Commission Delegated Regulation (EU) 2019/362 of 13 December 2018 amending Delegated Regulation (EU) No 150/2013 as regards regulatory technical standards specifying the details of the application for registration as a trade repository (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2019/362

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amending Delegated Regulation (EU) No 150/2013 as regards regulatory technical standards specifying the details of the application for registration as a trade repository

(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 56(3) thereof,

Whereas:

(1) Experience in applying Commission Delegated Regulation (EU) No 150/2013[(2)] has proved that the provisions of Regulation (EU) No 648/2012 concerning the registration of trade repositories constitute a sound basis to build the framework for registration of trade repositories. In order to strengthen that framework further, Regulation (EU) No 150/2013 should reflect the evolving nature of the industry.

(2) Establishing a consistent framework for registration and extension of registration of trade repositories under both Regulation (EU) No 648/2012 and Regulation (EU) 2015/2365 of the European Parliament and of the Council[(3)] is essential for achieving a level playing field among trade repositories and for the efficient provision of repository functions.

(3) The verification function of trade repositories is of primary importance for the transparency of derivative markets and to ensure data quality. Trade repositories should therefore demonstrate that they have established appropriate systems and procedures to verify the completeness and correctness of the details of derivative contracts. Those systems and procedures should therefore be further detailed in order to strengthen the framework for the registration. They should set out how the trade repositories will authenticate users, validate schema of the data, authorise the recording of data, validate the logic and content of the data, reconcile the details of derivatives and provide feedback to their users.

(4) Applications for registration as a trade repository should include more detailed information on the relevant internal control mechanisms and structures, the internal

Changes to legislation: *There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2019/362. (See end of Document for details)*

audit function and the audit work plan to enable ESMA to assess how those factors contribute to the efficient functioning of the trade repository.

(5) To enable ESMA to better assess the good repute, experience and skills of the board members, senior management and relevant senior staff of the applicant trade repository, an applicant trade repository should provide additional information about those persons, including information on their knowledge and experience in IT management, operations and development.

(6) The use of common resources within a trade repository for derivatives reporting services on the one hand and ancillary services or reporting services for securities financing transactions on the other, may lead to contagion of operational risks across those services. The validation, reconciliation, processing and recordkeeping of data may require an effective operational separation to avoid such contagion of risks. However, certain practices, such as a common front-end of systems, a common access point to data for authorities or the use of the same staff working in sales, compliance, or a client services helpdesk may be less prone to contagion and hence do not necessarily require operational separation. Trade repositories should therefore establish an appropriate level of operational separation between the resources, systems or procedures used in different business lines. That separation should include business lines that provide services subject to other Union legislation or third country legislation. It should also ensure that the application for registration contains detailed and clear information on the ancillary services, or on other business lines that the trade repository offers outside its core activity of repository services under Regulation (EU) No 648/2012.

(7) The soundness, resilience and protection of the information technology systems of trade repositories are essential to ensure compliance with the objectives of Regulation (EU) No 648/2012. Accordingly, trade repositories should provide comprehensive and more detailed information on those systems to enable ESMA to assess the soundness and resilience of their information technology systems. Where the provision of repository functions is outsourced to third parties, either at the level of the group or outside the group, trade repositories should provide detailed information on the relevant outsourcing arrangements to enable ESMA to assess compliance with the conditions for registration, including information on any service level agreements, on metrics and on how those metrics are effectively monitored. Finally, trade repositories should provide information on the mechanisms and controls that they put in place to effectively manage potential cyber-risks and to protect the data on cyber-attacks.

(8) To better achieve the objectives of Regulation (EU) No 648/2012 regarding the transparency of the derivatives market, trade repositories should demonstrate that they apply the terms and conditions of access to data held in trade repositories in accordance with Commission Delegated Regulation (EU) No 151/2013[4]. Those terms and conditions should ensure the integrity of the data provided to authorities and that the trade repositories are able to provide access to the data in accordance with Delegated Regulation (EU) No 151/2013. An application for registration should therefore detail the trade repositories' policies and procedures pursuant to which the different types of users report and access the data held in a trade repository. For the same reason, an

application for registration should contain a description of the channels and mechanisms used to publicly disclose information on the access rules to the data held in that trade repository. Trade repositories shall also provide more detailed information on their procedures for the verification of completeness and correctness of data.

(9) The fees associated with the services provided by trade repositories are essential information for market participants to enable them to make an informed choice. Those fees should therefore form part of the application for registration as a trade repository.

(10) To enable ESMA to establish the baseline for capacity and performance planning of the trade repositories, applications for registration should contain information which demonstrates that applicant trade repository has the necessary financial resources to perform its functions as a trade repository on an on-going basis. For the same reason, an application for registration should contain effective business continuity arrangements. Trade repositories should in particular provide information about their plans, procedures and arrangements for the managements of emergencies and crisis, including procedures to ensure the orderly substitution of the original trade repository if its registration is withdrawn or if a reporting counterparty decides to report to another trade repository.

(11) Because market participants and authorities rely on the data maintained by trade repositories, a trade repository's application for registration should clearly describe operational and record-keeping arrangements, which should be strict and effective. To demonstrate how the confidentiality and protection of data maintained by the trade repository is preserved and to allow for the traceability of those data, the application for registration should contain a specific reference regarding the set-up of a reporting log.

(12) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the European Commission pursuant to the procedure in Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[(5)].

(13) ESMA has conducted open public consultations on these draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the ESMA Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010.

(14) Delegated Regulation (EU) No 150/2013 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) No 150/2013

(1) in Article 1, paragraph 2 is replaced by the following:

2. The application for registration as a trade repository shall in particular contain the following information:

a the corporate name of the applicant and legal address within the Union;

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b an excerpt from the relevant commercial or court register, or other forms of certified evidence of the place of incorporation and scope of business activity of the applicant, valid at the application date;

c information on the classes of derivatives for which the applicant wishes to be registered;

d information on whether the applicant is authorised or registered by a competent authority in the Member State where it is established, and in such case, the name of the authority and any reference number related to the authorisation or registration;

e the articles of incorporation of the applicant, and, where relevant, other statutory documentation stating that the applicant is to conduct trade repository services;

f the minutes from the meeting where the applicant's Board approved the application;

g the name and contact details of the person(s) responsible for compliance, or any other staff involved in compliance assessments for the applicant;

h the programme of operations, including indications of the location of the main business activities;

i the identification of any subsidiaries and, where relevant, the group structure;

j any service, other than the trade repository function, that the applicant provides or intends to provide;

k any information on any pending judicial, administrative, arbitration or any other litigation proceedings irrespective of their type, that the applicant may be party to, particularly as regards tax and insolvency matters and where significant financial or reputational costs may be incurred, or any non- pending proceedings, that may still have any material impact on trade repository costs.

(2) Article 2 is replaced by the following:

Article 2

Policies and procedures

Where information regarding policies and procedures is provided as part of an application, an applicant shall ensure that the application includes the following items:

(a) an indication that the Board approves the policies, that the senior management approves the procedures and that the senior management is responsible for the implementation and maintenance of the policies and procedures;

(b) a description of how the communication of policies and procedures within the applicant is organised, how compliance with the policies will be ensured and monitored on a day to day basis, and the person or persons responsible for compliance in that regard;

(c) any records indicating that employed and dedicated staff are aware of the policies and procedures;

(d) a description of the measures to adopt in the event of a breach of policies and procedures;

(e) an indication of the procedure for reporting to ESMA any material breach of policies or procedures which may result in a breach of the conditions for initial registration.;

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

2. Where the applicant has a parent undertaking, it shall:

a identify the legal address of that parent undertaking;

b indicate whether the parent undertaking is authorised or registered and subject to supervision, and when this is the case, state any reference number and the name of the responsible supervisory authority.;

(4) Article 7 is replaced by the following:

Article 7

Internal control

1 An application for registration as a trade repository shall contain detailed information relating to the internal control system of the applicant, including information regarding its compliance function, risk assessment, internal control mechanisms and arrangements of its internal audit function.

2 The detailed information referred to in paragraph 1 shall contain:

a the applicant's internal control policies and respective procedures related to their consistent and effective implementation;

b any policies, procedures and manuals regarding the monitoring and evaluation of the adequacy and effectiveness of the applicant's systems;

c any policies, procedures and manuals regarding the control and safeguard for the applicant's information processing systems;

d the identity of the internal bodies in charge of the evaluation of the relevant internal control findings.

3 An application for registration as a trade repository shall contain the following information with respect to the applicant's internal audit activities:

a the composition of any Internal Audit Committee, its competences and responsibilities;

b its internal audit function charter, methodologies, standards and procedures;

c an explanation how its internal audit charter, methodology and procedures are developed and applied taking into account the nature and extent of the applicant's activities, complexities and risks;

d a work plan for three years following the date of application addressing the nature and extent of the applicant's activities, complexities and risks.;

(5) Article 9 is replaced by the following: