Commission Implementing Decision (EU) 2018/2030 of 19 December 2018 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) 2018/2030

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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. The Treaties will cease to apply to the United Kingdom from the date of entry into force of a withdrawal agreement or failing that, two years after that notification, i.e. from 30 March 2019, unless the European Council, in agreement with the United Kingdom, unanimously decides to extend that period.

(2) As announced in the Commission Communication of 13 November 2018'Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: a Contingency Action Plan'[(2)] ('the Contingency Action Plan'), a withdrawal without an agreement may pose risks in relation to certain services provided to Union operators by central securities depositories ('CSDs') that have already been authorised in the United Kingdom ('UK CSDs') and that cannot be replaced in the short-term. To prevent such risks, it is justified and in the interests of the Union and its Member States to ensure, for a limited period of time, that UK CSDs may continue to provide services in the Union after 29 March 2019.

(3) 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 issue and prevent undue duplication or reduction of securities. CSDs also operate securities settlement systems, which ensure that securities

transactions are settled properly and in a timely manner. These functions are critical in the post-trade clearing and settlement process and as such essential to the financial stability of the Union and its Member States. Securities settlement systems are essential also to monetary policy as they are closely involved in securing collateral for monetary policy operations. Furthermore, market operators in Ireland rely on the services of a UK CSD with respect to corporate securities and exchange traded funds constituted under the domestic law of Ireland.

(4) From 30 March 2019, UK CSDs will be 'third-country CSDs' and, as such, may only provide notary and central maintenance services in relation to financial instruments constituted under the law of a Member State if they are recognised by the European Securities and Markets Authority ('ESMA') in accordance with Article 25 of Regulation (EU) No 909/2014. In the absence of the recognition of UK CSDs, Union issuers may not use UK CSDs to record transferable securities constituted under such laws in book-entry form in a CSD as required by Article 3 of Regulation (EU) No 909/2014. That situation may result in temporary challenges for issuers to fulfil their legal obligations. As announced in the Contingency Action Plan, it is therefore necessary that, in that exceptional situation, the legal and supervisory arrangements governing UK CSDs are determined as equivalent for a strictly limited period of time and under specific conditions so that those CSDs may continue to provide notary and maintenance services in the Union.

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

(6) First, the legal and supervisory arrangements of a 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 29 March 2019, UK CSDs must comply with the requirements laid down in Regulation (EU) No 909/2014. As part of the European Union (Withdrawal) Act 2018, the United Kingdom incorporated on 26 June 2018 the provisions of Regulation (EU) No 909/2014 into United Kingdom domestic law with effect from the date of the United Kingdom's withdrawal from the Union.

(7) Second, the legal and supervisory arrangements of the third country must ensure that CSDs established in the third country are subject to effective supervision, oversight and enforcement on an ongoing basis. Until 29 March 2019, UK CSDs are under the supervision by the Bank of England, as determined by United Kingdom domestic law in accordance with Regulation (EU) No 909/2014. As part of the incorporation of Regulation (EU) No 909/2014 into United Kingdom domestic law, the Bank of England remains responsible for the supervision of CSDs and its supervisory, oversight and enforcement powers regarding CSDs will remain essentially unchanged.

(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 equivalence system in Article 25 of Regulation (EU) No 909/2014 into United Kingdom domestic law.

(9) The Commission concludes that the legal and supervisory arrangements of the United Kingdom applicable to UK CSDs on the day after its withdrawal from the Union meet the conditions laid down in Article 25(9) of Regulation (EU) No 909/2014.

(10) However, this Decision is based on the legal and supervisory arrangements applicable to UK CSDs on the day after the withdrawal of the United Kingdom from the Union. Those legal and supervisory arrangements should only be considered equivalent where the requirements applicable to CSDs in United Kingdom domestic law are maintained and continue to be effectively applied and enforced on an ongoing basis. The effective exchange of information and coordination of supervisory activities between ESMA and the Bank of England is therefore an essential condition for maintaining the determination of equivalence.

(11) That exchange of information requires the conclusion of comprehensive and effective cooperation arrangements in accordance with Article 25(10) of Regulation (EU) No 909/2014. Those cooperation arrangements should also ensure the possibility to share all relevant information with the authorities referred to in Article 25(5) of Regulation (EU) No 909/2014, including the European Central Bank and the other members of the European System of Central Banks, for the purpose of consulting those authorities about the recognised status of UK CSDs or where that information is necessary for those authorities to carry out their supervisory tasks.

(12) In the event of the exceptional situation of the withdrawal of the United Kingdom from the Union without an agreement, and given the importance of UK CSDs to market operators in the Union, cooperation arrangements established pursuant to Article 25(10) of Regulation (EU) No 909/2014 must ensure that ESMA has immediate access, on an ongoing basis, to all information requested by it. That information includes but is not limited to information allowing for the assessment of any material risks posed by UK CSDs to the Union or its Member States, either directly or indirectly. The cooperation arrangements should therefore specify the mechanism for the exchange of information between ESMA, the competent authorities of the Member States in which a CSD has a branch or provides CSD services (the ‘host Member State’) and the Bank of England, including access to all information regarding UK CSDs that is requested by ESMA and in particular access to information requested by the competent authority in the host Member State in the cases referred to in Article 25(7) of Regulation (EU) No 909/2014 regarding the periodic reporting on UK CSDs' activities in the host Member State; the communication of the identity of the issuers and participants in the securities settlement system operated by UK CSDs or any other relevant information concerning UK CSDs' activities in the host Member State; as well as the prompt notification of ESMA of any developments with regard to UK CSDs that could affect the monetary policy in the Union and of any changes in the legal and or supervisory arrangements applicable to UK CSDs; the mechanism for prompt notification of ESMA where the Bank of England deems a CSD that it is supervising to infringe the conditions of its authorisation or of