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Commission Delegated Regulation (EU) 2019/357 of 13 December 2018 supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to regulatory technical standards on access to details of securities financing transactions (SFTs) held in trade repositories (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2019/357

of 13 December 2018

supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to regulatory technical standards on access to details of securities financing transactions (SFTs) held in trade 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) 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 points (c) and (d) of Article 12(3) thereof,

Whereas:

(1) Article 12(2) of Regulation (EU) 2015/2365 requires that the entities listed in that Article have access to the details of SFTs so they are able to fulfil their responsibilities and mandates. 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 SFTs concluded by a counterparty, irrespective of whether that counterparty is a parent undertaking or subsidiary of another undertaking, or whether that information concerns transactions concluded through a particular branch of a counterparty, 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 12(2) of Regulation (EU) 2015/2365 have several and different mandates and needs. 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 mandates and specific needs of each entity.

(3) The mandates and responsibilities of the European Securities and Markets Authority (ESMA) with regard to trade repositories are laid down in Article 5 to 11 of Regulation (EU) 2015/2365 and cover, inter alia, the registration and supervision of trade repositories. An effective supervision requires that ESMA has full access to all details of all SFTs held by all trade repositories.

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(4) The European Banking Authority (EBA), the European Insurance and Occupational Pensions Agency (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 ESMA. It is therefore important that those authorities, like ESMA, have access to all details of all SFTs.

(5) Because of the close link between SFTs and monetary policy, a member of the European System of Central Banks (ESCB), as referred to in Article 12(2)(f) of Regulation (EU) 2015/2365, should have access to all details of SFTs relating to the currency issued by that ESCB member, and more specifically, to all details of SFTs of which the loan or the collateral is expressed in the currency issued by that ESCB member.

(6) Certain entities listed in Article 12(2) of Regulation (EU) 2015/2365 are responsible for monitoring systemic risks to financial stability. The proper performance of their tasks relating to the stability of the financial system requires that those entities have access to the broadest spectrum of market participants, trading venues and the most comprehensive and granular details of SFTs available for their area of responsibility, which can be, depending on the entity concerned, a Member State, the euro area or the Union.

(7) Council Regulation (EU) No 1024/2013[(2)] established a Single Supervisory Mechanism. A trade repository should ensure that the European Central Bank (ECB) has access to the details of all SFTs 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) The mandate and specific needs of the Union securities and markets authorities referred to in Article 12(2)(i) of Regulation (EU) 2015/2365 require that those authorities are provided with access to all details of SFTs representing transactions, or relating to markets, securities lent or borrowed or provided as collateral, benchmarks used as references, and counterparties that fall under the supervisory responsibilities and mandates of that authority

(9) Pursuant to Directive 2014/59/EU of the European Parliament and of the Council[(3)], 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 details of SFTs reported by those entities.

(10) Pursuant to Regulation (EU) No 806/2014 of the European Parliament and of the Council[(4)], the Single Resolution Board 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 details of SFTs concluded by any counterparty which falls under the scope of Regulation (EU) No 806/2014.

(11) The authorities referred to in Article 12(2)(m) of Regulation (EU) 2015/2365 comprise, inter alia, the authorities competent for the Single Supervisory Mechanism and for

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the prudential supervision of credit institutions, investment firms, insurance and reinsurance companies, UCITS, AIFMs, occupational pensions funds, central securities depositories and non-financial counterparties. To enable those authorities to exercise their responsibilities and mandates effectively, they need to have access to details of SFTs reported by the counterparties that fall under their responsibility.

(12) The authorities referred to in Article 12(2)(m) of Regulation (EU) 2015/2365 comprise, inter alia, the authorities responsible for the authorisation and supervision of central counterparties. To enable those authorities to perform their task effectively, they should have access to the details of SFTs relating to the central counterparties under their supervision.

(13) To ensure the standardisation and consistency of the access to details of SFTs and to reduce the administrative burden for both the authorities that have access to those details and trade repositories holding those details, trade repositories should follow a specific procedure for establishing the terms and conditions under which that access will be provided, more specifically the setting up of that access and ongoing operational arrangements.

(14) To ensure the confidentiality of the details of SFTs, any type of data exchange between trade repositories and the authorities concerned should be carried out through a secure machine-to-machine connection and by using data encryption protocols.

(15) To enable the effective and efficient comparison and aggregation of details of SFTs across trade repositories, XML format templates and XML messages developed in accordance with the ISO 20022 methodology should be used for providing access to those details and for communication between the authorities and the trade repositories.

(16) To enable the authorities listed in Article 12(2) of Regulation (EU) 2015/2365 to perform targeted investigations, it is essential to facilitate the direct and immediate access to specific datasets and thus to establish a set of combinable ad-hoc queries referring to the counterparties to the SFT, the type of SFT, the time horizon of the execution, maturity and termination of the SFT, as well as the life-cycle stage of the SFT.

(17) To enable the direct and immediate access to details of SFTs and to facilitate for the authorities concerned and the trade repositories the scheduling of their internal data processes, the deadlines by which the trade repositories should provide the authorities access to those details of SFTs should be harmonised.

(18) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the Commission pursuant to the procedure in Article 10 of Regulation (EU) No 1095/2010[(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 ESMA Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010,

HAS ADOPTED THIS REGULATION:

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Article 1

Details of SFTs to be made accessible

A trade repository shall ensure that details of SFTs made accessible to each entity listed in Article 12(2) of Regulation (EU) 2015/2365 in accordance with Article 3 include the following data:

(a) the reports of SFTs reported in accordance with Tables 1 to 4 of the Annex to Commission Delegated Regulation (EU) 2019/356[(6)], including the latest trade states of SFTs that have not matured or which have not been the subject of reports with action types 'Error', 'Termination/Early termination', or 'Position component' as referred to in Field 98 of Table 2 of Annex I to Commission Implementing Regulation (EU) 2019/363[(7)]

(b) the relevant details of SFT reports rejected by the trade repository, including any SFT reports rejected during the previous working day and the reasons for their rejection, as specified in accordance with Table 2 of Annex I to Commission Delegated Regulation (EU) 2019/358[(8)].

(c) the reconciliation status of all reported SFTs for which the trade repository has carried out the reconciliation process in accordance with Delegated Regulation (EU) 2019/358 except those SFTs that have expired or for which SFT reports with action types 'Error', 'Termination/Early termination', or 'Position component' were received more than a month before the date on which the reconciliation process takes place.

Article 2

Single access

A trade repository shall provide the entities that have several responsibilities or mandates under Article 12(2) of Regulation (EU) 2015/2365 with a single access to the details of all SFTs covered by those responsibilities and mandates.

Article 3

Access to details of SFTs in accordance with the mandate and specific needs of each authority concerned

1 A trade repository shall provide ESMA with access to all details of all SFTs to exercise its supervisory competences in accordance with its responsibilities and mandates.

2 A trade repository shall provide the EBA, EIOPA and ESRB with access to all details of all SFTs.

3 A trade repository shall provide an authority supervising trading venues with access to the details of all SFTs executed on those trading venues.

4 A trade repository shall provide a member of the ESCB whose Member State's currency is the euro and the ECB with access to the details of all SFTs:

a where the securities lent or borrowed or provided as collateral were issued by or offered on behalf of an entity established within a Member State whose currency is the euro;

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b where the securities lent or borrowed or provided as collateral are sovereign debt of a Member State whose currency is the euro;

c where the currency lent or borrowed or provided as collateral is the euro.

5 A trade repository shall provide a member of the ESCB whose Member State's currency is not the euro with access to the details of all SFTs:

a where the securities lent or borrowed or provided as collateral were issued by or offered on behalf of an entity established within the Member State of that ESCB member;

b where the securities lent or borrowed or provided as collateral are sovereign debt of the Member State of that ESCB member;

c where the currency lent or borrowed or provided as collateral is the currency issued by that ESCB member.

6 A trade repository shall provide an authority listed in Article 12(2) of Regulation (EU) 2015/2365, that monitors systemic risks to financial stability in the euro area, with access to the details of all SFTs concluded on trading venues, or by counterparties that fall under the responsibilities and mandates of that authority when monitoring systemic risks to financial stability in the euro area. A trade repository shall also provide that authority with access to the details of the SFTs of all branches of counterparties established in a third country that operate in a Member State whose currency is the euro.

7 A trade repository shall provide an authority listed in Article 12(2) of Regulation (EU) 2015/2365, that monitors systemic risks to financial stability and whose Member State's currency is not the euro, with access to the details of all SFTs concluded on trading venues, or by counterparties that fall under the responsibilities and mandates of that authority when monitoring systemic risks to financial stability in a Member State whose currency is not the euro. A trade repository shall also provide that authority with access to the details of all SFTs of all branches of counterparties established in a third country that operate in that authority's Member State.

8 A trade repository shall provide the ECB, in carrying out its tasks within the single supervisory mechanism under Council Regulation (EU) No 1024/2013, with access to the details of all SFTs concluded by any counterparty which, within the single supervisory mechanism, is subject to the ECB's supervision pursuant to Regulation (EU) No 1024/2013.

9 A trade repository shall provide an authority of a third country in respect of which an implementing act pursuant to Article 19(1) of Regulation (EU) 2015/2365 has been adopted with access to the details of all SFTs under the third country authority's mandate and responsibilities in line with the provisions of the aforementioned implementing act.

10 A trade repository shall provide an authority designated pursuant to Article 4 of Directive 2004/25/EC of the European Parliament and of the Council[(9)] with access to the details of all SFTs for which the security lent or borrowed or provided as collateral is a security issued by a company that meets one or more of the following conditions:

a the company is admitted to trading on a regulated market established within the Member State of that authority and the takeover bids on the securities of that company fall under that authority's supervisory responsibilities and mandates;

b the company has its registered office or head office in the Member State of that authority and the takeover bids on the securities of that company fall under that authority's supervisory responsibilities and mandates;

c the company is an offeror as defined in Article 2(1)(c) of Directive 2004/25/EC for the companies referred to in points (a) or (b) and the consideration it offers includes securities.