***Changes to legislation:*** *There are outstanding changes not yet made to Commission Delegated Regulation (EU) No 151/2013. 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 2013 No. 151 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) No 151/2013 of 19 December 2012 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 data to be published and made available by trade repositories and operational standards for aggregating, comparing and accessing the data (Text with EEA relevance)

## COMMISSION DELEGATED REGULATION (EU) No 151/2013

## of 19 December 2012

## 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 data to be published and made available by trade repositories and operational standards for aggregating, comparing and accessing the data

## (Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the opinion of the European Central Bank[(1)],

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[(2)], and in particular Article 81(5) thereof,

Whereas:

(1) It is essential to clearly identify relevant contracts and their respective counterparties. Following a functional approach, entities accessing data held by trade repositories should be considered according to the competences they have and the functions they perform.

(2) The European Securities and Markets Authority (ESMA) should have access to all the transaction level data held by trade repositories, for the purpose of trade repository supervision, to be able to make information requests, take appropriate supervisory measures and also monitor whether registration as a trade repository should be kept or withdrawn.

(3) Given its responsibilities under 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)[(3)] and Regulation (EU) No 648/2012, ESMA should be given access on different mandates. The access to data by individual staff members of ESMA should be in line with each of those specific mandates.

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(4) The European Systemic Risk Board (ESRB), ESMA and the relevant members of the European System of Central Banks (ESCB), including some national central banks and relevant Union securities and markets authorities, have a mandate for monitoring and preserving financial stability in the Union, and should therefore have access to transaction data for all counterparties for the purpose of their respective tasks in that regard.

(5) Supervisors and overseers of central counterparties (CCPs) need access to enable the effective exercise of their duties over of such entities, and should therefore have access to all the information necessary for such mandate.

(6) Access by the relevant ESCB members serves to fulfil their basic tasks, most notably the functions of a central bank of issue, their financial stability mandate, and in some cases prudential supervision over some counterparties. Since certain ESCB members have different mandates under national legislation, they should be granted access to data in accordance to the different mandates listed in Article 81(3) of Regulation (EU) No 648/2012.

(7) The relevant Union securities and market authorities have as a main duty investor protection in their respective jurisdictions and should be granted access to transaction data on markets, participants, products and underlyings covered under by their surveillance and enforcement mandates.

(8) The authorities appointed under Article 4 of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids[(4)] should be granted access to the transactions in equity derivatives where the underlying is either admitted to trading on a regulated market in their jurisdiction, has their legal address within their jurisdiction or is an offeror for a company for such an undertaking and the consideration it offers includes securities.

(9) The Agency for the Cooperation of Energy Regulators (ACER) should be granted access for the purpose of monitoring wholesale energy markets in order to detect and deter market abuse in cooperation with national regulatory authorities, and the monitoring of wholesale energy markets to detect and deter market abuse under Regulation (EU) No 1227/2011 the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (REMIT)[(5)]. ACER should therefore have access to all data held by a trade repository as regards energy derivatives.

(10) Regulation (EU) No 648/2012 only covers trade data and not pre-trade data such as orders to trade as required under Regulation (EU) No 1227/2011. Therefore, trade repositories should not be regarded as the appropriate source of information to ACER in that regard.

(11) Under a functional approach for accessing data held by trade repositories, prudential supervision is an essential component. Similarly, different authorities might have a prudential supervisory mandate. Therefore, access to the transaction data on the relevant entities should be ensured to all authorities listed under Article 81(3) of Regulation (EU) No 648/2012.

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(12) Entities accessing trade repository data under Article 81(3) of Regulation (EU) No 648/2012 should ensure that they keep and enforce policies in order to ensure that only the relevant persons access the information for a well-defined and legally founded purpose, also being clear on the possible other persons authorised to access such data.

(13) The access to data should be considered within three aggregation levels. Transaction data should include individual trade details; position data should regard aggregate position data by underlying/product for individual counterparties; and aggregate notional data should correspond to overall positions by underlying/product with no counterparty details. Access to transaction data would also grant access to position level and aggregate data. Access to position data would also grant access to aggregate data, but not transaction level data. Conversely, access to aggregate notional data should be the less granular category and should not enable access to position or transaction level data.

(14) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority to the Commission.

(15) In accordance with Article 10 of Regulation (EU) No 1095/2010, ESMA has consulted the relevant authorities and the members of the European System of Central Banks (ESCB) before submitting the draft regulatory technical standards on which this Regulation is based. ESMA has also 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 that Regulation,

HAS ADOPTED THIS REGULATION:

*Article 1*

**Publication of aggregate data**

1 Trade repositories shall publish data provided for in Article 81(1) of Regulation (EU) No 648/2012, including at least:

a a breakdown of the aggregate open positions per derivative class as follows:

(i) commodities;

(ii) credit;

(iii) foreign exchange;

(iv) equity;

(v) interest rate;

(vi) other;

b a breakdown of aggregate transaction volumes per derivative class as follows:

(i) commodities;

(ii) credit;

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(iii) foreign exchange;

(iv) equity;

(v) interest rate;

(vi) other;

c a breakdown of aggregate values per derivative class, as follows:

(i) commodities;

(ii) credit;

(iii) foreign exchange;

(iv) equity;

(v) interest rate;

(vi) other.

2 The data shall be published on a website or an online portal which is easily accessible by the public and updated at least weekly.

## *I[F1] 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[(6)], 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.

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5 A trade repository shall provide the Authority for the Cooperation of Energy Regulators (ACER) with access to all transaction data on derivatives where the underlying is an energy.

6 A trade repository shall provide an authority supervising trading venues with access to all transaction data for derivatives executed on those trading venues.

7 A trade repository shall provide a supervisory authority designated pursuant to Article 4 of Directive 2004/25/EC with access to all transaction data on derivatives where the underlying 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 as referred to in points (a) and (b) and the consideration it offers includes securities.

8 A trade repository shall provide an authority referred to in Article 81(3)(j) of Regulation (EU) No 648/2012 with access to all transaction data on derivatives for markets, contracts, underlyings, benchmarks and counterparties that fall under the supervisory responsibilities and mandates of that authority.

9 A trade repository shall provide a member of the ESCB whose Member State's currency is the euro with access to:

a all transaction data on derivatives where the reference entity of the derivative is established within the Member State of that ESCB member or within a Member State whose currency is the euro and falls within the scope of the member according to that member's supervisory responsibilities and mandates, or where the reference obligation is sovereign debt of the Member State of that ESCB member or of a Member State whose currency is the euro;

b position data for derivatives contracts in euro.

10 A trade repository shall provide an authority listed in Article 81(3) of Regulation (EU) No 648/2012 that monitors systemic risks to financial stability and whose Member State's currency is the euro, with access to all transaction data on derivatives concluded on trading venues or by CCPs and counterparties that fall under the responsibilities and mandates of that authority when monitoring systemic risks to financial stability in the euro area.

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

a all transaction level data on derivatives where the reference entity of the derivative is established within the Member State of that ESCB member and falls within the scope of the member according to that member's supervisory responsibilities and mandates, or where the reference obligation is sovereign debt of the Member State of that ESCB member;

b position data for derivatives in the currency issued by that member of the ESCB.

12 A trade repository shall provide an authority listed in Article 81(3) of Regulation (EU) No 648/2012 that monitors systemic risks to financial stability and whose Member State's currency is not the euro, with access to all transaction data on derivatives concluded on trading venues or by CCPs and counterparties that fall under the responsibilities and mandates of