Changes to legislation: *There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2019/359. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)EUR 2019 No. 359 may be subject to amendment by EU Exit Instruments made by the Financial Conduct Authority under powers set out in The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), regs. 2, 3, Sch. Pt. 1. These amendments are not currently available on legislation.gov.uk. Details of relevant amending instruments can be found on their website/s. (See end of Document for details) View outstanding changes*

Commission Delegated Regulation (EU) 2019/359 of 13 December 2018 supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the application for registration and extension of registration as a trade repository (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2019/359

of 13 December 2018

supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the application for registration and extension of 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) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012[(1)], and in particular Article 5(7) thereof,

Whereas:

(1) Rules should be laid down specifying the information to be provided to the European Securities and Markets Authority (ESMA) as part of an application for registration or extension of registration as a trade repository.

(2) Establishing a comprehensive and sound framework for registration and extension of registration of trade repositories is essential for the achievement of the objectives of Regulation (EU) 2015/2365 and for the efficient provision of repository functions.

(3) The rules and standards for the registration and the extension of registration of trade repositories for the purposes of Regulation (EU) No 2365/2015 should build on pre-existing infrastructures, operational processes and formats which were introduced with regard to reporting derivative contracts to trade repositories, in order to minimise additional operational costs for market participants.

(4) Experience in applying the provisions of Commission Delegated Regulation (EU) No 150/2013[(2)] supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards specifying the details of the application for registration as a trade repository has proved that the provisions for registration of trade repositories under Regulation (EU) No 648/2012 constitute a sound basis to build the framework for registration of trade repositories under Regulation (EU) 2015/2365. In order to further strengthen that framework, this Regulation should reflect the evolving nature of the industry.

Changes to legislation: *There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2019/359. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)EUR 2019 No. 359 may be subject to amendment by EU Exit Instruments made by the Financial Conduct Authority under powers set out in The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), regs. 2, 3, Sch. Pt. 1. These amendments are not currently available on legislation.gov.uk. Details of relevant amending instruments can be found on their website/s. (See end of Document for details) View outstanding changes*

(5) Any application for registration as a trade repository should contain information on the structure of its internal controls and the independence of its governing bodies, in order to enable ESMA to assess whether the corporate governance structure ensures the independence of the trade repository and whether that structure and its reporting routines are sufficient to ensure compliance with the requirements for trade repositories set out in Regulation (EU) 2015/2365. Detailed information on the relevant internal control mechanisms and structures, the internal audit function as well as the audit work plan should be included in the application for registration in order to enable ESMA to assess the way in which those factors contribute to the efficient functioning of the trade repository.

(6) Although trade repositories which operate through branches are not considered separate legal persons, separate information on branches should be provided in order to enable ESMA to clearly identify the position of the branches in the organisational structure of the trade repository, assess the fitness for duty and appropriateness of the senior management of the branches, and evaluate whether the control mechanisms, compliance and other functions in place are robust enough to identify, evaluate and manage the branches' risks in an effective manner.

(7) For the purpose of enabling ESMA to assess the good repute, experience and skills of the prospective trade repository's board members and senior management, an applicant trade repository should provide relevant information on those persons such as the curricula vitae, details regarding any criminal convictions, self-declarations of good repute and declarations of any potential conflicts of interests.

(8) Any application for registration should contain information which demonstrates that the applicant has the necessary financial resources at its disposal for the performance of its functions as a trade repository on an on-going basis and effective business continuity arrangements.

(9) Article 5(2) of Regulation (EU) 2015/2365 requires trade repositories to verify the completeness and correctness of data reported under Article 4 thereof. In order to be registered or be granted an extension of registration under Regulation (EU) 2015/2365, trade repositories should demonstrate that they have established systems and procedures which ensure their ability to verify the completeness and correctness of the details of the securities financing transactions (SFTs).

(10) The use of common resources within a trade repository between SFT reporting services on the one hand and ancillary services or derivative reporting services on the other may lead to contagion of operational risks across services. Whereas the validation, reconciliation, processing and recordkeeping of data may require an effective operational separation to avoid such contagion of risks, 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, including where those business lines comprise the provision of services subject to other Union or

***Changes to legislation:** There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2019/359. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)EUR 2019 No. 359 may be subject to amendment by EU Exit Instruments made by the Financial Conduct Authority under powers set out in The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), regs. 2, 3, Sch. Pt. 1. These amendments are not currently available on legislation.gov.uk. Details of relevant amending instruments can be found on their website/s. (See end of Document for details) View outstanding changes*

third country legislation, and ensure that detailed and clear information on the ancillary services, or other business lines that the trade repository offers outside its core activity of repository services under Regulation (EU) 2015/2365, is provided to ESMA in the application for registration or extension of registration.

(11) The soundness, resilience and protection of the information technology systems of trade repositories are essential to ensure compliance with the objectives of Regulation (EU) 2015/2365. Accordingly, trade repositories should provide comprehensive and detailed information on those systems to allow 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, the trade repository should provide detailed information on the relevant outsourcing arrangements to allow the assessment of compliance with the conditions for registration, including information on any service level agreements, on metrics and on how those metrics are effectively monitored. Finally, information should be provided by trade repositories on the mechanisms and controls that they put in place to effectively manage potential cyber-risks and to protect the data they maintain from cyber-attacks.

(12) Different types of users can report, access or modify the data maintained by the trade repository. The characteristics, as well as the rights and obligations of the different types of users should be clearly defined by the trade repository and should be provided as part of the application for registration. The information provided by the trade repositories should also clearly identify the different categories of access available. To ensure the confidentiality of data, but also its availability to third parties, a trade repository should provide information about how it ensures that only the data for which the relevant counterparties have provided their explicit, revocable and discretionary consent is made available to third parties. Finally, the trade repository should provide information in its application on the channels and mechanisms used to publicly disclose information on its access rules in order to ensure an informed decision by its service users.

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

(14) Given that market participants and authorities rely on the data maintained by trade repositories, strict and effective operational and record-keeping arrangements should be clearly described in a trade repository's application for registration. To demonstrate how the confidentiality and protection of data maintained by the trade repository is preserved as well as to allow for its traceability, a specific reference regarding the set-up of a reporting log needs to be included in the application for registration.

(15) To achieve the objectives of Regulation (EU) 2015/2365 regarding the transparency of SFTs, trade repositories should demonstrate that they apply the procedure for terms and conditions of access in accordance with Commission Delegated Regulation (EU) 2019/357[(3)], that the integrity of the data provided to authorities is ensured and that they are in a position to provide access to the data in accordance with the relevant requirements included in Commission Delegated Regulation (EU) 2019/358[(4)].

Changes to legislation: *There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2019/359. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)EUR 2019 No. 359 may be subject to amendment by EU Exit Instruments made by the Financial Conduct Authority under powers set out in The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), regs. 2, 3, Sch. Pt. 1. These amendments are not currently available on legislation.gov.uk. Details of relevant amending instruments can be found on their website/s. (See end of Document for details) View outstanding changes*

(16) The effective payment of the registration fees by trade repositories at the time of application is essential to cover ESMA's necessary expenditure relating to the registration or extension of registration of a trade repository.

(17) A simplified application procedure for the extension of registration should be established to allow those trade repositories already registered under Regulation (EU) No 648/2012 to have that registration extended under Regulation (EU) 2015/2365. To avoid any duplicate requirements, the information to be provided by the trade repository as part of an extension of registration should include detailed information on the adaptations necessary to ensure it complies with the requirements under Regulation (EU) 2015/2365.

(18) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority 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 of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)[(5)].

(19) 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 Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010,

HAS ADOPTED THIS REGULATION:

Article 1

Identification, legal status and types of securities financing transactions

1 For the purposes of Article 5(5)(a) of Regulation (EU) 2015/2365, the application for registration as a trade repository shall contain the following information:

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

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 types of securities financing transactions 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 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;

***Changes to legislation:** There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2019/359. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)EUR 2019 No. 359 may be subject to amendment by EU Exit Instruments made by the Financial Conduct Authority under powers set out in The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), regs. 2, 3, Sch. Pt. 1. These amendments are not currently available on legislation.gov.uk. Details of relevant amending instruments can be found on their website/s. (See end of Document for details) View outstanding changes*

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 Upon request by ESMA, the applicants shall also provide additional information during the examination of the application for registration where such information is needed for the assessment of the applicants' capacity to comply with the requirements set out in Chapter III of Regulation (EU) 2015/2365 and for ESMA to duly interpret and analyse the documentation to be submitted or already submitted.

3 Where an applicant considers that a requirement of this Regulation is not applicable to it, it shall clearly indicate that requirement in its application and also provide an explanation why such requirement does not apply.

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 contains 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 is 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.

Article 3

Ownership of the trade repository

1 An application for registration as a trade repository shall contain:

a a list containing the name of each person or entity who directly or indirectly holds 5 % or more of the applicant's capital or of its voting rights or whose holding makes it possible to exercise a significant influence over the applicant's management;

b a list of any undertakings in which a person referred to in point (a) holds 5 % or more of the capital or voting rights or over whose management they exercise a significant influence.