Changes to legislation: *There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2017/391. 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. 391 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 Delegated Regulation (EU) 2017/391 of 11 November 2016 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards further specifying the content of the reporting on internalised settlements (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2017/391

of 11 November 2016

supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards further specifying the content of the reporting on internalised settlements

(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 the second subparagraph of Article 9(2) thereof,

Whereas:

(1) The European Securities and Markets Authority (ESMA) has considered the 'Report on the outcome of the Committee of European Banking Supervisors call for evidence on custodian banks' internalisation of settlement and Central Counterparties-like activities' of 17 April 2009, which showcases considerable differences regarding the rules and monitoring procedures at the level of settlement internalisers across Member States, as well as regarding the understanding of the concept of internalised settlement.

(2) In accordance with Regulation (EU) No 909/2014, settlement internalisers are to report on settlements that they internalise. In order to provide a good overview of the scope and of the extent of internalised settlements it is necessary to specify further the content of such reporting. The reports on internalised settlement should provide detailed information on the aggregated volume and value of settlement instructions settled by settlement internalisers outside securities settlement systems specifying asset class, type of securities transactions, type of clients, and issuer central securities depository (CSD). A settlement internaliser should only report internalised settlements where it has executed a settlement instruction by a client of the settlement internaliser in its own books. A settlement internaliser should not report subsequent alignments of book-entry positions to reflect the settlement of instructions by other entities in the holding chain of securities, as these do not qualify as internalised settlement. Similarly, a settlement internaliser should not report transactions executed on a trading venue and transferred by the trading venue to a central counterparty (CCP) for clearing or to a CSD for settlement.

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(3) In order to facilitate data comparability across settlement internalisers, calculations related to the value of internalised settlement instructions under this Regulation should be based on objective and reliable data and methodologies.

(4) The reporting requirements set out in this Regulation may require significant IT system changes, market testing and adjustments to legal arrangements of the institutions concerned. It is therefore necessary to give those institutions sufficient time to prepare for the application of those requirements.

(5) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the Commission.

(6) ESMA has conducted open public consultations on the draft regulatory 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 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[(2)].

(7) In accordance with Article 9(2) of Regulation (EU) No 909/2014, in developing the draft regulatory technical standards on which this Regulation is based, ESMA has worked in close cooperation with the members of the European System of Central Banks,

HAS ADOPTED THIS REGULATION:

Article 1

For the purposes of this Regulation the following definitions apply:

(1) 'Internalised settlement instruction' means an instruction by a client of the settlement internaliser to place at the disposal of the recipient an amount of money or to transfer the title to, or interest in, a security or securities by means of a book entry on a register, or otherwise, which is settled by the settlement internaliser in its own books and not through a securities settlement system.

(2) 'Failed internalised settlement instruction' means non-occurrence of settlement, or partial settlement, of a securities transaction at the date agreed by the parties concerned due to a lack of securities or cash, regardless of the underlying cause.

Article 2

1 The reports referred to in the first subparagraph of Article 9(1) of Regulation (EU) No 909/2014 shall include the following information:

a country code of the place of establishment of the settlement internaliser;

b reporting timestamp;

c period covered by the report;

d identifier of the settlement internaliser;

e contact details of the settlement internaliser;

f the aggregated volume and value, expressed in euros, of internalised settlement instructions settled by the settlement internaliser during the period covered by the report;

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g the aggregated volume and value, expressed in euros, of internalised settlement instructions settled by the settlement internaliser during the period covered by the report, for each of the following types of financial instruments:

(i) transferable securities referred to in point (a) of Article 4(1)(44) of Directive 2014/65/EU of the European Parliament and of the Council[(3)];

(ii) sovereign debt referred to in point (61) of Article 4(1) of Directive 2014/65/EU;

(iii) transferable securities referred to in point (b) of Article 4(1)(44) of Directive 2014/65/EU, other than those referred to in point (ii) of point (g) of this subparagraph;

(iv) transferable securities referred to in point (c) of Article 4(1)(44) of Directive 2014/65/EU;

(v) exchange-traded funds as defined in point (46) of Article 4(1) of Directive 2014/65/EU;

(vi) units in collective investment undertakings, other than exchange-traded funds;

(vii) money-market instruments, other than those referred to in point (ii);

(viii) emission allowances;

(ix) other financial instruments;

h the aggregated volume and value, expressed in euros, of all internalised settlement instructions, for each of the following types of securities transactions settled by the settlement internaliser during the period covered by the report:

(i) purchase or sale of securities;

(ii) collateral management operations;

(iii) securities lending or securities borrowing;

(iv) repurchase transactions;

(v) other securities transactions;

i the aggregated volume and value, expressed in euros, of all internalised settlement instructions, settled by the settlement internaliser during the period covered by the report, covering the following types of clients:

(i) professional clients as defined in point (10) of Article 4(1) of Directive 2014/65/EU;

(ii) retail clients as defined in point (11) of Article 4(1) of Directive 2014/65/EU;

j the aggregated volume and value, expressed in euros, of all internalised settlement instructions referring to cash transfers settled by the settlement internaliser during the period covered by the report;

k the aggregated volume and value, expressed in euros, of all internalised settlement instructions settled by the settlement internaliser during the period covered by the report, per each CSD that provides the core service referred to in point 1 or 2 of Section A of the Annex to Regulation (EU) No 909/2014 in relation to the underlying securities;

l the aggregated volume and value, expressed in euros, of all internalised settlement instructions referred to in points (g) to (j), per each CSD that provides the core service