at the appropriate places—
- ““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;”;
- ““EEA CSD” has the same meaning as in section 285 of the Financial Services and Markets Act 2000;”
- ““member”, in relation to a central securities depository, means a participant of that central securities depository as defined in Article 2(19) of the CSD regulation;”;
- ““recognised body” has the same meaning as in section 313 of the Financial Services and Markets Act 2000;”;
- ““third country CSD” has the same meaning as in section 285 of the Financial Services and Markets Act 2000;”;
- (b) in the definition of “overseas”, after “clearing house” insert “or central securities depository”;
- (c) for the definition of ““recognised central counterparty”, “recognised clearing house” and “recognised investment exchange”” substitute—
- ““recognised central counterparty”, “recognised CSD”, “recognised clearing house” and “recognised investment exchange” have the same meaning as in the Financial Services and Markets Act 2000;”.
- (27) In section 191 (index of defined expressions) in the Table—
- (a) insert at the appropriate places—
- | | |
|--|-----------------------|
| (b) “authorised central securities depository services | (c) Section 155(3D)” |
| (d) “CSD regulation | (e) Section 190(1);”; |
| (f) “EEA CSD | (g) Section 190(1);”; |
| (h) “member (in relation to a central securities depository) | (i) Section 190(1);”; |
| (j) “recognised body | (k) Section 190(1);”; |
| (l) “recognised CSD | (m) Section 190(1);”; |
| (n) “third country CSD | (o) Section 190(1);”; |
- (p) in the expression “overseas” for “and clearing houses” substitute “, clearing houses and central securities depositories”.

Amendments to the Financial Markets and Insolvency Regulations 1991 [consequential]

- 4.—(1) The Financial Markets and Insolvency Regulations 1991(a) are amended as follows.
- (2) In regulation 7 (interpretation of Part 5)—
- (a) after the definition of “Talisman Charge” omit “and”;
 - (b) insert at the appropriate places—
 - ““EEA CSD” has the same meaning as in section 190(1) of the Act;”;
 - ““recognised body” has the same meaning as in section 190(1) of the Act;”;
 - ““recognised CSD” has the same meaning as in section 190(1) of the Act;”;
 - ““third country CSD” has the same meaning as in section 190(1) of the Act; and”.
- (3) In regulation 10 (extent to which charge granted in favour of recognised investment exchange to be treated as market charge), in paragraph (1)(b)—
- (a) after “a recognised clearing house” insert “or from a recognised CSD”;
 - (b) for “, clearing house or investment exchange” substitute “or recognised body”.
- (4) In regulation 11 (extent to which charge granted in favour of recognised clearing house to be treated as market charge)—
- (a) in paragraph (aa)—
 - (i) after “a recognised investment exchange” insert “, a recognised CSD”;
 - (ii) for “, investment exchange or clearing house” substitute “or recognised body”;
 - (b) in paragraph (b)—
 - (i) after “a recognised investment exchange” insert “or from a recognised CSD”;
 - (ii) for “, clearing house or investment exchange” substitute “or recognised body”.
- (5) After regulation 11 insert—

“Extent to which charge granted in favour of recognised CSD to be treated as market charge

- 11A.**—(1) A charge granted in favour of a recognised CSD shall be treated as a market charge only to the extent that—
- (a) it is a charge over property provided as margin in respect of market contracts entered into by the recognised CSD or over property provided as a default fund contribution to the recognised CSD; and
 - (b) it secures the obligation to pay to the recognised CSD any sum due to it from a member of the recognised CSD or from a recognised clearing house or from a recognised investment exchange or from another recognised CSD in respect of unsettled market contracts to which the member or recognised body is a party.
- (2) A charge granted in favour of an EEA CSD or third country CSD shall be treated as a market charge only to the extent that—
- (a) it is a charge over property provided as margin in respect of market contracts entered into by the EEA CSD or third country CSD or over property provided as a default fund contribution to the EEA CSD or third country CSD; and
 - (b) it secures the obligation to reimburse the cost (other than fees or other incidental expenses) incurred by the EEA CSD or third country CSD in settling unsettled market contracts in respect of which the charged property is provided as margin.”.
- (6) In regulation 16 (circumstances in which member or designated non-member dealing as principal to be treated as acting in different capacities)—

(a) S.I. 1991/880.

- (a) in paragraph (1)(a) after “a recognised clearing house” insert “or a member of a recognised CSD”;
- (b) in paragraph (1A) after “a recognised investment exchange” insert “or from a recognised CSD”;
- (c) in paragraph (1B) after “a recognised clearing house” insert “or from a recognised CSD”;
- (d) after paragraph (1B) insert—
 - “(1BA) In addition “relevant transaction” means a market contract entered into by a recognised CSD effected as principal in relation to which money is received by the recognised CSD from a recognised clearing house or from a recognised investment exchange or from another recognised CSD.”;
- (e) for paragraph (1C) substitute—
 - “(1C) Where paragraph (1A), (1B) or (1BA) applies, paragraph (1) applies to the recognised clearing house, recognised investment exchange or recognised CSD as it does to a member of the recognised clearing house, recognised investment exchange or recognised CSD, and as if the recognised clearing house, recognised investment exchange or recognised CSD were subject to the rules referred to in paragraph (1)(a)(i).”;
- (f) in paragraph 2—
 - (i) omit “or” at the end of sub-paragraph (a);
 - (ii) after sub-paragraph (b) insert—
 - “or
 - (c) a recognised CSD or a member of a recognised CSD.”.

Amendments to the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 [consequential/Article 39(1)]

5.—(1) The Financial Markets and Insolvency (Settlement Finality) Regulations 1999(a) are amended as follows.

- (2) In regulation 6 (certain bodies deemed to satisfy requirements for designation)—
 - (a) for paragraph (1) substitute—
 - “(1) Subject to paragraph (2), a recognised body, an EEA central counterparty, a third country central counterparty, an EEA CSD and a third country CSD shall be deemed to satisfy the requirements in paragraphs 2 and 3 of the Schedule.”;
 - (b) for paragraph (3) substitute—
 - “(3) “EEA central counterparty”, “third country central counterparty”, “EEA CSD” and “third country CSD” have the meanings given by section 285 of the 2000 Act.
 - (4) “recognised body” has the meaning given by section 313 of the 2000 Act.”.
- (3) In regulation 7 (revocation of designation), in paragraph (2)—
 - (a) for “Subsections (1) to (7)” substitute “Subsections (1) to (6)”;
 - (b) after paragraph (b) insert—
 - “(ba) any reference to the appropriate regulator shall be taken to be a reference to the designating authority;”;
 - (c) for sub-paragraph (d) substitute—
 - “(d) subsection (4) has effect as if the period for making representations specified in the notice must be at least three months.”.

(a) S.I. 1999/2979.

PART 4

Amendments to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001

Amendments to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001

6.—(1) The Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001(a) are amended as follows. [*consequential on section 285 amendments*]

(2) In the title and in regulation 1 (citation) for “and Clearing Houses” substitute “, Clearing Houses and Central Securities Depositories”.

(3) In regulation 3(b) (interpretation), in paragraph (1) in the definition of “exempt activities” after “(3A)” insert “or (3D)”.

(4) After regulation 5A(c) (recognition requirements for central counterparties) insert—

“Recognition requirements for central securities depositories

5B. Part 7 of the Schedule sets out recognition requirements applying to bodies in respect of which a recognition order has been made under section 290(1)(d) of the Act, or which have applied for such an order under section 288A of the Act.”.

(5) In regulation 6(d) (method of satisfying recognition requirements), after paragraph (3) insert— [*Arts 17 and 19*]

“(4) This regulation does not apply in respect of a recognised CSD or an applicant for an order under section 288A of the Act.”.

(6) In the Schedule—

- (a) in Part 2 (recognition requirements for investment exchanges: default rules in respect of market contracts)—
 - (i) in paragraph 10(e)—
 - (aa) in sub-paragraph (4), after “recognised clearing house” insert “, a recognised CSD”;
 - (bb) in sub-paragraph (5), after “clearing house” insert “, the central securities depository”;
 - (ii) in paragraph 14(f), after “recognised clearing house” insert “, a recognised CSD”;
- (b) in Part 4 (recognition requirements applying to clearing houses: default rules in respect of market contracts)—
 - (i) in paragraph 24(g)—
 - (aa) in sub-paragraph (3), after “recognised investment exchange” insert “, a recognised CSD”;
 - (bb) in sub-paragraph (4), after “investment exchange” insert “, the central securities depository”;
 - (ii) in paragraph 27(h), after “recognised investment exchange” insert “, a recognised CSD”;

(a) S.I. 2001/995.

(b) The definition of “exempt activities” was amended by S.I. 2013/504.

(c) Regulation 5A was inserted by S.I. 2013/504.

(d) Regulation 6 was amended by S.I. 2013/472.

(e) Paragraph 10 of the Schedule was amended by S.I. 2006/3386 and 2009/853.

(f) Paragraph 14 of the Schedule was amended by S.I. 2009/853.

(g) Paragraph 24 of the Schedule was amended by S.I. 2009/853.

(h) Paragraph 27 of the Schedule was amended by S.I. 2009/853.

- (c) after Part 6(a) (recognition requirements applying to central counterparties: default rules) insert—

“PART 7

Recognition Requirements for Central Securities Depositories

Requirements of the CSD regulation

37. The central securities depository must meet the requirements set out in the CSD regulation and any directly applicable EU regulation made under that regulation.

Market abuse or financial crime

38. The central securities depository must ensure that appropriate measures are adopted to reduce the extent to which its facilities can be used for a purpose connected with market abuse or financial crime, and to facilitate their detection and monitor their incidence. [*existing para 19(d) of Schedule*].

Access to settlement facilities

39.—(1) The central securities depository must make transparent and non-discriminatory rules, based on objective criteria, governing access to settlement facilities provided by it.

(2) The rules under sub-paragraph (1) must enable an investment firm or a credit institution authorised by the competent authority of another EEA State (including a branch established in the United Kingdom of such a firm or institution) to have access to those facilities on the same terms as a UK firm for the purposes of finalising or arranging the finalisation of transactions in financial instruments.

(3) The central securities depository may refuse access to those facilities on legitimate commercial terms. [*existing paragraph 21A of Schedule, adapted. Art 34 of MIFID*]

Reporting of infringements

40.—(1) The central securities depository must have in place appropriate procedures for its employees to report actual or potential infringements of the CSD regulation and any directly applicable EU regulation made under that regulation internally through a specific, independent and autonomous channel. [*Art 65(3)*]

(2) The protections set out in points (b), (c) and (d) of Article 65(2) of that regulation (reporting of infringements) must be applied in relation to those procedures.

Investment services and activities

41. A central securities depository providing investment services and activities in addition to the services explicitly listed in Sections A and B of the Annex to the CSD regulation must comply with the markets in financial instruments directive except for Articles 5 to 10b.” [*Art 73 – refers to existing MiFID*]

PART 5

Amendments to the Central Securities Depositories Regulations 2014

Amendments to the Central Securities Depositories Regulations 2014

- 7.—(1) The Central Securities Depositories Regulations 2014(b) are amended as follows.
(2) In regulation 1(2) (interpretation) in the appropriate place insert—

(a) Part 6 was inserted by S.I. 2013/504 and amended by S.I. 2013/1908.
(b) S.I. 2014/2879.

““credit institution” means credit institution (defined in point (1) of Article 4(1) of Regulation (EU) 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms^(a)) authorised pursuant to Article 8 of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms^(b)”.

(3) In regulation 2 (designation of competent authorities)—

(a) in paragraph (1) after sub-paragraph (b) insert—

“(c) the supervision of investment firms authorised pursuant to Article 5 of the markets in financial instruments directive^(c) for the purposes of the CSD regulation.”; [**Art 6 of CSDR**]

(b) in paragraph (2)—

(i) before sub-paragraph (a) insert— [**Art 9**]

“(za) the functions referred to in Article 9(1) of the CSD regulation;”;

(ii) in sub-paragraph (a) after “CSD regulation,” insert “and all other competent authority duties under that regulation in relation to CSDs^(d) authorised in the EEA and third-country CSDs^(e)”; [**Various**]

(iii) omit “and” at the end of sub-paragraph (b);

(iv) after sub-paragraph (c) insert—

“; and

(d) the supervision of CCPs^(f) for the purposes of the CSD regulation.”. [**Art 7 of CSDR and various**]

(4) After regulation 2 insert—

“Powers of the FCA”.

(5) After regulation 5 (procedure in relation to regulation 4) insert— [**Art 9, Art 38**]

“Powers of the Bank

Power of the Bank to require information

5A.—(1) This regulation applies where—

(a) the Bank cannot determine whether a settlement internaliser^(g) has complied with the first sub-paragraph of Article 9(1) of the CSD regulation;

(b) it is necessary for the Bank to determine whether a person is a settlement internaliser; or

(c) it is necessary for the Bank to determine whether a participant^(h) has complied with Article 38(5) and (6) of the CSD regulation.

(2) The Bank may, by giving notice in writing, require a person—

(a) to provide specified information or information of a specified description, or

(b) to provide specified documents or documents of a specified description,

(a) OJ No L176, 27.6.2013, p.1.

(b) OJ No L176, 27.6.2013, p.338.

(c) Defined in section 425(1) of the Financial Services and Markets Act 2000; OJ No L145, 30.4.2004, p.1. Definitions in the Financial Services and Markets Act 2000 apply by virtue of S.I. 2014/2879.

(d) Defined in Article 2(1)(1) of the CSD regulation. Definitions in the CSD regulation apply by virtue of S.I. 2014/2879.

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

(f) Defined in Article 2(1)(16) of the CSD regulation.

(g) Defined in Article 2(1)(11) of the CSD regulation.

(h) Defined in Article 2(1)(19) of the CSD regulation.

so that it can verify whether the settlement internaliser has complied with Article 9(1) of the CSD regulation, whether the person is a settlement internaliser, or whether the participant has complied with Article 38(5) and (6) of the CSD regulation.

(3) 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.

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

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

(6) The Bank 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.

(7) A requirement imposed under this regulation is a relevant requirement for the purposes of sections 380 (injunctions) and 382 (restitution orders) of the Act^(a) as applied to the Bank by paragraphs 26 and 27 of Schedule 17A to the Act.

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

Penalties and statements

5B.—(1) If the Bank considers that—

- (a) a person has contravened a relevant requirement imposed on it; or
- (b) a settlement internaliser or a participant has contravened a requirement imposed by or under the CSD regulation;

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

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

(3) Where the Bank 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 Bank.

(5) The Bank 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 Bank as to how the Bank 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 Bank to provide the Treasury at specified times with information relating to penalties that the Bank has imposed under this regulation.

(a) Section 380 was amended by paragraph 19 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. 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.

(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 5A.

Procedure in relation to regulation 5B

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

(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 Bank decides to take action against a person under regulation 5B, 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 Bank decides to take action against a person under regulation 5B, the person may refer the matter to the Tribunal^(a).

(8) Sections 312J (statement of policy) and 312K (statement of policy: procedure) of the Act apply in respect of the imposition of penalties under regulation 5B and the amount of such penalties as they apply in respect of the imposition of penalties under section 312F of the Act.

(9) After a statement under regulation 5B is published, the Bank 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) of the Act (applied by paragraph (10)).

(10) Sections 387(1), (2) and (3) (warning notices), 388 (decision notices), 389 (notices of discontinuance), 390 (final notices), 393 (third party rights) and 394 (access to FCA or PRA material) of the Act^(b) apply in relation to a warning notice or decision notice given by the Bank under this regulation as if references to the regulator were references to the Bank.

(11) Section 391 of the Act (publication) applies in relation to a warning notice or decision notice under this regulation and in relation to a notice of discontinuance and a final notice under section 389 or 390 of the Act as applied by paragraph (10), but as if—

- (a) references to the regulator and the FCA were to the Bank;
- (b) a warning notice under this regulation were treated as falling within subsection (1ZB);
- (c) in subsection (8A)—
 - (i) the reference to the Act were to these Regulations, and
 - (ii) the reference to a requirement included a requirement under regulation 5A.

(a) Defined in section 417(1) of the Financial Services and Markets Act 2000.

(b) Sections 387, 388, 389, 390, 391, 393 and 394 were amended by Schedule 9 to the Financial Services Act 2012. Sections 387 and 388 are prospectively also amended by Schedule 3 to the Financial Services (Banking Reform) Act 2013. Section 390 was also amended by S.I. 2010/22. Section 391 was also amended by section 13 of the Financial Services Act 2010 (c.28), section 24 of the Financial Services Act 2012 and S.I. 2012/916, 2013/1388, 2013/3115 and 2014/2879. Section 394 was also amended by Schedule 4 to the Regulation of Investigatory Powers Act 2000 (c.23).

(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, with the following modifications—

- (a) a reference is a “disciplinary reference” for the purposes of section 133 of the Act^(a) if it is in respect of a decision to publish a statement or impose a penalty under regulation 5B;
- (b) section 133(1)(a) and (c) of the Act does not apply.

Control over recognised CSD

Interpretation of regulations 5D to 5I [Art 27(7) to (8); Art 66]

5D. In regulations 5D to 5I—

“acquisition” means a transfer of ownership rights which gives rise to a change in the identity of the persons exercising control over the operation of a recognised CSD^(b);

“Article 27 notice” means a notification by a person under Article 27(7) of the CSD regulation of a proposed acquisition;

“assessment period” means the period of 60 working days referred to in Article 27(8) of the CSD regulation;

“control” means the relationship between two undertakings as described in section 1162 of, and Schedule 7 to, the Companies Act 2006^(c)

“proposed acquisition” means a decision to transfer ownership rights which gives rise to a change in the identity of the persons exercising control over the operation of a recognised CSD;

“restriction notice” has the meaning given by regulation 5G;

“shares” has the meaning given by section 422 of the Act (controller), but section 422A of the Act^(d) (disregarded holdings) does not apply;

“voting power” has the meaning given by section 422 of the Act;

“working day” means a day other than—

- (a) Saturday or Sunday,
- (b) Christmas Day or Good Friday, or
- (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971^(e) in any part of the United Kingdom.

Powers of Bank in relation to proposed acquisition

5E.—(1) The Bank may before the end of a period of 14 working days starting with the day on which it receives an Article 27 notice, by notice in writing, require the person who gave the Article 27 notice—

- (a) to provide specified information or information of a specified description; or
- (b) to provide specified documents or documents of a specified description.

(2) Subsection (1) only applies to information or documents which the Bank reasonably requires in order to decide whether there are objective and demonstrable grounds for believing that a proposed acquisition would pose a threat to the sound and prudent

(a) 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 and 2014/3329.

(b) Defined in section 285 of the Financial Services and Markets Act 2000 as amended by [these Regulations].

(c) 2006 c.46

(d) Sections 422 and 422A were substituted by S.I. 2009/534. Section 422 was amended by S.I. 2013/3115. Section 422A was amended by S.I. 2011/1613 and 2013/3115.

(e) 1971 c.80.

management of the recognised CSD or to the ability of the recognised CSD to comply with the CSD regulation.

(3) The information or documents must be provided or produced—

- (a) before the end of such period as may be specified;
- (b) at such place as may be specified.

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

(5) The Bank 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.

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

(7) For the purposes of Article 27(8) of the CSD regulation, the information referred to in Article 27(7) of that regulation is not received until the Bank receives all the information and documents required under this regulation, and where the Bank has imposed a requirement under paragraph (4) or (5), that requirement has been complied with.

Procedure in relation to proposed acquisition

5F.—(1) If the Bank gives a person (“P”) notice of its decision under Article 27(8) of the CSD regulation that it opposes a proposed acquisition, P may refer the Bank’s decision to the Tribunal.

(2) The notice under Article 27(8) of the CSD regulation must—

- (a) give reasons for the decision;
- (b) inform P that P may make representations to the Bank within such period as may be specified in the notice (whether or not P has referred the matter to the Tribunal); and
- (c) inform P of P’s right to refer the matter to the Tribunal, and give an indication of the procedure on such a reference.

(3) The Bank may extend the period allowed under the notice under Article 27(8) of the CSD regulation for making representations.

(4) If, having considered any representations made by P, the Bank decides to rescind the notice under Article 27(8) of the CSD regulation, it must give P written notice.

(5) If, having considered any representations made by P, the Bank decides not to rescind the notice under Article 27(8) of the CSD regulation, it must give P written notice which must comply with paragraph (2)(c).

(6) 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.

Restriction notices

5G.—(1) The Bank may give notice in writing (a “restriction notice”) to a person (“P”) in the following circumstances.

(2) The circumstances are that—

- (a) P has taken a decision in relation to which P is required to give the Bank an Article 27 notice; and
- (b) P has made the acquisition—
 - (i) without giving the Article 27 notice,

- (ii) before the expiry date of the assessment period (unless the Bank has approved the acquisition), or
 - (iii) in contravention of the Bank’s decision under Article 27(8) of the CSD regulation.
- (3) In a restriction notice, the Bank may direct that shares or voting power to which the notice relates are, until further notice, subject to one or more of the following restrictions—
- (a) except by court order, an agreement to transfer or a transfer of any such shares or voting power or, in the case of unissued shares, any agreement to transfer or transfer of the right to be issued with them, is void;
 - (b) no voting power is to be exercisable;
 - (c) no further shares are to be issued in pursuance of any right of the holder of any such shares or voting power or in pursuance of any offer made to their holder;
 - (d) except in a liquidation, no payment is to be made of any sums due from the body corporate on any such shares, whether in respect of capital or otherwise.
- (4) A restriction notice takes effect—
- (a) immediately; or
 - (b) on such date as may be specified in the notice.
- (5) A restriction notice does not extinguish rights which would be enjoyable but for the notice.
- (6) A copy of the restriction notice must be given to—
- (a) the recognised CSD in question; and
 - (b) in the case of shares or voting power held in a parent undertaking^(a) of a recognised CSD, the parent undertaking.
- (7) A person to whom the Bank gives a restriction notice may refer the matter to the Tribunal.
- (8) 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.

Orders for sale of shares

5H.—(1) The court may, on the application of the Bank, order the sale of shares or the disposition of voting power in the following circumstances.

- (2) The circumstances are that—
- (a) a person (“P”) has taken a decision in relation to which P is required to give the Bank an Article 27 notice; and
 - (b) P has made the acquisition—
 - (i) without giving the Article 27 notice,
 - (ii) before the expiry date of the assessment period (unless the Bank has approved the acquisition), or
 - (iii) in contravention of the Bank’s decision under Article 27(8) of the CSD regulation.
- (3) Where the court orders the sale of shares or disposition of voting power it may—
- (a) if a restriction notice has been given in relation to the shares or voting power, order that the restrictions cease to apply; and
 - (b) make any further order.

(a) Defined in section 420 of the Financial Services and Markets Act 2000.

(4) Where the court makes an order under this regulation, it must take into account the level of holding that P would have been entitled to acquire, or to continue to hold, without contravening the Bank's decision under Article 27(8) of the CSD regulation.

(5) If shares are sold or voting power disposed of in pursuance of an order under this regulation, any proceeds, less the costs of the sale or disposition, must be paid into court for the benefit of the persons beneficially interested in them; and any such person may apply to the court for payment of the whole or a part of the proceeds.

(6) The jurisdiction conferred by this regulation may be exercised by the High Court or in Scotland, the Court of Session.

Offences

5I.—(1) A person who fails to comply with an obligation to notify the Bank under the Article 27(7) of the CSD regulation is guilty of an offence.

(2) A person who gives an Article 27 notice to the Bank and makes the acquisition to which the notice relates before the expiry date of the assessment period is guilty of an offence unless the Bank has approved the acquisition.

(3) A person who makes an acquisition in contravention of the Bank's decision under Article 27(8) of the CSD regulation is guilty of an offence.

(4) A person who provides information to the Bank which is false in a material particular is guilty of an offence.

(5) A person guilty of an offence under paragraph (1), (2) or (4) is liable—

- (a) in England and Wales, on summary conviction or on conviction on indictment to a fine; and
- (b) in Scotland and Northern Ireland, on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine.

(6) A person guilty of an offence under paragraph (3) is liable—

- (a) in England and Wales—
 - (i) on summary conviction to a fine, or
 - (ii) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both; and
- (b) in Scotland and Northern Ireland—
 - (i) on summary conviction to a fine not exceeding the statutory maximum, or
 - (ii) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

(7) It is a defence for a person charged with an offence under paragraph (1) to show the person had, at the time of the alleged offence, no knowledge of the act or circumstances by virtue of which the duty to notify the Bank arose.

References to the Tribunal

References to the Tribunal [Art 66]

5J.—(1) Paragraph (2) applies where the Bank or FCA takes a decision—

- (a) to require a recognised CSD to discontinue a CSD link^(a) in accordance with Article 19(7) of the CSD regulation;
- (b) to refuse to communicate information in accordance with Article 23(3) and (4) of that regulation (freedom of CSD to provide services in another Member State);

(a) Defined in Article 2(1)(29) of the CSD regulation.

- (c) to take measures pursuant to the second sub-paragraph of Article 24(5) of that regulation (cooperation between authorities of the home Member State and the host Member State: CSD providing services in another Member State);
 - (d) to refuse an application for authorisation under Article 30(4) of that regulation (outsourcing);
 - (e) in relation to a complaint under Article 33(3) of that regulation (requirements for participation);
 - (f) in relation to a complaint under Article 49(4) of that regulation (freedom to issue in a CSD authorised in the European Union);
 - (g) in relation to a complaint under Article 52(2) of that regulation (procedure for CSD links);
 - (h) in relation to a complaint under Article 53(3) of that regulation (access between a CSD and another market infrastructure);
 - (i) to refuse an application by a CSD for authorisation to designate a credit institution or to provide banking-type ancillary services listed in or permitted under Section C of the Annex to that regulation under Article 55(5) of that regulation (procedure for granting and refusing authorisation to provide banking-type ancillary services);
 - (j) to refuse an application by a recognised CSD for an extension of banking-type ancillary services listed in or permitted under Section C of the Annex to that regulation (including services to be provided by a designated credit institution) under Article 55(5) of that regulation as applied by Article 56(2) of that regulation (extension of banking-type ancillary services);
 - (k) to withdraw, wholly or partly, a recognised CSD's authorisation to designate a credit institution or to provide banking-type ancillary services listed in or permitted under Section C of the Annex to the CSD regulation under Article 57 of that regulation (withdrawal of authorisation).
- (2) The following persons may refer the matter to the Tribunal—
- (a) in all cases, the CSD,
 - (b) in the case of decision to which paragraph (1)(e), (f) or (g) applies, the complainant, and
 - (c) in the case of decision to which paragraph (1)(h) applies, the CCP and the trading venue^(a).
- (3) 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.

Access to trading venues

Access to trading venues [Art 53]

5K.—(1) Paragraph (2) applies where the FCA has decided in respect of a complaint made to it under Article 53(3) of the CSD regulation that a trading venue^(b) which is not a recognised body has failed, unjustifiably, to grant the access sought by the complainant.

(2) The FCA may direct the trading venue to take specified steps for the purpose of securing the trading venue's compliance with the FCA's determination of the complaint.

(3) A direction under this regulation is enforceable, on the application of the FCA, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988^(c).

(a) Defined in Article 2(1)(42) of the CSD regulation.
 (b) Defined in Article 2(1)(42) of the CSD regulation.
 (c) 1988 c.36.

(4) Section 298 of the Act applies in relation to a direction under this regulation as it applies in relation to a direction under section 296 of the Act given to a recognised CSD.

Reporting of infringements

Reporting of infringements

5L.—(1) Trading venues, investment firms^(a), CCPs, settlement internalisers and credit institutions designated under Article 54(2)(b) of the CSD regulation must have in place appropriate procedures for their employees to report actual or potential infringements of the CSD regulation and any directly applicable EU regulation made under that regulation internally through a specific, independent and autonomous channel. [*Art 65(3)*]

(2) The protections set out in points (b), (c) and (d) of Article 65(2) of that regulation (reporting of infringements) must be applied in relation to those procedures.”.

(6) In regulation 10 (review) after “regulations 2 to 9” in each place insert “and the Central Securities Depositories Regulations 2016”.

PART 6

Transitional and saving provisions [*Art 69*]

Transitional and saving provisions: interpretation

8.—(1) In this Part—

“the Act” means the Financial Services and Markets Act 2000;

“Bank” means the Bank of England;

“commencement” means the coming into force of these Regulations;

“CSD RCH” means a person established in the United Kingdom which immediately before [*date on which the level 2 measures in Art 69(3) of CSDR enter into force*] was a recognised clearing house which—

(a) operated a securities settlement system referred to in point (3) of Section A of the Annex to the CSD regulation in the United Kingdom, and

(b) provided at least one other core service listed in Section A of that Annex in the United Kingdom;

“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^(b);

“recognised clearing house” means a recognised clearing house referred to section 285(1)(b)(ii) of the Act^(c);

“recognition order” has the meaning given in section 313(1) of the Act.

(2) In this Part, expressions defined for the purposes of the CSD regulation have the meanings given by that regulation.

Transitional and saving provisions for recognised clearing houses

9.—(1) The transition period for a CSD RCH begins with commencement.

(2) The transition period for a CSD RCH ends immediately after—

(a) Defined in section 424A of the Act.

(b) OJ No L257, 28.8.2014, p1.

(c) The definition of "recognised clearing house" in section 285(1)(b) was substituted by S.I. 2013/504.

- (a) the Bank determines its application under section 288A of the Act^(a) in accordance with Article 17 of the CSD regulation and any directly applicable EU regulation made under that Article, or
 - (b) the end of the six month period specified in Article 69(2) of the CSD regulation, if the CSD RCH has not made an application under section 288A of the Act before the end of that period.
- (3) During a CSD RCH's transition period—
- (a) section 313(1A) of the Act (interpretation of Part 18) inserted by regulation 2(31) does not apply;
 - (b) the amendments made by paragraph 14 of the Schedule (amendments to the Financial Services (Banking Reform) Act 2013) do not apply.
- (4) Nothing in these Regulations affects the validity of a CSD RCH's recognition order under section 290(1)(c) of the Act^(b) during its transition period, and accordingly during that period the CSD RCH remains a recognised clearing house except where the order is revoked during that period.
- (5) Where—
- (a) a CSD RCH has made an application under section 288A of the Act, and
 - (b) the Bank has determined that application in accordance with Article 17 of the CSD regulation and any directly applicable EU regulation made under that Article,
- any previous recognition order under section 290(1)(c) of the Act shall cease to be valid.

Transitional and saving provisions: overseas persons

- 10.**—(1) The transition period for an overseas person begins with commencement.
- (2) The transition period for an overseas person established in an EEA State other than the United Kingdom ends immediately after—
- (a) if the overseas person has made a communication under Article 23(3) of the CSD regulation to the competent authority of its home Member State before the end of the six month period specified in Article 69(2) of that regulation—
 - (i) the decision of the competent authority of the overseas person's home Member State not to make a communication to the Bank under Article 23(4) of the CSD regulation, or
 - (ii) the overseas person becomes eligible under Article 23(6) of the CSD regulation to provide the services referred to in Article 23(2) of that regulation in the United Kingdom or to establish a branch in the United Kingdom, or
 - (b) if the overseas person has not made a communication under Article 23(3) of the CSD regulation to the competent authority of its home Member State before the end of the six month period specified in Article 69(2) of that regulation, the end of that six month period.
- (3) The transition period for an overseas person established in a State which is not an EEA State ends immediately after—
- (a) if the overseas person has made an application under Article 25(4) of the CSD regulation before the end of the six month period specified in Article 69(3) of that regulation, the determination of its application under Article 25(4) of that regulation, or
 - (b) if the overseas person has not made an application under Article 25(4) of the CSD regulation before the end of the six month period specified in Article 69(3) of that regulation, the end of that six month period.

(a) Section 288A was inserted by S.I. [] [these Regulations].
 (b) Section 290(1) was substituted by S.I. 2013/504.

(4) During the transition period for an overseas person, article 72 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(a) applies in relation to that overseas person as if it had not been amended by these Regulations.

(5) In this regulation, “overseas person” means an overseas person (within the meaning of article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001) which immediately before commencement provided the services referred to in Article 23 or 25 of the CSD regulation in the United Kingdom (including through a branch in the United Kingdom).

Transitional and saving provisions: designation orders under the Financial Markets and Insolvency (Settlement Finality) Regulations 1999

11.—(1) Nothing in these Regulations affects any designation order under the Financial Markets and Insolvency (Settlement Finality) Regulations 1999(b) in relation to a designated system in force at commencement, and no system operator shall be required to apply for a new or amended designation order in consequence only of these Regulations.

(2) Expressions used in this regulation which are defined in the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 have the meanings given in those Regulations.

Minor and consequential amendments

12. The Schedule, which makes minor and consequential amendments to primary and secondary legislation, has effect.

Date *Name*
Name
Two of the Lords Commissioners of Her Majesty’s Treasury

Date *Name*
Secretary of State for Business, Innovation and Skills

(a) S.I. 2001/544. The definition of “overseas person” in article 3(1) was amended by S.I. 2003/1475, 2003/1476, 2006/2383, 2006/3384, 2009/1342 and 2013/1773. Article 72 was amended by S.I. 2003/1476, 2006/2383, 2006/3384, 2009/1342 and 2013/504.

(b) S.I. 1999/2979.

Minor and consequential amendments to primary and secondary legislation

PART 1

Consequential amendments to primary legislation

Stock Exchange (Completion of Bargains) Act 1976

1. In section 5 of the Stock Exchange (Completion of Bargains) Act 1976(a) (acquisition and disposal of securities by trustees and personal representatives), in subsection (2), in paragraphs (a) and (b)(i), after “recognised clearing house” insert “or a recognised CSD”.

Companies Act 1985

2. In paragraph 31 of Schedule 15D to the Companies Act 1985(b) (disclosures)—
- (a) in sub-paragraph (1) for “or a recognised clearing house” substitute “, a recognised clearing house or a recognised CSD”;
 - (b) in sub-paragraph (2) for “and recognised clearing house” substitute “, recognised clearing house and recognised CSD”.

Companies Act 1989

- 3.—(1) The Companies Act 1989(c) is amended as follows.
- (2) In section 87 (exceptions from restrictions on disclosure), in subsection (4), in the entry in the table relating to a recognised investment exchange or a recognised clearing house—
- (a) in the first column for “or a recognised clearing house” substitute “, recognised clearing house or recognised CSD”;
 - (b) in the second column for “or clearing house” substitute “, clearing house or central securities depository”.
- (3) In section 213 (provisions extending to Northern Ireland), in subsection (5)(c) for “and clearing houses” substitute “, recognised clearing houses and recognised CSDs”.

Finance Act 1991

- 4.—(1) The Finance Act 1991(d) is amended as follows.
- (2) In section 116 (investment exchanges and clearing houses: stamp duty)—
- (a) for the heading substitute “Investment exchanges, clearing houses and central securities depositories: stamp duty”;
 - (b) in subsection (4)(b)(ii) after “a recognised clearing house,” insert “a recognised CSD, [EEA CSD, third country CSD],”.
- (3) In section 117 (investment exchanges and clearing houses: SDRT) for the heading substitute “Investment exchanges, clearing houses and central securities depositories: SDRT”.

(a) 1976 c.47; subsection (2) was amended by S.I. 2001/3649.

(b) 1985 c.6; Schedule 15D was inserted by paragraphs 16 and 25 of Schedule 2 to the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c.27).

(c) 1989 c.40; the table in section 87(4) was amended by S.I. 2001/3649; there are other amendments but none is relevant.

(d) 1991 c.31; section 116(4)(b) was substituted by S.I. 2013/504.

Pension Schemes Act 1993

5.—(1) The Pension Schemes Act 1993(a) is amended as follows.

(2) In section 149 (procedure on an investigation), in subsection (6)(l) after “recognised clearing house,” insert “recognised CSD, EEA CSD, third country CSD,”.

(3) In section 158A (other disclosures by the Secretary of State), in subsection (1), in the entry in the table relating to a recognised investment exchange or a recognised clearing house—

- (a) in the first column for “or a recognised clearing house” substitute “, a recognised clearing house or a recognised CSD”;
- (b) in the second column for “or clearing house” substitute “, clearing house or central securities depository”.

Bank of England Act 1998

6.—(1) The Bank of England Act 1998(b) is amended as follows.

(2) In section 9O (making of recommendations within the Bank), in subsection (2)(b) for “and clearing houses” substitute “, clearing houses and central securities depositories”.

(3) In section 9S (duty to prepare explanation), in subsection (2)(b) for “and clearing houses” substitute “, clearing houses and central securities depositories”.

(4) In section 9ZA (interpretation of Part 1A), before the definition of “the FCA” insert—

““central securities depository” has the meaning given by point (1) of Article 2(1) 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;”.

Pensions Act 2004

7.—(1) The Pensions Act 2004(c) is amended as follows.

(2) In Schedule 3 (restricted information held by the regulator: certain permitted disclosures to facilitate exercise of functions), in the entry in the table relating to a recognised investment exchange etc.—

- (a) in the first column after “recognised clearing house,” insert “recognised CSD, EEA CSD, third country CSD,”;
- (b) in the second column after “clearing house” insert “, central securities depository”.

(3) In Schedule 8 (restricted information held by the Board: certain permitted disclosures to facilitate exercise of functions), in the entry in the table relating to a recognised investment exchange etc.—

- (a) in the first column after “recognised clearing house,” insert “recognised CSD, EEA CSD, third country CSD,”;
- (b) in the second column after “clearing house” insert “, central securities depository”.

Companies Act 2006

8.—(1) The Companies Act 2006(d) is amended as follows.

(a) 1993 c.48. Section 149(6)(l) was substituted by S.I. 2001/3649 and amended by S.I. 2013/504. Section 158A was inserted by paragraph 9 of Schedule 6 to the Pensions Act 1995 and amended by S.I. 2001/3649; there are other amendments to section 158A but none is relevant.

(b) 1998 c.11; sections 9O, 9S and 9ZA were inserted by section 4 of the Financial Services Act 2012.

(c) 2004 c.35. Schedules 3 and 8 were amended by SI 2013/504; there are other amendments but none is relevant.

(d) 2006 c.46; Schedule 11A was inserted by S.I. 2007/3494.

(2) In section 778 (issue of certificates etc.: allotment or transfer to financial institution), in subsection (2), in paragraphs (a) and (b)(i), after “a recognised clearing house” insert “or a recognised CSD”.

(3) In Schedule 2 (specified persons, descriptions of disclosures etc. for the purposes of section 948), in Part 2, in paragraph 40—

- (a) in sub-paragraph (1) for “or a recognised clearing house” substitute “, a recognised clearing house or a recognised CSD”;
- (b) in sub-paragraph (2) for “and “recognised clearing house”” substitute “, “recognised clearing house” and “recognised CSD””.

(4) In Schedule 11A (specified persons, descriptions, disclosures etc. for the purposes of section 1224A), in Part 2, in paragraph 55—

- (a) for “or a recognised clearing house” substitute “, a recognised clearing house or a recognised CSD”;
- (b) for “and “recognised clearing house”” substitute “, “recognised clearing house” and “recognised CSD””.

Income Tax Act 2007

9. In section 886 of the Income Tax Act 2007(a) (interest paid by recognised clearing houses etc.)—

- (a) in subsection (1)—
 - (i) in paragraph (a) after “clearing service” insert “or as a central securities depository”;
 - (ii) in paragraph (b) after “service” insert “or central securities depository”;
- (b) in subsection (2) after “clearing service” insert “or as a central securities depository”;
- (c) in subsection (3), after paragraph (d) of the definition of “relevant entity” insert—
 - “(e) a recognised CSD;
 - (f) an EEA CSD;
 - (g) a third country CSD.”.

Banking Act 2009

10. In section 4 of the Banking Act 2009(b) (special resolution objectives), in subsection (4)(a), after “clearing houses” insert “, recognised CSDs within the meaning of section 285 of the Financial Services and Markets Act 2000”.

Corporation Tax Act 2009

11. In section 697 of the Corporation Tax Act 2009(c) (exceptions to section 696)—

- (a) in subsection (1)(a) after “recognised clearing house,” insert “recognised CSD,”;
- (b) in subsection (6)—
 - (i) after ““recognised clearing house,”” insert ““recognised CSD,””;
 - (ii) for “investment exchanges and clearing houses” substitute “bodies”.

Finance Act 2011

12. In Schedule 23 to the Finance Act 2011(d) (data-gathering powers), in Part 2—

(a) 2007 c.3; section 886 was amended by paragraph 24 of Schedule 14 to the Finance Act 2007 (c.11) and S.I. 2013/504.
(b) 2009 c.1; section 4 was amended by paragraph 5 of Schedule 17 to the Financial Services Act 2012 and S.I. 2014/3329.
(c) 2009 c.4; relevant amendments are made by S.I. 2013/504.
(d) 2011 c.11.

- (a) in paragraph 19(1)(b) after “a clearing house” insert “or a central securities depository (defined in point (1) of Article 2(1) 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)”;
- (b) in paragraph 20(a) after “a clearing house” insert “or a central securities depository (as defined in paragraph 19)”.

Financial Services Act 2012

13.—(1) The Financial Services Act 2012(a) is amended as follows.

(2) In section 68 (cases in which Treasury may arrange independent inquiries), in subsection (3)—

- (a) in paragraph (a) for “or a recognised inter-bank payment system” substitute “, a recognised inter-bank payment system or a recognised CSD”;
- (b) in paragraph (b)(i) after “clearing houses” insert “or central securities depositories”.

(3) In section 83 (interpretation and supplementary provision), in subsection (1) insert in the appropriate place—

““recognised CSD” has the same meaning as in FSMA 2000;”.

(4) In section 85 (relevant functions in relation to complaints scheme), in subsection (3)(a) after “clearing houses” insert “and CSDs”.

(5) In section 110 (payment to Treasury of penalties received by Bank of England), in subsection (5)(b)—

- (i) for “and 312F” insert “, 312F and 312FA”;
- (ii) after “in relation to clearing houses” insert “and central securities depositories”.

Financial Services (Banking Reform) Act 2013

14.—(1) The Financial Services (Banking Reform) Act 2013(b) is amended as follows.

(2) In section 41 (meaning of “payment system”)—

- (a) in subsection (2)(c) for “person approved” to the end substitute “recognised CSD”;
- (b) in subsection (3) before the definition of “recognised clearing house” insert—

““recognised CSD” has the meaning given by section 285(1) of FSMA 2000;”.

(3) In section 112 (interpretation: infrastructure companies), for subsection (2)(b) substitute—

“(b) a recognised CSD operating a securities settlement system, or”.

(4) In section 113 (interpretation: other expressions), in subsection (1) after the definition of “operator” insert—

““recognised CSD” has the meaning given by section 285 of FSMA 2000;”.

(5) In section 115 (objective of FMI administration)—

- (a) in subsection (1)—
 - (i) omit “or a securities settlement system”;
 - (ii) omit paragraph (b);
 - (iii) in paragraph (c) omit “or those purposes”;
- (b) after subsection (1) insert—

“(1A) Where an FMI administrator is appointed in relation to a recognised CSD operating a securities settlement system, the objective of the FMI administration is—

(a) 2012 c.21; section 85(3) was substituted by paragraph 10 of Schedule 10 to the Financial Services (Banking Reform) Act 2013.

(b) 2013 c.33.

- (a) to ensure that the system is and continues to be maintained and operated as an efficient and effective system,
- (b) to ensure that the protected activities continue to be carried on, and
- (c) to ensure by one or both of the specified means that it becomes unnecessary for the FMI administration order to remain in force for that purpose or those purposes.”;
- (c) in subsection (3)—
 - (i) for “(1)(b)” substitute “(1A)(b)”;
 - (ii) in paragraph (a) for “285(3)(a) or (b)” substitute “285(3D)”.

PART 2

Minor and consequential amendments to secondary legislation

Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

15.—(1) The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(a) is amended as follows.

(2) In article 72 (overseas persons) after paragraph (9) insert— [*Arts 23 and 25*]

“(10) Paragraphs (1) to (5) do not apply—

- (a) where the overseas person is a central securities depository which provides the services referred to in Article 23(2) or 25(2) of the CSD regulation in the United Kingdom (including through a branch in the United Kingdom); or
- (b) where the overseas person is an EEA CSD which provides services in the United Kingdom for which it is not authorised under Article 16 of the CSD regulation.”.

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

16. In regulation 2 (interpretation) of the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(b), in the definition of “EEA competent authority”, for “or the EMIR regulation” substitute “, the EMIR regulation or the CSD regulation”.

Public Interest Disclosure (Prescribed Persons) Order 2014

17. In the Schedule to the Public Interest Disclosure (Prescribed Persons) Order 2014(c) (prescribed persons), in the second column of the entry in the table relating to the Bank of England—

- (a) after “central counterparties” insert “and central securities depositories”;
- (b) for “and securities settlement systems” substitute “securities settlement systems and the internalised settlement of securities”.

18.—(1) [*other consequential amendments*]

(a) S.I. 2001/544; relevant amendments to article 72 are made by S.I. 2006/3384 and 2013/504.

(b) S.I. 2001/2188; the definition of “EEA competent authority” in regulation 2 was amended by S.I. 2003/2066, 2006/3413 and 2013/504.

(c) S.I. 2014/2418.