Changes to legislation: *There are outstanding changes not yet made to Commission Delegated Regulation (EU) No 150/2013. 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. 150 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 150/2013 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 details of the application for registration as a trade repository (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) No 150/2013

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 details of the application for 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 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 56(3) 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 as a trade repository.

(2) Any person applying for registration as a trade repository should provide 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 adequate.

(3) ESMA, as established by 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)], is responsible for the registration and supervision of trade repositories under Title VI of Regulation (EU) No 648/2012. For the purpose of enabling ESMA to assess the good repute, as well as the experience and skills of the prospective trade repository senior management, an applicant trade repository should provide the relevant information to perform such an assessment.

(4) The applicant trade repository should provide information to ESMA to demonstrate that it has the necessary financial resources at its disposal for the performance of its functions on an on-going basis and adequate business continuity arrangements.

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(5) Although when a trade repository operates through branches, these are not 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 considered to be robust and enough to identify, evaluate and manage the branches' risks in an appropriate manner.

(6) It is important for an applicant to provide ESMA with information on ancillary services, or other business lines that the trade repository offers outside its core activity of derivatives reporting, particularly as regards its central core activity of regulatory reporting.

(7) In order for ESMA to assess the continuity and orderly function of an applicant trade repository's technological systems, that applicant should provide ESMA with descriptions of those relevant technological systems and how they are managed. The applicant should also describe any outsourcing arrangements that are relevant for its services.

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

(9) Given that market participants and regulators rely on the data maintained by trade repositories, strict operational and record-keeping requirements should be clearly distinguishable in a trade repository's application for registration.

(10) The risk management models associated with the services provided by a trade repository are a necessary item in its application for registration so as to enable market participants to make an informed choice.

(11) In order to secure full access to the trade repository, third party service providers are granted non-discriminatory access to information maintained by the trade repository, on the condition that the entity providing the data and the relevant counterparties have provided their consent. An applicant trade repository should therefore provide ESMA with information about its access policies and procedures.

(12) In order to carry out its authorisation duties effectively, ESMA should receive all information from trade repositories, related third parties and third parties to whom the trade repositories have outsourced operational functions and activities. Such information is necessary to assess or complete the assessment of the application for registration and the documentation therein.

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

(14) In accordance with Article 10 of Regulation (EU) No 1095/2010, ESMA has conducted open public consultations on the draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the ESMA Securities

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and Markets Stakeholder Group established in accordance with Article 37 of that Regulation,

HAS ADOPTED THIS REGULATION:

CHAPTER 1

REGISTRATION

SECTION 1

General

Article 1

Identification, legal status and class of derivatives

1 An application for registration as a trade repository shall identify the applicant and the activities it intends to carry out which require it to be registered as a trade repository.

[[F1]2 The application for registration as a trade repository shall in particular 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 classes of derivatives 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 of the applicant, 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;

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.**]**

3 Upon request by ESMA, the applicants shall also send to it 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 Articles

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56 to 59 of Regulation (EU) No 648/2012 and for ESMA to duly interpret and analyse the documentation to be submitted or already submitted.

4 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.

Textual Amendments

F1 Substituted by Commission Delegated Regulation (EU) 2019/362 of 13 December 2018 amending Delegated Regulation (EU) No 150/2013 as regards regulatory technical standards specifying the details of the application for registration as a trade repository (Text with EEA relevance).

[F1 *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 includes 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 will be 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.]

Textual Amendments

F1 Substituted by Commission Delegated Regulation (EU) 2019/362 of 13 December 2018 amending Delegated Regulation (EU) No 150/2013 as regards regulatory technical standards specifying the details of the application for registration as a trade repository (Text with EEA relevance).

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SECTION 2

Ownership

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 applicants capital or of its voting rights or whose holding makes it possible to exercise a significant influence over the applicants 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.

[[F1]2 Where the applicant has a parent undertaking, it shall:

a identify the legal address of that parent undertaking;

b indicate whether the parent undertaking is authorised or registered and subject to supervision, and when this is the case, state any reference number and the name of the responsible supervisory authority.**]**

Textual Amendments

F1 Substituted by Commission Delegated Regulation (EU) 2019/362 of 13 December 2018 amending Delegated Regulation (EU) No 150/2013 as regards regulatory technical standards specifying the details of the application for registration as a trade repository (Text with EEA relevance).

Article 4

Ownership chart

1 An application for registration as a trade repository shall contain a chart showing the ownership links between the parent undertaking, subsidiaries and any other associated entities or branches.

2 The undertakings shown in the chart referred to in paragraph 1 shall be identified by their full name, legal status and legal address.