Commission Delegated Regulation (EU) 2020/1732 of 18 September 2020 supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to securitisation repositories (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2020/1732

of 18 September 2020

supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to securitisation repositories

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012[(1)], and in particular Article 16(2) thereof,

Whereas:

(1) Pursuant to Article 16 of Regulation (EU) 2017/2402, the European Securities and Markets Authority ('ESMA') shall charge securitisation repositories fees that fully cover ESMA's necessary expenditure relating to the registration and supervision of those repositories. ESMA will incur higher costs when processing applications for registration from securitisation repositories that intend to offer ancillary services. Such costs, however, will be lower where the securitisation repository is already registered as a trade repository under either Regulation (EU) No 648/2012 of the European Parliament and of the Council[(2)], or Regulation (EU) 2015/2365 of the European Parliament and of the Council[(3)]. The registration fee on entities applying for registration should therefore take specific account of the type of services to be provided by the securitisation repository and whether or not it is already registered as a trade repository. As ESMA's expenditure in assessing the application for registration is the same, regardless of the size of the applicant, and only depends on the type of services that are to be provided, it is appropriate that the registration fee is fixed.

(2) Where an entity that is not already registered as a trade repository submits, at the same time, applications for registration as a trade repository and as a securitisation repository, the costs incurred by ESMA when processing those applications simultaneously would also be lower owing to synergies. Where such applications are submitted simultaneously, the securitisation repository should pay the full fee pursuant to Regulation (EU) No 648/2012 or Regulation (EU) 2015/2365, as applicable, for

registration as a trade repository while a reduced extension-of-registration fee should be payable for registration as a securitisation repository.

(3) The registration fee or extension-of-registration fee payable by a securitisation repository that offers ancillary services after registration should take account of those ancillary services. Conversely, a securitisation repository that stops offering ancillary services after registration should not have its registration fee or extension-of-registration fee reimbursed as ESMA will already have incurred the cost for the assessment of the application.

(4) In order to discourage frivolous applications, registration fees or extension-of-registration fees should not be reimbursed where ESMA has refused registration and should only be partially reimbursed where an applicant withdraws its application during the registration process.

(5) In order to ensure the fair allocation of supervisory fees and to ensure that fees imposed reflect the actual cost incurred by ESMA with respect to each supervised entity, the annual supervisory fee should be calculated on the basis of the turnover generated by each securitisation repository. Where historical data on a registered securitisation repository's turnover are not available, the annual supervisory fee should be based on the securitisation repository's expected turnover.

(6) The annual supervisory fees charged to each securitisation repository should be proportionate to the turnover accrued by that repository within a given financial year in comparison with the total turnover accrued by all registered and supervised securitisation repositories within the same financial year. A minimum annual supervisory fee should also be imposed on each securitisation repository, given that certain fixed administrative costs apply for the supervision of all securitisation repositories, irrespective of the amount of turnover accrued.

(7) As only limited data will be available on the activity of a securitisation repository during the financial year following registration, the annual supervisory fee for that year should be calculated on the basis of the registration fee and the effort ESMA has put into supervising that securitisation repository over the course of the year. The supervisory effort in the first months after registration is similar to the effort in assessing the registration of the applicant. Therefore, in the first year of operation of the securitisation repository, the supervisory fee should be based on the registration fee paid by the applicant, adjusted by a coefficient.

(8) In view of ESMA's annual budgetary procedure and the time needed to estimate supervisory costs, it will not be possible to take securitisation repositories registered on or after 1 October of a given financial year into account for the purposes of calculating the total annual supervisory cost for the following year. Therefore, the annual supervisory fee for a securitisation repository registered on or after 1 October of the preceding year should be equal to its registration fee.

(9) National competent authorities incur costs when carrying out work pursuant to Regulation (EU) 2017/2402, and, in particular, undertaking tasks delegated in accordance with Article 14(1) of that Regulation. The fees charged by ESMA to

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securitisation repositories should also cover those costs. To ensure that competent authorities do not incur a loss or profit when carrying out delegated tasks or when assisting ESMA, ESMA should reimburse only the actual costs incurred by a national competent authority in this respect,

HAS ADOPTED THIS REGULATION:

Article 1

Recovery of supervisory costs in full

The fees charged to securitisation repositories shall cover:

(a) all costs relating to the registration and supervision of securitisation repositories by ESMA in accordance with Regulation (EU) 2017/2402, including costs resulting from the extension of registration for trade repositories that have already been registered under Title VI, Chapter 1 of Regulation (EU) No 648/2012 or Chapter III of Regulation (EU) 2015/2365;

(b) all costs for the reimbursement of competent authorities that have carried out work pursuant to Regulation (EU) 2017/2402, and as a result of any delegation of tasks pursuant to Article 14(1) of that Regulation.

Article 2

Applicable turnover

1 Securitisation repositories registered only under Regulation (EU) 2017/2402 shall keep audited accounts for the purposes of this Regulation which distinguish the revenues generated from the following:

a core securitisation services as defined in Article 1, point (3), of Commission Delegated Regulation (EU) 2020/1230[(4)];

b ancillary securitisation services as defined in Article 1, point (4), of Delegated Regulation (EU) 2020/1230;

c any other services provided.

2 A securitisation repository registered under Regulation (EU) 2017/2402 that is also registered as a trade repository under either Regulation (EU) No 648/2012 or Regulation (EU) 2015/2365 shall keep audited accounts for the purposes of this Regulation which distinguish between the revenues generated from:

a provision of core securitisation services;

b provision of ancillary securitisation services;

c core functions of centrally collecting and maintaining records of derivatives under Regulation (EU) No 648/2012;

d provision of ancillary services that are directly related to centrally collecting and maintaining records of derivatives under Regulation (EU) No 648/2012;

e core functions of centrally collecting and maintaining records of securities financing transactions under Regulation (EU) 2015/2365;

f provision of ancillary services that are directly related to centrally collecting and maintaining records of securities financing transactions under Regulation (EU) 2015/2365;

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g provision of combined ancillary services that are directly related to:

(i) the activities referred to in points (a) and (c);

(ii) the activities referred to in points (a) and (e);

(iii) the activities referred to in points (c) and (e);

h any other services provided.

3 The applicable turnover of a securitisation repository for a given year n shall be the sum of:

a the repository's revenues, or expected revenues, where paragraph 5 applies, generated from the activities referred to in paragraph 2, point (a), as stated in the audited accounts of year n-2;

b the repository's revenues generated from the activities referred to in paragraph 2, point (b) and the applicable share of the revenues generated from the activities referred to in paragraph 2, points (g)(i) and g(ii), as stated in the audited accounts of year n-2.

4 The applicable share of the revenues referred to in paragraph 3, point (b), shall be equal to the revenues generated from the activities referred to in paragraph 2, point (a), divided by the sum of the revenues generated by the activities referred to in:

a paragraph 2, point (a);

b paragraph 2, point (c);

c paragraph 2, point (e).

5 Where no audited accounts for year n-2 are available, ESMA shall use the expected revenues for year n provided in the business plans submitted to ESMA pursuant to Article 13(3) of Delegated Regulation (EU) 2020/1230. Those expected revenues shall be broken down into the following elements:

a revenues expected to be generated from the activities referred to in paragraph 2, point (a);

b revenues expected to be generated from the activities referred to in paragraph 2, point (b);

c revenues expected to be generated from the activities referred to in paragraph 2, points (g)(i) and g(ii).

A securitisation repository that decides to provide ESMA with an update of the expected revenues for year n shall do so by 30 September of year n-1.

Article 3

Registration fee and extension-of-registration fee

1 Where the applicant is not registered as a trade repository under either Title VI, Chapter 1, of Regulation (EU) No 648/2012 or Chapter III of Regulation (EU) 2015/2365, the registration fee shall amount to the following:

a EUR 100 000, where the repository intends to provide ancillary services as referred to in Article 2(2), points (b), (g)(i), or (g)(ii);

b EUR 65 000, where point (a) does not apply.

2 Where the applicant is registered as a trade repository under either Title VI, Chapter 1 of Regulation (EU) No 648/2012 or Chapter III of Regulation (EU) 2015/2365, the extension-of-registration fee shall be the following: