Commission Delegated Regulation (EU) 2019/361 of 13 December 2018 amending Delegated Regulation (EU) No 151/2013 with regard to access to the data held in trade repositories (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2019/361

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(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 81(5) thereof,

Whereas:

(1) Article 32(3) of Regulation (EU) 2015/2365 of the European Parliament and of the Council[(2)] has amended Article 81(3) of Regulation (EU) No 648/2012 by adding a number of entities to the list of entities to which a trade repository is to provide information on derivatives so that those entities are able to fulfil their responsibilities and mandates. Those entities should therefore also be included in Commission Delegated Regulation (EU) No 151/2013[(3)] with specifications concerning the information and the level of access to the details of derivatives to be provided. It is therefore essential that trade repositories are able to identify accurately the counterparties and transactions concerned. The access provided by trade repositories should include access to details of transaction data on derivatives concluded by a counterparty, irrespective of whether that counterparty is a parent undertaking or subsidiary of another undertaking, provided that the access required concerns information needed for the fulfilment of the responsibilities and mandates of the relevant entity.

(2) Many of the entities listed in Article 81(3) of Regulation (EU) No 648/2012 have several and different responsibilities and mandates. To avoid that trade repositories continuously have to check under which mandate and for which specific need an entity demands access, and thus to avoid unnecessary administrative burdens for those trade repositories, it is appropriate to allow the trade repositories to provide each entity with a single access, which should cover the responsibilities and mandates of each entity.

(3) Access by the entities listed in Article 81(3) of Regulation (EU) No 648/2012 to all details of derivatives, including details of derivatives that have not been accepted by the trade repository and details following the performance of the reconciliation process for derivatives referred to in Article 19 of Commission Delegated Regulation (EU) No

Changes to legislation: *There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2019/361. (See end of Document for details)*

150/2013[4], is of utmost importance to ensure that those entities are able to fulfil their responsibilities and mandates.

(4) Certain entities listed in Article 81(3) of Regulation (EU) No 648/2012 are responsible for monitoring systemic risks to financial stability. The proper performance of their tasks requires that those entities have access to the broadest spectrum of market participants, trading venues and the most comprehensive and granular details of derivatives data available for their area of responsibility, which can be, depending on the entity concerned, a Member State, the euro area or the Union.

(5) Because of the links between derivatives and monetary policy, a member of the European System of Central Banks (ESCB), as referred to in Article 81(3)(g) of Regulation (EU) No 648/2012, should have access to position data on derivatives expressed in the currency issued by that ESCB member. Position data should include derivatives data aggregated by criteria, including underlying, product and maturity for individual counterparties.

(6) The European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Systemic Risk Board (ESRB) are part of the European System for Financial Supervision and have, with regard to financial stability and systemic risk, mandates and responsibilities that are very similar to those of the European Securities and Markets Authority (ESMA). It is therefore important that those authorities, like ESMA, have access to all transaction data on derivatives.

(7) Council Regulation (EU) No 1024/2013[5] established a Single Supervisory Mechanism (SSM). A trade repository should therefore ensure that the European Central Bank (ECB) has access to all transaction data on derivatives concluded by any counterparty which, within the single supervisory mechanism, is subject to the ECB's supervision pursuant to Regulation (EU) No 1024/2013.

(8) Pursuant to Directive 2014/59/EU of the European Parliament and of the Council[6], resolution authorities are to be given effective means of action with respect to the entities referred to in Article 1(1) of that Directive to prevent contagion. Each resolution authority should therefore have access to transaction data on derivatives reported by those entities.

(9) Pursuant to Regulation (EU) No 806/2014 of the European Parliament and of the Council[7], the Single Resolution Board (SRB) is responsible for the effective and consistent functioning of the Single Resolution Mechanism, inter alia, by drawing up the resolution plans for the entities referred to in Article 2 of that Regulation. To enable the Single Resolution Board to draw up those resolution plans, a trade repository should provide that Board with access to the transaction data on derivatives concluded by any counterparty which falls under the scope of Regulation (EU) No 806/2014.

(10) To enable the authorities referred to in points (o) and (p) of Article 81(3) of Regulation (EU) No 648/2012 to exercise their responsibilities and mandates, they should have access to data reported by counterparties that fall under their responsibilities and mandates.

(11) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the European Commission.

(12) ESMA has consulted the relevant authorities and the members of the ESCB before submitting the draft regulatory technical standards on which this Regulation is based. ESMA has also conducted open public consultations, analysed the potential related costs and benefits and requested the opinion 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[8].

(13) Delegated Regulation (EU) No 151/2013 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Delegated Regulation (EU) No 151/2013 is amended as follows:

(i) Article 2 of Delegated Regulation (EU) No 151/2013 is replaced by the following:

Article 2

Access to details of derivatives in accordance with the responsibilities and mandate of each authority concerned

1 A trade repository shall ensure that the details of transaction data on derivatives made accessible to the entities listed in Article 81(3) of Regulation (EU) No 648/2012 in accordance with paragraphs 3 to 17 of this Article include the following data:

- a the reports of derivatives reported in accordance with Tables 1 and 2 of the Annex to Delegated Regulation (EU) No 148/2013[9], including the latest trade states of derivatives that have not matured or which have not been the subject of reports with action types 'Error', 'Early termination', 'Compression' and 'Position component' as referred to in Field 93 of Table 2 of the Annex to Delegated Regulation (EU) No 148/2013;
- b the relevant details of derivative reports rejected by the trade repository, including any derivative reports rejected during the previous working day and the reasons for their rejection;
- c the reconciliation status of all derivatives reported for which the trade repository has carried out the reconciliation process in accordance with Article 19 of Delegated Regulation (EU) No 150/2013.

2 A trade repository shall provide the entities that have several responsibilities or mandates under Article 81(3) of Regulation (EU) No 648/2012 with a single access point to the derivatives covered by those responsibilities and mandates.

3 A trade repository shall provide ESMA with access to all transaction data for derivatives to exercise competences in accordance with its responsibilities and mandates.

4 A trade repository shall provide the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Systemic Risk Board (ESRB) with access to all transaction data for derivatives.