Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Central Securities Depositories Regulations 2017. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY INSTRUMENTS

2017 No. 1064

FINANCIAL SERVICES AND MARKETS

The Central Securities Depositories Regulations 2017

Made - - - -	*6th November 2017*
Laid before Parliament	*7th November 2017*
Coming into force - -	*28th November 2017*

The Treasury are designated [F1] for the purposes of section 2(2) of the European Communities Act 1972 [F2] in relation to financial services.

The Treasury make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and by sections 286 and 428(3) of the Financial Services and Markets Act 2000 [F3].

F1 S.I. 2012/1759.

F2 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).

F3 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.

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Central Securities Depositories Regulations 2017 and come into force on 28th November 2017.

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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 [F4] (meaning of "regulator"), in subsection (3)(b) for "recognised investment exchanges and clearing houses" substitute " recognised investment exchanges, clearing houses and CSDs ".

(3) In section 55G [F5] (giving permission: special cases), in subsection (3)(a) omit "any of subsections (2) to (3C) of".

(4) In section 128 [F6] (suspension of investigations)—

(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 [F7] (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)).";

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

(6) In section 192B [F8] (meaning of "qualifying parent undertaking"), in subsection (3) for "or a recognised clearing house" substitute " , a recognised clearing house or a recognised CSD ".

(7) In section 192F (consultation between regulators), in subsection (3) after "recognised clearing house" insert " or a recognised CSD ".

(8) For the heading of Part 18 substitute " Recognised investment exchanges, clearing houses and CSDs ".

(9) In section 285 [F9] (exemption for recognised investment exchanges and clearing houses)—

(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 [F10]; 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 or 19(1)(a) or (c) of that regulation, or

(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 of the CSD regulation.

(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 (including additional services authorised or notified under Article 19 of that 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 [F11] (powers exercisable in relation to recognised investment exchanges and clearing houses)—

(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 ".

(11) In section 286 [F12] (qualification for recognition)—

(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) In section 288 [F13] (application by a clearing house), before subsection (1) insert—

"(A1) This section applies only in relation to an application by a clearing house.".

(13) After section 288 insert—

"**288A 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.".

(14) In section 289 [F14] (applications: supplementary), after subsection (4) insert—

"(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.".

(15) In section 290 [F15] (recognition orders)—

(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 or 19(1)(a) or (c) of that regulation, and

(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 of the CSD regulation.

(1F) A CSD recognition order must also record the terms of any of the following authorisations granted to the CSD under the CSD regulation or notifications made by the CSD under that regulation—

(a) an authorisation under Article 19(1) of the CSD regulation to outsource a core service under Article 30 of that regulation,

(b) an authorisation under Article 19(1)(d) of the CSD regulation (settlement of cash leg of securities settlement system in the books of another settlement agent),

(c) an authorisation under Article 19(1)(e) of the CSD regulation (setting up interoperable link),

(d) a notification under Article 19(5) of the CSD regulation (other CSD links),

(e) an authorisation under Article 54 or 56 of the CSD regulation to provide (in accordance with Article 54(2)(a) or (b)) any banking-type ancillary service listed in or permitted under Section C of the Annex to that regulation, and

(f) an authorisation to provide investment services and activities in addition to the services explicitly listed in Sections A and B of the Annex to the CSD regulation.";

(c) after subsection (4) insert—

"(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—

"(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.".

(16) After section 290ZA [F16] (variation of central counterparty recognition order) insert—

"**290ZB Variation of CSD recognition order**

(1) Where the Bank of England—

(a) grants an authorisation in accordance with Article 19(1), 54 or 56 of the CSD regulation,

(b) receives a notification under Article 19 of that regulation, or

(c) decides to withdraw authorisation for a service, activity or financial instrument in accordance with Article 20(4) or 57(4) of that regulation,

the Bank of England must vary the CSD recognition order accordingly.

(2) Where an authorisation to provide investment services and activities in addition to the services explicitly listed in Sections A and B of the Annex to the CSD regulation is granted, varied or withdrawn, the Bank of England must vary the CSD recognition order accordingly.

(3) 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.".

(17) In section 290A [F17] (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 ".

(18) In section 293 [F18] (notification requirements)—

(a) in subsection (3), after "this Act" insert " or under Directive 2016/1148/EU of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security network and information systems across the Union [F19] ";

(b) after subsection (5) insert—