Commission Delegated Regulation (EU) No 1003/2013 of 12 July 2013 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 trade repositories (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) No 1003/2013

of 12 July 2013

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 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) 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 72(3) thereof,

Whereas:

(1) Article 62 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), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC[(2)] provides that the revenues of the European Securities and Markets Authority (ESMA) consist of fees paid to ESMA in the cases specified in Union legislation, together with contributions from national public authorities and a subsidy from the Union.

(2) A registration fee should be charged to trade repositories established in the Union to reflect ESMA's costs for processing the application for registration. The costs associated with assessing the application increase where a trade repository intends to cover at least three derivative classes or to offer ancillary services. Therefore, the registration fee should be calculated with regard to these two objective criteria.

(3) The provision of ancillary services and of reporting services in more than three derivative classes are also expected to have a direct impact on the future turnover of the trade repository. Therefore, for the purpose of charging registration fees, trade repositories should be classified into three different categories of expected total turnover (high, medium and low expected total turnover), to which different registration fees should apply, depending on whether they intend to provide ancillary services or reporting services in more than three derivative classes, or both.

(4) If, after registration, a trade repository starts offering ancillary services or starts operating in more than three derivative classes, thereby falling into an upper category in

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terms of expected total turnover, the trade repository should pay the difference between the registration fee initially paid and the registration fee corresponding to the new category of expected total turnover in which it falls.

(5) In order to discourage unfounded applications, registration fees should not be reimbursed if an applicant withdraws its application during the registration process, nor if registration is refused.

(6) To ensure an efficient use of ESMA's budget and, at the same time, alleviate the financial burden on Member States and the Union, it is necessary to ensure that trade repositories pay at least all the costs related to their supervision. Fees should be set at a level such as to avoid a significant accumulation of deficit or surplus for activities related to trade repositories. If significant deficits or surplus become recurrent, the Commission should revise the level of the fees and charges.

(7) In order to ensure a fair and clear allocation of fees which, at the same time, reflects the actual administrative effort devoted to each supervised entity, the supervisory fee should be calculated on the basis of the turnover generated by a trade repository's core activities. The supervisory fees charged to a trade repository should be proportionate to the activity of that individual trade repository compared to the total activity of all registered and supervised trade repositories within a given financial year. However, given that there are some fixed administrative costs for the supervision of trade repositories, a minimum supervisory fee should be established.

(8) As only limited data will be available regarding the activity of a trade repository in the year in which it is registered, the initial annual supervisory fee should be calculated on the basis of the registration fee and the supervisory effort ESMA has put into supervising that trade repository that year.

(9) Trade repositories are relatively new entities that provide new regulated financial services and therefore a reliable measure of their turnover does not yet exist. Nonetheless, in order to estimate the trade repositories' turnover, several indicators should be taken into account, in particular the trade repositories' core financial revenues generated from centrally collecting and maintaining records of derivatives, excluding any revenues arising from ancillary services, the number of trades reported for a certain period and the number of trades outstanding at the end of each period. In the first year of operation of the trade repository, the supervisory fee should correspond to the supervisory effort carried out by ESMA for its supervision since the date of registration until the end of the year, on the basis of registration fees determined according to the expected total turnover level.

(10) Trade repositories registered in 2013 will not start providing reporting services before the end of 2013 and their level of activity in 2013 is likely to be almost non-existent. Therefore, their annual supervisory fee for 2014 should be calculated on the basis of their applicable turnover during the first half of 2014.

(11) In view of the nascent stage of the trade repositories industry and possible future developments, the method of calculating the turnover of trade repositories should be reviewed if necessary. The Commission should assess the appropriateness of the

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methodology for the calculation of turnover set out in this Regulation within four years of the entry into force of this Regulation.

(12) Rules should be provided for fees to be charged to third country trade repositories that apply for recognition in the Union pursuant to the relevant provisions of Regulation (EU) No 648/2012, in order to cover recognition and annual supervisory administrative costs. In this regard, ESMA's costs are based on the necessary expenditure relating to the recognition of such third country trade repositories pursuant to Article 77(2) of that Regulation, the conclusion of cooperation arrangements with the competent authorities of the third country where the applicant trade repository is registered pursuant to Article 75(3) of that Regulation, and the supervision of recognised trade repositories. The costs associated with the conclusion of cooperation arrangements will be shared among the trade repositories recognised from the same third country.

(13) The supervisory functions exercised by ESMA in respect of recognised third country trade repositories mainly relate to the implementation of cooperation arrangements, including the effective exchange of data between relevant authorities. The cost of providing those functions should be covered by supervisory fees charged to recognised trade repositories. As those costs will be much lower than the costs incurred by ESMA for providing direct supervision of registered trade repositories in the Union, the supervisory fees for recognised trade repositories should be significantly lower than the minimum supervisory fee charged to registered trade repositories directly supervised by ESMA.

(14) In view of possible future developments, it is appropriate that the methodology for the calculation of the applicable turnover, as well as the level of registration, recognition and supervision fees be reviewed and updated when necessary.

(15) National competent authorities incur costs when carrying out work pursuant to Regulation (EU) No 648/2012 and, in particular as a result of any delegation of tasks in accordance with Article 74 of Regulation (EU) No 648/2012. The fees charged by ESMA to trade repositories should also cover those costs. In order to avoid competent authorities incurring a loss or profit from carrying out delegated tasks or from assisting ESMA, ESMA should reimburse only the actual costs incurred by that national competent authority.

(16) This Regulation should form the basis for ESMA's right to charge fees to trade repositories. In order to immediately facilitate effective and efficient supervisory and enforcement activity, it should enter into force on the third day following that of its publication,

HAS ADOPTED THIS REGULATION:

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CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation lays down rules on the fees that the European Securities and Markets Authority (ESMA) shall charge trade repositories for their registration, supervision and recognition.

Article 2

Recovery of supervisory costs in full

The fees charged to trade repositories shall cover:

(a) all costs relating to the registration and supervision of trade repositories by ESMA in accordance with Regulation (EU) No 648/2012, including those costs resulting from the recognition of trade repositories;

(b) all costs for the reimbursement of competent authorities that have carried out work pursuant to Regulation (EU) No 648/2012, in particular as a result of any delegation of tasks in accordance with Article 74 of Regulation (EU) No 648/2012.

Article 3

Applicable turnover

1 The applicable turnover of a trade repository for a given financial year (n) shall be the sum of one third of each of the following:

a the revenues generated from the core functions of centrally collecting and maintaining records of derivatives of the trade repository on the basis of the audited accounts of the previous year (n-1), divided by the total revenues generated from the core functions of centrally collecting and maintaining records of derivatives of all registered trade repositories during the previous year (n-1);

b the number of trades reported to the trade repository during the previous year (n-1), divided by the total number of trades reported to all registered trade repositories during the previous year (n-1);

c the number of recorded outstanding trades on 31 December of the previous year (n-1), divided by the total number of recorded outstanding trades on 31 December of the previous year (n-1) in all registered trade repositories.

The applicable turnover of a given trade repository (‘TRi’ in the formula below) as referred to in the first subparagraph shall be calculated as follows:

$$\frac{1}{3} \times \frac{\text{Core Revenues TRi}}{\sum \text{Core Revenues all TR}} + \frac{1}{3} \times \frac{\text{Trades reported to TRi}}{\sum \text{Trades reported to all TR}} + \frac{1}{3} \times \frac{\text{Outstanding Trades at TRi}}{\sum \text{Outstanding Trades at all TR}}$$

2 Where the trade repository did not operate during the full year (n-1), the applicable turnover shall be estimated according to the formula set out in paragraph 1 by extrapolating for the trade repository, and for each of the elements referred to in points (a), (b) and (c) of

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paragraph 1, the values calculated for the number of months during which the trade repository operated in year (n-1) to the whole year (n-1).

Article 4

Adjustment of fees

1 Fees charged to trade repositories shall be set at a level such as to avoid a significant accumulation of deficit or surplus.

Where there is a recurrent significant surplus or deficit, the Commission shall revise the level of fees.

2 Where the fees charged to trade repositories in year (n) are insufficient to cover ESMA's total necessary expenditure for registration, supervision and recognition of trade repositories, ESMA shall increase in year (n+1) the supervisory fees to be charged to the trade repositories that were registered during the full year (n) and are still registered in year (n+1) by the necessary amount.

3 The adjustment of fees for deficits covered by paragraph 2 shall be calculated for each individual trade repository in proportion to its applicable turnover in year (n).

CHAPTER II

FEES

Article 5

Types of fees

1 Trade repositories established in the Union that apply for registration in accordance with Article 55(1) of Regulation (EU) No 648/2012 shall be charged the following types of fees:

a registration fees according to Article 6;

b annual supervisory fees according to Article 7.

2 Trade repositories established in third countries that apply for recognition in accordance with Article 77(1) of Regulation (EU) No 648/2012 shall be charged the following types of fees:

a recognition fees according to Article 8(1);

b annual supervisory fees for recognised trade repositories according to Article 8(2).

Article 6

Registration fee

1 The registration fee to be paid by individual applicant trade repositories shall be calculated according to the supervisory effort necessary for the assessment and examination of the application, as well as the expected total turnover of the trade repository as specified in paragraphs 2 to 6.