Commission Delegated Regulation (EU) 2020/2145 of 1 September 2020 amending Delegated Regulation (EU) No 876/2013 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council as regards changes to the composition, functioning and management of colleges for central counterparties (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2020/2145

of 1 September 2020

amending Delegated Regulation (EU) No 876/2013 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council as regards changes to the composition, functioning and management of colleges for central counterparties

(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 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories[(1)], and in particular Article 18(6) thereof,

Whereas:

(1) Regulation (EU) No 648/2012 has been amended by Regulation (EU) 2019/2099 of the European Parliament and of the Council[(2)] as regards, among other things, the procedures for the authorisation of CCPs and the authorities involved in such authorisation, and requirements for the recognition of third-country CCPs. Those amendments include changes to the composition, functioning and management of CCP colleges. Those changes should be reflected in Commission Delegated Regulation (EU) No 876/2013[(3)].

(2) According to Article 18(2), points (ca) and (i), of Regulation (EU) No 648/2012, the CCP's competent authority is to provide full and detailed reasons in writing if it does not consent to a competent authority or a central bank of issue participating in the college at their request. For reasons of efficiency and legal certainty, it is important that those reasons are given within a reasonable time limit.

(3) In accordance with Article 19(3) of Regulation (EU) No 648/2012, the European Central Bank ('ECB') has two votes when it is a member of a CCP college both in the framework of its tasks concerning the prudential supervision of credit institutions within the single supervisory mechanism and as the central bank of issue of one of the most relevant Union currencies of the financial instruments cleared. In order to reflect the appropriate representation of the ECB, it should be laid down that in such cases, the ECB should have two participants with voting rights.

Changes to legislation: *There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2020/2145. (See end of Document for details)*

(4) It is necessary to ensure an efficient flow of documentation between college members and to give college members enough time to prepare for the college meetings. The CCP's competent authority should therefore circulate the agenda of the college meeting and all information relevant for the preparation of that meeting well in advance.

(5) In order to ensure a proper functioning of colleges and to ensure that a college meets on a regular basis, a meeting of a CCP college should be held at least annually. College members may also request that a meeting of the CCP college be held when they consider such meeting to be necessary.

(6) A physical meeting of the college may not always be possible. The CCP college should therefore be able to vote by written procedure where considered appropriate by the CCP's competent authority or at the request of a college member.

(7) Article 18(1) of Regulation (EU) No 648/2012 as amended by Regulation (EU) 2019/2099 attributes new responsibilities to CCP colleges, including for outsourcing arrangements. The CCP's competent authority should therefore provide college members with information about any changes in a CCP's outsourcing arrangements for major activities linked to risk management.

(8) In order to enable the college to perform its duties, the CCP's competent authority should provide college members with information about changes in the CCP's participation requirements, clearing membership models, account segregation models, changes in the CCP's default management procedures and changes in the CCP's payment and settlement arrangements, and with reports on the CCP's test of its default procedures conducted in accordance with Article 49(2) of Regulation (EU) No 648/2012.

(9) In order to protect confidential information and to ensure that college members are informed on an equal basis, confidential information should be exchanged by secure means.

(10) In order to provide college members with sufficient time to prepare for the CCP college meeting and to enable them to raise any points of interest or concern regarding the competent authority's review or evaluation as referred to in Article 21 of Regulation (EU) No 648/2012, the information referred to in paragraph 4 of that Article should be submitted to the college members early enough for them to review and discuss that information in advance.

(11) Delegated Regulation (EU) No 876/2013 should therefore be amended accordingly.

(12) This Regulation is based on draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority following consultation of the European System of Central Banks.

(13) The amendments are limited in scope and concern only competent authorities without imposing any additional requirements on market participants. In addition, it is important that CCP colleges can adjust as soon as possible to the new requirements introduced by Regulation (EU) 2019/2099. Because of the limited scope and impact of the amendments and the urgency of their application, the European Securities and Markets

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Authority considered it highly disproportionate to conduct open public consultations on the draft regulatory technical standards on which this Regulation is based, and to analyse the potential related costs and benefits. The European Securities and Markets Authority has however requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[(4)],

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) No 876/2013

Delegated Regulation (EU) No 876/2013 is amended as follows:

(1) in Article 2, the following paragraph 4a is inserted:

4a. Competent authorities as referred to in Article 18(2), point (ca), of Regulation (EU) No 648/2012, and central banks of issue as referred to in Article 18(2), point (i), of that Regulation, that wish to participate in the college shall submit a reasoned request to the CCP's competent authority. The CCP's competent authority shall, within 20 calendar days of the receipt of the request, either provide the requesting competent authority or central bank with a copy of the written agreement for review and approval, or substantiating in writing why the request has been rejected.;

(2) in Article 3, paragraph 4 is replaced by the following:

4. Where an authority has the right to participate in the college under more than one of points (c) to (i) of Article 18(2) of Regulation (EU) No 648/2012, it may nominate additional participants who shall have no voting rights.;

(3) in Article 3, the following paragraph 6 is added:

6. By way of derogation from paragraphs 4 and 5, the ECB may nominate two participants with voting rights where it is a member of the college pursuant to both points (c) and (h) of Article 18(2) of Regulation (EU) No 648/2012.;

(4) in Article 4(4), the following subparagraphs are added:

For the purposes of point (b), the CCP's competent authority shall circulate a draft agenda for each meeting of the college, other than for meetings called in emergency situations, well in advance of each meeting, in order to enable the members of the college to contribute to the setting of the agenda, in particular by adding points to the agenda.

The agenda shall be finalised and distributed by the CCP's competent authority to college members sufficiently in advance of a meeting of the college. The CCP's competent authority and other college members shall distribute any information to be considered at a meeting of the college well in advance of the meeting.

For the purposes of point (c), the CCP's competent authority shall distribute the minutes of meetings to college members as soon as practicable following the meetings and give them sufficient time to comment.;

(5) in Article 4(5), the following subparagraph is added: