Commission Delegated Regulation (EU) 2020/1230 of 29 November 2019 supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the application for registration of a securitisation repository and the details of the simplified application for an extension of registration of a trade repository (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2020/1230

of 29 November 2019

supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the application for registration of a securitisation repository and the details of the simplified application for an extension of registration of 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) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012[(1)], and in particular the third subparagraph of Article 10(7) thereof insofar as it relates to points (b) and (c) of the first subparagraph of that paragraph,

Whereas:

(1) Article 7(2) of Regulation (EU) 2017/2402 requires the information for a securitisation transaction to be made available by means of a securitisation repository or, where no such repository is registered in accordance with Article 10 of that Regulation, by means of a website meeting certain requirements. Article 10 of Regulation (EU) 2017/2402 sets out the conditions and procedure for the registration of securitisation repositories, including the requirement to submit either an application for registration or, in the case of trade repositories already registered under Chapter 1 of Title VI of Regulation (EU) No 648/2012 of the European Parliament and of the Council[(2)] or under Chapter III of Regulation (EU) 2015/2365 of the European Parliament and of the Council[(3)], an application for extension of registration for the purposes of Article 7 of Regulation (EU) 2017/2402.

(2) In order to minimise additional operational costs for market participants, the rules for the registration of securitisation repositories, including the rules for registration by means of an extension of registration for the purposes of Article 7 of Regulation (EU) 2017/2402, should build on existing infrastructures, operational processes and formats introduced in connection with the reporting of securities financing transactions

Changes to legislation: *There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2020/1230. (See end of Document for details)*

and derivative contracts. The rules on registration should, however, also reflect the specificities of securitisations, including complexities associated with hosting securitisation data and documentation and should reflect recent market developments, such as the common use of Legal Entity Identifiers, which improves the organisation and classification of information on legal entities to be provided in the application. For clarity and ease of reference for applicants, it is also desirable for the rules on registration to follow the order of the relevant requirements in Regulation (EU) 2017/2402.

(3) Securitisations are highly complex instruments involving many different types of information, including information on the features of underlying exposures, information on their cash flows, information on the structure of the securitisation and information on the legal and operational arrangements entered into with third parties. It is therefore important that a prospective securitisation repository is able to demonstrate sufficient knowledge and working experience with securitisations, and the capacity to receive, process and make available the relevant information set out in Regulation (EU) 2017/2402. Prospective securitisation repositories should also be able to demonstrate that their staff, systems, controls and procedures are adequate for ensuring compliance with the requirements set out in Regulation (EU) 2017/2402.

(4) Securitisation repositories may provide services, referred to as 'ancillary securitisation services', which are directly related to and arise from the delivery of services for which registration as a securitisation repository is required under Regulation (EU) 2017/2402 (referred to as 'core securitisation services'). For example, securitisation repositories may provide research or consultancy services to a prospective securitisation issuer which make use of the securitisation data available to the securitisation repository. Securitisation repositories may also provide ancillary services that are neither directly related to, nor arise from the delivery of core securitisation services (ancillary non-securitisation services). However, the use of common resources within a securitisation repository for the provision of both core securitisation services and ancillary securitisation services, or indeed ancillary non-securitisation services, could lead to contagion of operational risks across those services. Services involving the validation, reconciliation, processing or record-keeping of information may therefore require an effective means of operational separation in order to avoid such contagion. On the other hand, practices such as common front-end systems, a common access point to information or use of the same staff working in sales, compliance or a client services helpdesk may be considered less prone to contagion and hence will not necessarily require operational separation. Applicants for registration as a securitisation repository should therefore be required to demonstrate that they have established an appropriate level of operational separation between the resources, systems and procedures used in those business lines that are involved in the provision of core securitisation services and the resources, systems and procedures used in other business lines involved in the provision of ancillary services, regardless of whether those other business lines are run by the securitisation repository, an affiliated entity, or another entity.

(5) Article 10(5) of Regulation (EU) 2017/2402 envisages a simplified application for an extension of registration, where trade repositories registered under Regulation (EU)

No 648/2012 or under Regulation (EU) 2015/2365 apply for their existing registration as a trade repository to be extended for the purposes of Article 7 of Regulation (EU) 2017/2402. Therefore, to avoid any duplication of requirements, the information to be provided by a trade repository applying for an extension of registration should be confined to details about the adaptations necessary to ensure compliance with Regulation (EU) 2017/2402.

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

(7) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[(4)], ESMA has conducted an open public consultation on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of that Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

For the purposes of this Regulation, the following definitions shall apply:

(1) ‘user’, in relation to a securitisation repository, means any of the following:

(a) any entity listed in Article 17(1) of Regulation (EU) 2017/2402;

(b) any reporting entity in relation to that securitisation repository;

(c) any other client of the securitisation repository who uses core securitisation services provided by the securitisation repository;

(2) ‘reporting entity’ means the entity designated in accordance with the first subparagraph of Article 7(2) of Regulation (EU) 2017/2402;

(3) ‘core securitisation services’ means services for which registration as a securitisation repository is required under Regulation (EU) 2017/2402;

(4) ‘ancillary securitisation services’ means services provided by a securitisation repository that are directly related to and arise from the delivery of core securitisation services provided by that securitisation repository;

(5) ‘ancillary non-securitisation services’ means services that are neither core securitisation services nor ancillary securitisation services;

(6) the following expressions have the meaning given to that expression in Article 2 of Regulation (EU) No 648/2012:

(a) ‘group’;

(b) ‘parent undertaking’;

(c) ‘subsidiary’;

(d) ‘capital’;

(e) 'close links';

(f) 'board';

(7) 'senior management' means the person or persons who effectively direct the business of the securitisation repository, and the executive member or members of its board.

Article 2

Identification, legal status and type of securitisation

1 An application for registration as a securitisation repository shall identify the applicant and the activities that the applicant intends to carry out for which registration as a securitisation repository is required.

2 For the purposes of paragraph 1, the application shall in particular contain the following:

a the corporate name of the applicant, its legal address within the Union and the corporate name and legal address of any subsidiaries and branches of the applicant;

b the applicant's legal entity identifier (LEI) registered with the Global Legal Entity Identifier Foundation;

c the uniform resource locator (URL) of the applicant's website;

d an excerpt from the relevant commercial or court register showing the place of incorporation and scope of business activity of the applicant, or some other form of certified evidence of the place of incorporation and scope of business activity of the applicant, valid in either case as at the date of the application for registration as a securitisation repository;

e the securitisation types (ABCP transaction or non-ABCP transaction), risk transfer methods (traditional securitisation or synthetic securitisation) and underlying exposure types (residential real estate, commercial real estate, corporate, leasing, consumer, automobile, credit card, esoteric) for which the applicant wishes to be registered;

f whether the applicant is authorised or registered by a competent authority in the Member State where it is established and, if so, the name of the competent authority and any reference number related to the authorisation or registration;

g the articles of incorporation or equivalent terms of establishment and, where relevant, other statutory documentation stating that the applicant is to conduct core securitisation services;

h the name and contact details of the person(s) responsible for compliance, or any other staff involved in compliance assessments for the applicant, in relation to its provision of core securitisation services;

i the name and contact details of the contact person for the purposes of the application;

j the programme of operations, including the location of the main business activities of the applicant;

k any ancillary securitisation or ancillary non-securitisation service that the applicant provides or intends to provide;

l 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 securitisation repository costs.

3 Upon request, the applicant shall provide ESMA with additional information during the examination of the application for registration where such information is needed for the assessment of the applicant's ability to comply with the applicable requirements of Regulation (EU) 2017/2402 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 explain why that requirement does not apply.

Article 3

Organisational chart

1 An application for registration as a securitisation repository shall contain a chart detailing the organisational structure of the applicant, including that of any ancillary securitisation services and of any ancillary non-securitisation services.

2 The chart referred to in paragraph 1 chart shall include information about the identity of the person responsible for each significant role, including the identity of each member of its senior management and of persons who effectively direct the business of any subsidiaries and branches.

Article 4

Corporate governance

1 An application for registration as a securitisation repository shall contain information regarding the applicant's internal corporate governance policies and the procedures and terms of reference which govern its senior management, including the board, its non-executive members and, where established, committees.

2 The information referred to in paragraph 1 shall describe the selection process, appointment, performance evaluation and removal of senior management.

3 Where the applicant adheres to a recognised corporate governance code of conduct, the application for registration as a securitisation repository shall identify the code and provide an explanation for any situations where the applicant deviates from that code.

Article 5

Internal control

1 An application for registration as a securitisation repository shall contain detailed information about the internal control system of the applicant, including information regarding its compliance function, risk assessment, internal control mechanisms and the arrangements of its internal audit function.

2 The detailed information referred to in paragraph 1 shall contain:

a the applicant's internal control policies and the procedures to ensure the consistent and effective implementation of those policies;

b any policies, procedures and manuals for monitoring and evaluating the adequacy and effectiveness of the applicant's systems;