

ECSDA Written Feedback to the Progress Report – Amount A of Pillar One

Introduction and Background

The European Central Securities Depositories Associations (ECSDA) welcomes the Progress Report. In our response to the consultation, we are however highlighting the need to calibrate further the scope of activities contained in the term ‘Investment Institution’.

In May 2022, ECSDA shared feedback with the OECD on why Central Securities Depositories (CSDs) and Securities Settlement Systems (SSSs), both Financial Market Intermediaries (FMIs), should be considered as ‘Investment Institutions’.

ECSDA understands that instead of creating a specific carve-out, the OECD is taking an activity-based approach when defining an ‘Investment Institution’ under Point 14 of Section 20. In this context, ECSDA welcomed the amendments bringing certain activities of CSD and SSS into the scope of the exclusion. These include securities lending, repurchase agreements and safekeeping.

However, as core activities such as ‘settlement’ and ‘custody’ of financial instruments are not included, the OECD risks excluding those services provided by CSDs and SSSs that are based on sound legal bases.

CSDs and SSSs’ activities are to be included under ‘Investment Institution’

Settling and custody activities

Including ‘settlement’ and ‘custody’ under Point 14 of Section 20, will fulfil the OECD intention of bringing into scope CSDs and SSSs activities as ‘Investment Institutions’.

As CSDs and SSSs fulfil the three cumulative criteria to fall under the Regulated Financial Services Exclusion, it is necessary that the relevant scope of activities reflects the services provided by those entities.

In the context of the activities requirement, ECSDA highlights that Principle 1 of the global Principles for Financial Market Infrastructures (PFMIs) states “*The legal basis should provide a high degree of certainty for each material aspect of an FMI’s activities in all relevant jurisdictions.*”

Further to Principle 1 of the PFMIs, both ‘settlement’ and ‘custody’ activities provided by CSDs and SSSs are built on sound legal bases across regional jurisdictions, such as the CSD Regulation (Regulation (EU) 909/2014) in the EEA context.

To avoid legal uncertainty and support the OECD policy regarding CSDs and SSSs, ECSDA proposes the following amendment to the definition of ‘Investment Institution’

Section 20, Point 14, “Investment Institution”	
OECD Progress Report	ECSDA Proposal
14. “Investment Institution” means a Group Entity: ...	14. “Investment Institution” means a Group Entity: ...

<p>c. For which the Total Reported Income attributable to one or more of the following activities equals or exceeds 75 per cent of the Group Entity's Total Reported Income during the Period:</p> <ul style="list-style-type: none"> i. dealing, broking, clearing, or trading in Financial Assets for own account or for account of customers; and / or ii. holding securities in inventory; and / or iii. hedging transactions; and / or iv. securities lending and sale and repurchase agreements in respect of Financial Assets; and /or v. participating in placing and underwriting, mergers and acquisitions, syndication, securitisation and securities issues and providing financial services related to such activities; and / or vi. holding, safekeeping, transferring, controlling, administering or distributing Financial Assets for the account of other persons; and / or vii. investment advice in support of the activities identified in subdivisions (i) to (vi) and performed by the Entity; but does not include a Group Treasury Entity. 	<p>c. For which the Total Reported Income attributable to one or more of the following activities equals or exceeds 75 per cent of the Group Entity's Total Reported Income during the Period:</p> <ul style="list-style-type: none"> i. dealing, broking, clearing, settlement or trading in Financial Assets for own account or for account of customers; and / or ii. holding securities in inventory; and / or iii. hedging transactions; and / or iv. securities lending and sale and repurchase agreements in respect of Financial Assets; and /or v. participating in placing and underwriting, mergers and acquisitions, syndication, securitisation and securities issues and providing financial services related to such activities; and / or vi. holding, safekeeping, custody, transferring, controlling, administering or distributing Financial Assets for the account of other persons; and / or vii. investment advice in support of the activities identified in subdivisions (i) to (vi) and performed by the Entity; and providing financial services related to such activities but does not include a Group Treasury Entity.
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