Changes to legislation: *There are outstanding changes not yet made to Commission Implementing Regulation (EU) 2017/394. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)EUR 2017 No. 394 may be subject to amendment by EU Exit Instruments made by the Bank of England under powers set out in The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), regs. 2, 3, Sch. Pt. 3. These amendments are not currently available on legislation.gov.uk. Details of relevant amending instruments can be found on their website/s. (See end of Document for details) View outstanding changes*

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

COMMISSION IMPLEMENTING REGULATION (EU) 2017/394

of 11 November 2016

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012[(1)], and in particular Article 17(10), Article 22(11), Article 24(8), Article 29(4), Article 33(6), Article 49(6), Article 52(4), Article 53(5) and Article 55(8) thereof,

Whereas:

(1) The provisions in this Regulation are closely linked, since they all deal with supervisory requirements involving central securities depositories (CSDs). To ensure coherence between those provisions, and to facilitate a comprehensive view and compact access to them by persons subject to those obligations, it is desirable to include all the implementing technical standards required by Article 17(10), Article 22(11), Article 24(8), Article 29(4), Article 33(6), Article 49(6), Article 52(4), Article 53(5) and Article 55(8) of Regulation (EU) No 909/2014 in a single Regulation.

(2) Any information submitted to the competent authority in a CSD's application for authorisation as well as for the purposes of review and evaluation should be provided in a durable medium.

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(3) In order to facilitate quick identification of the information submitted by a CSD, all documents provided to the competent authority, including those provided with an application for authorisation, should bear a unique reference number. Information submitted as part of the process of review and evaluation of the CSDs' activities should contain precise indications of the changes to the documents that have been submitted during that process.

(4) In order to facilitate the cooperation between authorities where CSDs provide cross-border activities or set up branches, it is necessary to provide for harmonised standards, forms and procedures for such cooperation.

(5) To carry out their duties effectively and consistently, the authorities authorised to have access to the records of CSDs in accordance with Regulation (EU) No 909/2014 should be provided with data that is comparable across CSDs. In addition, the use of common formats across different financial market infrastructures should facilitate the greater use of those formats by a wide variety of market participants, thus promoting standardisation. Standardised procedures and data formats across CSDs should reduce as well the costs for market participants and facilitate the tasks of supervisors and regulators.

(6) To ensure consistency of the record keeping, all legal entities that use the services of a CSD should be identified by a unique code through the use of legal entity identifiers (LEI). The use of an LEI is already required under Commission Implementing Regulation (EU) No 1247/2012[(2)] and it should be required for the purposes of the record keeping by CSDs. The use of proprietary formats by CSDs should be limited to internal processes, but for reporting purposes and for providing information to competent authorities any internal code should be appropriately converted into a globally accepted standard such as LEI. Account holders that are not participants in the securities settlement systems operated by CSDs, for instance in the case of direct securities holding systems, and clients of participants in the securities settlement systems operated by CSDs should be allowed to continue to be identified by national identifiers where available.

(7) In order to ensure a harmonised approach regarding the processing of complaints concerning the access of participants to CSDs, the access of issuers to CSDs, the access between CSDs, and the access between a CSD and another market infrastructure, standard forms and templates should be used, specifying the identified risks and the assessment of the identified risks that justify a refusal of access.

(8) In order to facilitate the consultation by the competent authority of a CSD with other authorities involved referred to in Regulation (EU) No 909/2014 prior to granting or refusing authorisation to provide banking-type ancillary services, it is necessary to provide for an effective and structured process for consultation. To facilitate the timely cooperation of the authorities concerned and allow each of them to provide a reasoned opinion concerning the application, the documents and data attached to an application should be organised according to common templates.

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(9) With a view to ensuring legal certainty and a consistent application of the law, certain requirements provided for in this Regulation concerning settlement discipline measures should start to apply from the date of entry into force of those measures.

(10) This Regulation is based on the draft implementing technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(11) In accordance with Regulation (EU) No 909/2014, in developing the draft implementing technical standards on which this Regulation is based, ESMA has worked in close cooperation with the members of the European System of Central Banks (ESCB). In accordance with Article 15 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[(3)], ESMA has conducted open public consultations before submitting the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010,

HAS ADOPTED THIS REGULATION:

CHAPTER I

CSD AUTHORISATION

(Article 17(10) of Regulation (EU) No 909/2014)

Article 1

Standard forms, templates and procedures for application

1 A central securities depository applying for authorisation in accordance with Article 17 of Regulation (EU) No 909/2014 ('applicant CSD') shall submit its application in a durable medium as defined in point (g) of Article 1 of Commission Delegated Regulation (EU) 2017/392[(4)], filling in the standard form and templates set out in Annex I.

2 The applicant CSD shall provide the competent authority with a list of all documents submitted as part of its application for authorisation which identifies the following information:

a the unique reference number of each document;

b the title of each document;

c the chapter, section or page of each document where the relevant information is provided.

3 All information shall be submitted in the language indicated by the competent authority. The competent authority may request the CSD to submit the same information in a language customary in the sphere of international finance.

4 An applicant CSD maintaining any of the relationships referred to in Article 17(6) of Regulation (EU) No 909/2014 shall provide the competent authority with the list of competent authorities to be consulted, including contact persons from those authorities.

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CHAPTER II

REVIEW AND EVALUATION

(Article 22(11) of Regulation (EU) No 909/2014)

Article 2

Standard forms and templates for the provision of information

1 The CSD shall provide the information referred to in Article 40 of Delegated Regulation (EU) 2017/392 in a durable medium.

2 Information provided by a CSD shall be submitted in the standard form and templates provided in Annex II and, where relevant, the template of Table 2 in Annex I. Where the template set out in Table 2 of Annex I is used, it shall have an additional column specifying the chapter, section or page of the document where changes were introduced during the review period and another additional column to include any explanations in relation to the changes introduced during the review period.

Article 3

Procedure for the provision of information

1 The competent authority shall communicate to the CSD the following information:

a the frequency and the depth of the review and evaluation as referred to in Article 22(4) of Regulation (EU) No 909/2014;

b the commencement and end dates of the review period referred to in Article 40 of Delegated Regulation (EU) 2017/392.

c the language in which all information shall be submitted. The competent authority may request the CSD to submit the same information in a language customary in the sphere of international finance.

The competent authority shall communicate to the CSD any changes to the information referred to in the first subparagraph, including the request for a more frequent submission of specific information, without undue delay.

2 The CSD shall provide the information referred to in Article 40(2) of Delegated Regulation (EU) 2017/392 within two months following the end of the review period.

Article 4

Provision of information to the authorities referred to in Article 22(7) of Regulation (EU) No 909/2014

1 Upon completion of the review and evaluation, the competent authority shall communicate within three working days to the authorities referred to in Article 22(7) of Regulation (EU) No 909/2014 its results as specified in Article 44 of Delegated Regulation (EU) 2017/392.

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2 Where the review and evaluation gives rise to remedial action or a penalty, the competent authority shall inform the authorities referred to in paragraph 1 within three working days after that measure is taken.

3 The authorities referred to in paragraph 1 shall agree on the working language for the exchange of information and, where there is no agreement, the working language shall be a language customary in the sphere of international finance.

Article 5

Exchange of information between competent authorities

1 Prior to every review and evaluation, when supervising a CSD which maintains the relationships referred to in points (a), (b) and (c) of Article 17(6) of Regulation (EU) No 909/2014, the competent authority shall update the list referred to in Article 1(4) of this Regulation regarding other competent authorities to be involved in the review and evaluation, including contact persons from those authorities, and shall share that list with all those authorities.

2 The competent authority shall provide the information referred to in Article 45(1) of Delegated Regulation (EU) 2017/392 to the competent authorities included in the list referred to in paragraph 1 within 30 working days from the date of availability of that information.

3 Within 30 working days from the time-limit referred to in paragraph 2, the competent authorities included in the list referred to in paragraph 1 shall send to the competent authority that provided the information their assessment thereof.

4 Within 3 working days from the completion of the review and evaluation referred to in Article 22(1) of Regulation (EU) No 909/2014, as notified by the competent authority to the competent authorities included in the list referred to in paragraph 1, the competent authority shall communicate to the competent authorities included in the list referred to in paragraph 1 its results as specified under Article 45(2) of Delegated Regulation (EU) 2017/392.

5 The authorities referred to in paragraphs 1 to 4 shall agree on the working language for the exchange of information and, where there is no agreement, the working language shall be a language customary in the sphere of international finance.

CHAPTER III

COOPERATION ARRANGEMENTS

(Article 24(8) of Regulation (EU) No 909/2014)

Article 6

General requirements for cooperation arrangements

1 The competent authority of the home Member State and the competent authority of the host Member State shall agree on the working language of their cooperation activities and, where there is no agreement, the working language shall be a language customary in the sphere of international finance.