Commission Delegated Regulation (EU) 2020/1302 of 14 July 2020 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to central counterparties established in third countries (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2020/1302

of 14 July 2020

supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to central counterparties established in third countries

(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 25d(3) thereof,

Whereas:

(1) Article 25d of Regulation (EU) No 648/2012 requires that the European Securities and Markets Authority ('ESMA') charge third-country central counterparties ('CCPs') fees associated with applications for recognition under Article 25 of that Regulation and annual fees associated with the performance of its tasks in accordance with that Regulation in relation to recognised third-country CCPs. Article 25d(2) of Regulation (EU) No 648/2012 requires that such fees be proportionate to the turnover of the CCP concerned and cover all costs incurred by ESMA for the recognition and the performance of its tasks in relation to third-country CCP in accordance with that Regulation.

(2) Fees associated with applications for recognition ('recognition fees') should be charged to third-country CCPs to cover ESMA's costs for processing applications for recognition, including costs for verifying that applications are complete, requesting additional information, drafting of decisions and costs relating to the assessment of the systemic importance of third-country CCPs ('tiering'). For CCPs that are systemically important or likely to become systemically important for the financial stability of the Union or of one or more of its Member States and that are recognised by ESMA in accordance with Article 25(2b) of Regulation (EU) No 648/2012 ('Tier 2 CCPs'), additional costs are incurred by ESMA. These additional costs are incurred by ESMA when assessing compliance with the recognition conditions set out in Article 25(2b) of Regulation (EU) No 648/2012 and whether, by complying with the applicable third-country legal framework, a CCP may be deemed to satisfy compliance with the requirements set out in Article 16 and Titles IV and V of Regulation (EU) No 648/2012

('comparable compliance'). The costs associated with applications made by Tier 2 CCPs will therefore be higher than those associated with applications made by third-country CCPs that are not deemed to be systemically important or likely to become systemically important for the financial stability of the Union or of one or more of its Member States ('Tier 1 CCPs').

(3) While a basic recognition fee should be charged to all third-country CCPs applying for recognition under Article 25 of Regulation (EU) No 648/2012, an additional fee should be charged to Tier 2 CCPs to cover the additional cost incurred by ESMA as part of the application process. The additional recognition fee should also be charged to already recognised CCPs the first time that ESMA determines whether they are to be classified as Tier 2 CCPs following the review of their systemic importance under Article 25(5) or Article 89(3c) of Regulation (EU) No 648/2012.

(4) Annual fees are also to be charged to recognised third-country CCPs to cover ESMA's costs for the performance of its tasks under Regulation (EU) No 648/2012 in relation to such CCPs. For both Tier 1 and Tier 2 CCPs, those tasks include the periodic review of the systemic importance of CCPs pursuant to Article 25(5) of Regulation (EU) No 648/2012, the implementation and maintenance of cooperation arrangements with third-country authorities and the monitoring of regulatory and supervisory developments in third countries. For Tier 2 CCPs, ESMA is also required to supervise on an ongoing basis compliance by those CCPs with the requirements set out in Article 16 and Titles IV and V of Regulation (EU) No 648/2012, including through comparable compliance, where granted. It is therefore appropriate that different annual fees apply to Tier 1 and Tier 2 CCPs.

(5) The recognition and annual fees laid down in this Regulation should cover the costs that ESMA expects to incur when processing applications for recognition on the basis of its experience in performing tasks in relation to third-country CCPs and other supervised entities as well as on the basis of its expected costs as stated in its annual activity-based budget.

(6) The tasks performed by ESMA under Regulation (EU) No 648/2012 in relation to recognised Tier 1 CCPs will largely be the same for each Tier 1 CCP independently of their size. It is therefore appropriate that the costs incurred by ESMA in relation to recognised Tier 1 CCPs are covered by levying an annual fee of the same amount on each recognised Tier 1 CCP. In relation to recognised Tier 2 CCPs, in order to ensure a fair allocation of fees which, at the same time, reflects the actual administrative effort required by ESMA for the performance of its tasks with respect to each Tier 2 CCP, annual fees should also take account of the turnover of the Tier 2 CCP.

(7) Annual fees charged to third-country CCPs for the first year in which they are recognised pursuant to Article 25 of Regulation (EU) No 648/2012 should be proportionate to the part of that year during which ESMA performs tasks in accordance with that Regulation in relation to those CCPs. The same principle should apply for the year in which a CCP that is recognised as a Tier 1 CCP, is classified for the first time as a Tier 2 CCP pursuant to Article 25(5) of that Regulation.

***Changes to legislation:** There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2020/1302. (See end of Document for details)*

(8) To ensure the timely funding of the costs incurred by ESMA in relation to applications for recognition made pursuant to Article 25 of Regulation (EU) No 648/2012, recognition fees should be paid to ESMA before the processing of applications for recognition or the assessment of whether Tier 2 CCPs comply with the recognition requirements set out in Article 25(2b) of Regulation (EU) No 648/2012. In order to ensure the timely funding of the costs incurred by ESMA in the performance of its tasks in relation to recognised third-country CCPs, annual fees should be paid in the beginning of the calendar year to which they relate. Annual fees in the first year of recognition should be paid soon after the adoption of recognition decisions.

(9) In order to discourage repeated or unfounded applications, recognition fees should not be reimbursed in the case where an applicant withdraws its application. As the administrative work required in the case of an application for recognition that is refused is the same as that required in the case of an application that is accepted, recognition fees should not be reimbursed if recognition is refused.

(10) Any costs incurred by ESMA after the entry into force of Regulation (EU) 2019/2099 of the European Parliament and of the Council[(2)] in respect of third-country CCPs that have already been recognised in accordance with Article 25 of Regulation (EU) No 648/2012 prior to 22 September 2020 should be covered by fees. Such third-country CCPs should therefore be required to pay an interim annual fee for 2020 and each subsequent year until the review of their systemic importance pursuant to Article 89(3c) of Regulation (EU) No 648/2012 has been carried out.

(11) This Delegated Regulation should enter into force as a matter of urgency to ensure that ESMA is funded in a timely and appropriate manner following the entry into force of Regulation (EU) 2019/2099,

HAS ADOPTED THIS REGULATION:

CHAPTER I

FEES

Article 1

Recognition fees

1 A CCP established in a third country that applies for recognition in accordance with Article 25 of Regulation (EU) No 648/2012 shall pay a basic recognition fee of EUR 50 000.

2 A CCP established in a third country shall pay an additional recognition fee of EUR 360 000 where ESMA determines that, in accordance with Article 25(2a) of Regulation (EU) No 648/2012, that CCP is systemically important or likely to become systemically important for the financial stability of the Union or of one or more of its Member States (‘Tier 2 CCP’). A Tier 2 CCP shall pay the additional recognition fee in any of the following cases:

a the CCP applies for recognition;

Changes to legislation: There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2020/1302. (See end of Document for details)

b the CCP, where already recognised pursuant to Article 25(2) of Regulation (EU) No 648/2012, is determined to be a Tier 2 CCP following the review carried out by ESMA in accordance with Article 25(5) of that Regulation.

Article 2

Annual fees

1 A recognised CCP shall pay an annual fee.

2 Where a CCP is recognised by ESMA in accordance with Article 25(2) of Regulation (EU) No 648/2012 ('Tier 1 CCP'), the annual fee for each Tier 1 CCP for a given year (n) shall be the total annual fee divided in equal parts between all Tier 1 CCPs recognised on 31 December of the previous year (n-1).

For the purposes of the first subparagraph, the total annual fee for a given year (n) shall be the estimate of expenditure relating to the tasks to be performed by ESMA with regard to all recognised Tier 1 CCPs under Regulation (EU) No 648/2012 as included in ESMA's budget for that year.

3 Where a CCP is recognised by ESMA in accordance with Article 25(2b) of Regulation (EU) No 648/2012 ('Tier 2 CCP'), the annual fee for a given year (n) shall be the total annual fee divided between all Tier 2 CCPs recognised on 31 December of the previous year (n-1) and multiplied by the applicable weight determined pursuant to Article 4 of this Regulation.

For the purposes of the first subparagraph, the total annual fee for a given year (n) shall be the estimate of expenditure relating to the tasks to be performed by ESMA with regard to all recognised Tier 2 CCPs under Regulation (EU) No 648/2012 as included in ESMA's budget for that year.

Article 3

Annual fees in year of recognition

1 For the year in which a third-country CCP is recognised by ESMA in accordance with Article 25 of Regulation (EU) No 648/2012, the annual fee shall be calculated as follows:

a where ESMA recognises a CCP as a Tier 1 CCP, the annual fee shall be determined as the proportion of the basic recognition fee laid down in Article 1(1) of this Regulation calculated in accordance with the following ratio:

$$\frac{\textit{Number of calendar days from the date of recognition until 31 December}}{\textit{Number of calendar days in year}}$$

b where ESMA recognises a CCP as a Tier 2 CCP, the annual fee shall be determined as the proportion of the additional recognition fee laid down in Article 1(2) of this Regulation calculated in accordance with the following ratio:

$$\frac{\textit{Number of calendar days from the date of recognition until 31 December}}{\textit{Number of calendar days in year}}$$

2 Where a CCP has paid an interim annual fee in accordance with Article 9 for the year in which that CCP is recognised as a Tier 1 CCP, the annual fee calculated in accordance with paragraph 1(a) shall not be charged.

***Changes to legislation:** There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2020/1302. (See end of Document for details)*

3 Where a CCP has paid an interim annual fee in accordance with Article 9 or an annual fee in accordance with Article 2(2) for the year in which that CCP is recognised as a Tier 2 CCP, the amount of that fee shall be deducted from the fee to be paid in accordance with paragraph 1(b).

Article 4

Applicable turnover for Tier 2 CCPs

1 The relevant turnover of a Tier 2 CCP shall be its worldwide revenues accrued from provision of clearing services (membership fees and clearing fees net of transaction costs) during the CCP's most recent financial year.

Tier 2 CCPs shall provide ESMA, on an annual basis, with audited figures confirming its worldwide revenues accrued from the provision of the clearing services referred to in the first subparagraph. The audited figures shall be submitted to ESMA no later than 30 September each year. The documents containing audited figures shall be provided in a language customary in the sphere of financial services.

If the revenues referred to in the first subparagraph are reported in another currency than euro, ESMA shall convert them into euro using the average euro foreign exchange rate applicable to the period during which the revenues were recorded. For that purpose, the euro foreign exchange reference rate published by the European Central Bank shall be used.

2 On the basis of the turnover determined in accordance with paragraph 1 for a given year (n), the CCP shall be deemed to belong to one of the following groups:

a Group 1: annual turnover below EUR 600 million;

b Group 2: annual turnover of EUR 600 million or above.

A Tier 2 CCP in Group 1 shall be attributed the turnover weight 1.

A Tier 2 CCP in Group 2 shall be attributed the turnover weight 1,2.

3 The total turnover weight of all recognised Tier 2 CCPs for a given year (n) shall be the sum of the turnover weights determined in accordance with paragraph 2 of all Tier 2 CCPs recognised by ESMA on the 31 December of the previous year (n-1).

4 For the purpose of Article 2(3), the applicable weight of a Tier 2 CCP for a given year (n) shall be its turnover weight determined in accordance with paragraph 2 divided by the total turnover weight of all recognised Tier 2 CCPs determined in accordance with paragraph 3.

CHAPTER II

PAYMENT CONDITIONS

Article 5

General payment modalities

1 All fees shall be paid in euro.