Commission Implementing Decision (EU) 2020/1766 of 25 November 2020 determining, for a limited period of time, that the regulatory framework applicable to central securities depositories of the United Kingdom of Great Britain and Northern Ireland is equivalent in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council

COMMISSION IMPLEMENTING DECISION (EU) 2020/1766

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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 25(9) thereof,

Whereas:

(1) On 29 March 2017, the United Kingdom of Great Britain and Northern Ireland (the 'United Kingdom') submitted the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. On 17 October 2019, the Union and the United Kingdom reached an agreement on the withdrawal of the United Kingdom from the Union[(2)] ('the Withdrawal Agreement'), with a revised Protocol on Ireland/Northern Ireland, and a revised Political Declaration[(3)]. Pursuant to the Withdrawal Agreement and following its ratification by the House of Commons in the United Kingdom, its adoption by the European Parliament and its conclusion by the Council, the United Kingdom became a third country on 1 February 2020 and Union law will cease to apply to and in the United Kingdom on 31 December 2020.

(2) Central securities depositories ('CSDs') are instrumental to financial markets. The recording of securities in a book-entry system ('notary services') and the maintenance of securities accounts at the top tier level ('central maintenance services') increase transparency and protect investors, as they ensure the integrity of the securities issue by preventing the undue creation or reduction of issued securities. CSDs also operate securities settlement systems, which ensure that securities transactions are settled properly and in a timely manner. Those functions are critical in the post-trade clearing and settlement processes. Securities settlement systems are essential also to monetary policy as they are closely involved in securing collateral for monetary policy operations.

(3) From 1 January 2021, CSDs established in the United Kingdom ('UK CSDs') will be considered third-country CSDs within the meaning of Regulation (EU) No 909/2014.

As such, they may not provide notary and central maintenance services in relation to financial instruments constituted under the law of a Member State unless they are recognised by the European Securities and Markets Authority (ESMA) in accordance with Article 25 of that Regulation. In the absence of such recognition, Union issuers may not use UK CSDs to perform notary and central maintenance services concerning transferable securities constituted under the law of a Member State . Such a situation may result in temporary challenges for Union issuers to fulfil their legal obligations, as those services provided by UK CSDs in relation to corporate securities and exchange-traded funds constituted under the domestic law of Ireland ('Irish corporate securities and ETFs') are currently not provided by CSDs authorised in the Union ('Union CSDs'). It is therefore justified and in the interest of the Union and its Member States to ensure that UK CSDs may continue to provide services in the Union after 31 December 2020 for a limited period of time.

(4) ESMA may only recognise a CSD established in a third country where the Commission has adopted an implementing act determining that the legal and supervisory arrangements governing that CSD are equivalent to the requirements laid down in Regulation (EU) No 909/2014. In view of the risk of the United Kingdom withdrawing from the Union without the conclusion of a withdrawal agreement, Commission Implementing Decision (EU) 2018/2030[(4)] granted equivalence to the legal and supervisory framework of the United Kingdom for the period until 30 March 2021. As a consequence of the conclusion of the Withdrawal Agreement, that Implementing Decision never became applicable. Union CSDs are very advanced in the process of developing services in relation to Irish corporate securities and ETFs, to allow Union issuers to migrate their positions, but that work will not be fully finalised when Union law ceases to apply to and in the United Kingdom on 31 December 2020. It is therefore necessary and in the interest of the Union and its Member States that the legal and supervisory arrangements governing UK CSDs are determined as equivalent to the requirements laid down in Regulation (EU) No 909/2014 for a period of six months.

(5) In accordance with Article 25(9) of Regulation (EU) No 909/2014, three conditions are to be fulfilled in order to determine that the legal and supervisory arrangements of a third country regarding CSDs established therein are equivalent to those laid down in that Regulation.

(6) First, the legal and supervisory arrangements of the third country must ensure that CSDs in that third country comply with legally binding requirements which are in effect equivalent to the requirements laid down in Regulation (EU) No 909/2014. Until the end of the tranition period on 31 December 2020, UK CSDs must comply with the requirements laid down in Regulation (EU) No 909/2014. On 26 June 2018, the United Kingdom incorporated the provisions of Regulation (EU) No 909/2014 into its domestic law with effect from the end of the transition period.

(7) Second, the legal and supervisory arrangements of the third country must ensure that CSDs established in that third country are subject to effective supervision, oversight and enforcement on an ongoing basis. Until the end of the transition period on 31 December 2020, UK CSDs are under the supervision of the Bank of England, as determined in

United Kingdom domestic law in accordance with Regulation (EU) No 909/2014. As part of the incorporation of the provisions set out in Regulation (EU) No 909/2014 into United Kingdom domestic law, the Bank of England will remain responsible for the supervision of CSDs from the end of the transition period and there are, for the moment, no indications that any important changes to that supervision are foreseen.

(8) Third, the legal framework of the third country must provide for an effective equivalent system for the recognition of CSDs authorised under third-country legal regimes. This is ensured by the incorporation of the provisions set out in Article 25 of Regulation (EU) No 909/2014 into United Kingdom domestic law. Furthermore, the United Kingdom has introduced specific transitional provisions, which enable a third-country CSD to provide notary and central maintenance services in the United Kingdom during a period of at least six months after the United Kingdom has determined the equivalence of that third-country framework.

(9) On that basis, it can be concluded that the legal and supervisory arrangements of the United Kingdom which will be applicable to UK CSDs after the end of the transition period referred to in Article 126 of the Withdrawal Agreement meet the conditions laid down in Article 25(9) of Regulation (EU) No 909/2014.

(10) This Decision is based on the information currently available about the legal and supervisory arrangements applicable to UK CSDs from 1 January 2021. In view of the United Kingdom's announcement that certain requirements that will come into force under the Union legal framework in the future will not be incorporated in its domestic law, the legal and supervisory arrangements currently in place in the United Kingdom can only be deemed as equivalent for a limited period of time. Given the United Kingdom's announcement about the future divergence as regards the legal and supervisory arrangements applicable to UK CSDs, market participants are expected to prepare for a situation without a further equivalence decision in this area.

(11) The conclusion of comprehensive and effective cooperation arrangements between ESMA and the Bank of England in accordance with Article 25(10) of Regulation (EU) No 909/2014 ensures the pro-active exchange of information and coordination of supervisory activities. In particular, those arrangements must ensure that ESMA on an ongoing basis has immediate access in all situations, including emergency situations, , to all information requested by it. Those cooperation arrangements also ensure that ESMA may share all relevant information with the authorities referred to in Article 25(5) of Regulation (EU) No 909/2014 for the purpose of consulting them about the recognised status of UK CSDs or where that information is necessary for those authorities to carry out their supervisory tasks.

(12) The United Kingdom's authorities are expected to inform the Union about all changes to the United Kingdom's legal or supervisory framework affecting the provision of notary and central maintenance services in the United Kingdom. The Commission, in cooperation with ESMA, will monitor any changes introduced in the legal and supervisory arrangements affecting the provision of such services in the United Kingdom, market developments as well as the effectiveness of supervisory cooperation, including prompt information exchange between ESMA and the Bank of England. The