

Commission Delegated Regulation (EU) 2017/392 of 11 November 2016 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on authorisation, supervisory and operational requirements for central securities depositories (Text with EEA relevance)

CHAPTER XII

CSD LINKS

(Article 48(3), (5), (6) and (7) of Regulation (EU) No 909/2014)

Article 84

Conditions for the adequate protection of linked CSDs and of their participants

- 1 A CSD link shall be established and maintained under the following conditions:
 - a the requesting CSD shall meet the requirements of the receiving CSD's participation rules;
 - b the requesting CSD shall conduct an analysis of the receiving third-country CSD's financial soundness, governance arrangements, processing capacity, operational reliability and any reliance on a third party critical service provider;
 - c the requesting CSD shall take all necessary measures to monitor and manage the risks that are identified following the analysis referred to in point (b);
 - d the requesting CSD shall make the legal and operational terms and conditions of the link arrangement available to its participants allowing them to assess and manage the risks involved;
 - e before the establishment of a CSD link with a third-country CSD, the requesting CSD shall perform an assessment of the local legislation applicable to the receiving CSD;
 - f the linked CSDs shall ensure the confidentiality of information in connection to the operation of the link. The ability to ensure confidentiality shall be evidenced by the information provided by the CSDs, including any relevant legal opinions or arrangements;
 - g the linked CSDs shall agree on aligned standards and procedures concerning operational issues and communication in accordance with Article 35 of Regulation (EU) No 909/2014;
 - h before the link becomes operational, the requesting and receiving CSDs shall:
 - (i) conduct end-to-end tests;
 - (ii) establish an emergency plan, as part of the business continuity plans of the respective CSDs, identifying the situations where the securities settlement systems of the two CSDs malfunction or break down, and provide for the remedial actions planned if those situations occur;
 - i all link arrangements shall be reviewed at least annually by the receiving CSD and the requesting CSD taking into account all relevant developments, including market and IT developments, as well as any developments in local legislation referred to in point (e);

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to in point (i) shall also include an assessment of any developments that may allow supporting DVP settlement.

For the purposes of point (e), in performing the assessment, the CSD shall ensure that the securities maintained in the securities settlement system operated by the receiving CSD benefit from a level of asset protection comparable to the one ensured by the rules applicable to the securities settlement system operated by the requesting CSD. The requesting CSD shall require from the third-country CSD a legal assessment addressing the following issues:

- (i) the entitlement of the requesting CSD to the securities, including the law applicable to proprietary aspects, the nature of the rights of the requesting CSD on the securities, the possibility of encumbering the securities;
- (ii) the impact of insolvency proceedings opened against the receiving third- country CSD on the requesting CSD regarding the segregation requirements, settlement finality, procedures and time limits to claim the securities in the relevant third country.

2 In addition to the conditions referred to in paragraph 1, a CSD link providing for DVP settlement shall be established and maintained under the following conditions:

- a the requesting CSD shall assess and mitigate the additional risks resulting from the settlement of cash;
- b a CSD that is not authorised to provide banking-type ancillary services in accordance with Article 54 of Regulation (EU) No 909/2014, and which is involved in the execution of cash settlement on behalf of its participants, shall not receive credit and shall use prefunding mechanisms covered by its participants in relation to the DVP settlements to be processed through the link;
- c a CSD that uses an intermediary for the cash settlement shall ensure that the intermediary performs that settlement efficiently. The CSD shall conduct yearly reviews of the arrangements with that intermediary.

3 In addition to the conditions referred to in paragraphs 1 and 2, an interoperable link shall be established and maintained under the following conditions:

- a the linked CSDs shall agree on equivalent standards concerning reconciliation, opening hours for the processing of the settlement and of corporate actions and cut-off times;
- b the linked CSDs shall establish equivalent procedures and mechanisms for transmission of settlement instructions to ensure a proper, secure and straight through processing of settlement instructions;
- c where an interoperable link supports DVP settlement, the linked CSDs shall reflect at least daily and without undue delay the results of the settlement in their books;
- d the linked CSDs shall agree on equivalent risk-management models;
- e the linked CSDs shall agree on equivalent contingency and default rules and procedures referred to in Article 41 of Regulation (EU) No 909/2014.

Article 85

Monitoring and management of additional risks resulting from the use of indirect links or intermediaries to operate CSD links

1 In addition to complying with the requirements under Article 84, where a requesting CSD uses an indirect link or an intermediary to operate a CSD link, it shall ensure that:

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- a the intermediary is one of the following:
- (i) a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 that complies with the following requirements:
 - it complies with Article 38(5) and (6) of Regulation (EU) No 909/2014 or with segregation and disclosure requirements at least equivalent to those laid down in Article 38(5) and (6) of Regulation (EU) No 909/2014 where the link is established with a third- country CSD,
 - it ensures prompt access by the requesting CSD to the securities of the requesting CSD when required,
 - it has low credit risk, which shall be established in an internal assessment by the requesting CSD by employing a defined and objective methodology that does not exclusively rely on external opinions;
 - (ii) a third-country financial institution that complies with the following requirements:
 - it is subject to and complies with prudential rules at least equivalent to those laid down in Regulation (EU) No 575/2013,
 - it has robust accounting practices, safekeeping procedures, and internal controls,
 - it complies with Article 38(5) and (6) of Regulation (EU) No 909/2014 or with segregation and disclosure requirements at least equivalent to those laid down in Article 38(5) and (6) of Regulation (EU) No 909/2014 where the link is established with a third- country CSD,
 - it ensures prompt access by the requesting CSD to the securities of the requesting CSD when required,
 - it has low credit risk, based upon an internal assessment by the requesting CSD by employing a defined and objective methodology that does not exclusively rely on external opinions;
- b the intermediary complies with the rules and requirements of the requesting CSD, as evidenced by the information provided by that intermediary, including any relevant legal opinions or arrangements;
- c the intermediary ensures the confidentiality of information concerning the operation of the CSD link, as evidenced by the information provided by that intermediary, including any relevant legal opinions or arrangements;
- d the intermediary has the operational capacity and systems for:
- (i) handling the services provided to the requesting CSD;
 - (ii) sending the CSD any information relevant to the services provided in relation to the CSD link in a timely manner;
 - (iii) complying with the reconciliation measures in accordance with Article 86 and Chapter IX;
- e the intermediary adheres to and complies with the risk-management policies and procedures of the requesting CSD and it has an appropriate risk-management expertise;
- f the intermediary has put in place measures that include business continuity policies and associated business continuity and disaster recovery plans, to ensure the continuity of

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- us services, the timely recovery of its operations, and the fulfilment of its obligations in events that pose a significant risk of disrupting its operations;
- g the intermediary holds sufficient financial resources to fulfil its obligations towards the requesting CSD and to cover any losses for which it may be held liable;
 - h an individually segregated account at the receiving CSD is used for the operations of the CSD link;
 - i the condition referred to in point (e) of Article 84(1) is fulfilled;
 - j the requesting CSD is informed of the continuity arrangements between the intermediary and the receiving CSD;
 - k the proceeds from settlement are promptly transferred to the requesting CSD.

For the purposes of the first indent in point (a)(i), the third indent in point (a)(ii) and point (h), the requesting CSD shall ensure that it can have access to the securities held in the individually segregated account at any point in time. Where an individually segregated account at the receiving CSD is however not available for the operations of a CSD link established with a third-country CSD, the requesting CSD shall inform its competent authority about the reasons justifying the unavailability of individually segregated accounts and shall provide it with the details on the risks resulting from the unavailability of individually segregated accounts. The requesting CSD shall in any case ensure an adequate level of protection of its assets held with the third-country CSD.

2 In addition to complying with the requirements under paragraph 1, when a requesting CSD uses an intermediary to operate a CSD link and that intermediary operates the securities accounts of the requesting CSD on its behalf in the books of the receiving CSD, the requesting CSD shall ensure that:

- a the intermediary does not have any entitlement to the securities held;
- b the account in the books of the receiving CSD is opened in the name of the requesting CSD and the liabilities and obligations as regards the registration, transfer and custody of securities are only enforceable between both CSDs;
- c the requesting CSD is able to immediately access the securities held with the receiving CSD, including in the event of a change or insolvency of the intermediary.

3 Requesting CSDs referred to in paragraphs 1 and 2 shall perform a yearly due diligence to ensure that the conditions referred to therein are fulfilled.

Article 86

Reconciliation procedures for linked CSDs

1 The reconciliation procedures referred to in Article 48(6) of Regulation (EU) No 909/2014 shall include the following measures:

- a the receiving CSD shall transmit to the requesting CSD daily statements with information specifying the following, per securities account and per securities issue:
 - (i) the aggregated opening balance;
 - (ii) the individual movements during the day;
 - (iii) the aggregated closing balance;
- b the requesting CSD shall conduct a daily comparison of the opening balance and the closing balance communicated to it by the receiving CSD or by the intermediary with the records maintained by the requesting CSD itself.

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2 Where a CSD suspends a securities issue for settlement in accordance with Article 65(2), all CSDs that are participants of or have an indirect link with that CSD, including in the case of interoperable links, shall subsequently suspend the securities issue for settlement.

Where intermediaries are involved in the operation of CSD links, those intermediaries shall establish appropriate contractual arrangements with the CSDs concerned in order to ensure compliance with the first subparagraph.

3 In the event of a corporate action that reduces the balances of securities accounts held by an investor CSD with another CSD, settlement instructions in the relevant securities issues shall not be processed by the investor CSD until the corporate action has been fully processed by the other CSD.

In the event of a corporate action that reduces the balances of securities accounts held by an investor CSD with another CSD, the investor CSD shall not update the securities accounts that it maintains to reflect the corporate action until the corporate action has been fully processed by the other CSD.

An issuer CSD shall ensure the timely transmission to all its participants, including investor CSDs, of information on the processing of corporate actions for a specific securities issue. The investor CSDs shall in turn transmit the information to their participants. That transmission shall include all necessary information for investor CSDs to adequately reflect the outcome of those corporate actions in the securities accounts they maintain.

Article 87

DVP settlement through CSD links

Delivery versus payment (DVP) settlement shall be regarded as practical and feasible where:

- (a) there is a market demand for DVP settlement evidenced through a request from any of the user committees of one of the linked CSDs;
- (b) the linked CSDs may charge a reasonable commercial fee for the provision of DVP settlement, on a cost-plus basis, unless otherwise agreed by the linked CSDs;
- (c) there is a safe and efficient access to cash in the currencies used by the receiving CSD for settlement of securities transactions of the requesting CSD and its participants.

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Changes and effects yet to be applied to :

- Regulation revoked by [2023 c. 29 Sch. 1 Pt. 13](#)