

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.
- (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.

⁽¹⁾ Not yet published in the Official Journal.⁽²⁾ OJ L 201, 27.7.2012, p. 1.⁽³⁾ OJ L 331, 15.12.2010, p. 84.

- (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 and Markets Stakeholder Group established in accordance with Article 37 of that Regulation,
- (f) the name and contact details of the person(s) responsible for compliance, or any other staff involved in compliance assessments for the applicant;
- (g) the programme of operations, including indications of the location of the main business activities;
- (h) the identification of any subsidiaries and, where relevant, the group structure;
- (i) any service, other than the trade repository function, that the applicant intends to provide;
- (j) 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.

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.
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) the articles of incorporation and, where relevant, other statutory documentation stating that the applicant is to conduct trade repository services;
 - (e) the minutes from the meeting where the board approved the application;

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 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.

Article 2

Policies and procedures

Where information regarding policies or procedures is to be provided, an applicant shall ensure that the policies or procedures contain or are accompanied by each of the following items:

- (a) an indication of the person responsible for the approval and maintenance of the policies and procedures;
- (b) a description of how compliance with the policies and procedures will be ensured and monitored, and the person responsible for compliance in that regard;
- (c) a description of the measures to adopt in the event of a breach of policies and procedures;
- (d) 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.

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.

2. Where the applicant has a parent undertaking, it shall:

- (a) identify the legal address;
- (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.

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.

SECTION 3

Organisational structure, governance and compliance

Article 5

Organisational chart

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

2. That chart shall include information about the identity of the person responsible for each significant role, including senior management and persons who direct the activities of any branches.

Article 6

Corporate governance

1. An application for registration as a trade 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. That information shall include a description of the selection process, appointment, performance evaluation and removal of senior management and members of the board.

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

Article 7

Internal controls

1. An application for registration as a trade repository shall contain an overview of the internal controls of the applicant. This shall include information regarding its compliance function, review function, risk assessment, internal control mechanisms and arrangements of its internal audit function.

2. The overview shall include information on the following matters:

- (a) the applicants' internal control policies and procedures;
- (b) the monitoring and evaluation of the adequacy and effectiveness of the applicant's systems;
- (c) the control and safeguard for the applicant's information processing systems;
- (d) the internal bodies in charge of the evaluation of the findings.

3. An application for registration as a trade repository shall contain the following information with respect to the applicant's internal audit function:

- (a) an explanation of how its internal audit methodology is developed and applied taking into account the nature of the applicant's activities, complexities and risks;
- (b) a work plan for three years following the date of application.

*Article 8***Regulatory compliance**

An application for registration as a trade repository shall contain the following information regarding an applicant's policies and procedures for ensuring compliance with Regulation (EU) No 648/2012:

- (a) a description of the roles of the persons responsible for compliance and of any other staff involved in the compliance assessments, including how the independence of the compliance function from the rest of the business will be ensured;
- (b) the internal policies and procedures designed to ensure that the applicant, including its managers and employees, comply with all the provisions of Regulation (EU) No 648/2012, including a description of the role of the board and senior management;
- (c) where available, the most recent internal report prepared by the persons responsible for compliance or any other staff involved in compliance assessments within the applicant.

*Article 9***Senior management and members of the board**

1. An application for registration as a trade repository shall contain the following information in respect of each member of the senior management and each member of the board:

- (a) a copy of the curriculum vitae in order to enable the assessment on the adequate experience and knowledge to adequately perform their responsibilities;
- (b) details regarding any criminal convictions in connection with the provision of financial or data services or in relation to acts of fraud or embezzlement, notably via an official certificate if available within the relevant Member State;
- (c) a self-declaration of good repute in relation to the provision of a financial or data service, where each member of the senior management and the board states whether they:
 - (i) have been convicted of any criminal offence in connection with the provision of financial or data services or in relation to acts of fraud or embezzlement;
 - (ii) have been subject to an adverse decision in any proceedings of a disciplinary nature brought by a regulatory authority or government bodies or agencies or are the subject of any such proceedings which are not concluded;

- (iii) have been subject to an adverse judicial finding in civil proceedings before a court in connection with the provision of financial or data services, or for impropriety or fraud in the management of a business;
 - (iv) have been part of the board or senior management of an undertaking whose registration or authorisation was withdrawn by a regulatory body;
 - (v) have been refused the right to carry on activities which require registration or authorisation by a regulatory body;
 - (vi) have been part of the board or senior management of an undertaking which has gone into insolvency or liquidation while this person was connected to the undertaking or within a year of the person ceasing to be connected to the undertaking;
 - (vii) have been part of the board or senior management of an undertaking which was subject to an adverse decision or penalty by a regulatory body;
 - (viii) have been otherwise fined, suspended, disqualified, or been subject to any other sanction in relation to fraud, embezzlement or in connection with the provision of financial or data services, by a government, regulatory or professional body;
 - (ix) have been disqualified from acting as a director, disqualified from acting in any managerial capacity, dismissed from employment or other appointment in an undertaking as a consequence of misconduct or malpractice;
- (d) a declaration of any potential conflicts of interests that the senior management and the members of the board may have in performing their duties and how these conflicts are managed.

2. Any information received by ESMA under paragraph 1 shall only be used for the purpose of registration and compliance at all times with the conditions for registration of the applicant trade repository.

SECTION 4

Staffing and remuneration*Article 10***Staffing policies and procedures**

An application for registration as a trade repository shall contain the following policies and procedures:

- (a) a copy of the remuneration policy for the senior management, board members and the staff employed in risk and control functions of the applicant;

(b) a description of the measures put in place by the applicant to mitigate the risk of over-reliance on any individual employees.

Article 11

Fitness and properness

An application for registration as a trade repository shall contain the following information about the applicant's staff:

- (a) a general list of the staff employed including their role and qualifications per role;
- (b) a specific description of the information technology staff employed for providing the trade repository services including their role and qualifications of each individual;
- (c) a description of the roles and qualifications of each individual who is responsible for internal audit, internal controls, compliance, risk assessment and internal review;
- (d) the identification of the dedicated staff members and those members of the staff that are operating under an outsourcing arrangement;
- (e) details regarding the training and development relevant to the trade repository business, including any examination or other type of formal assessment required for staff regarding the conduct of trade repository activities.

SECTION 5

Financial resources for the performance of the trade repository

Article 12

Financial reports and business plans

1. An application for registration as a trade repository shall contain the following financial and business information about the applicant:

- (a) a complete set of financial statements, prepared in conformity with international standards adopted in accordance with Article 3 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards ⁽¹⁾;
- (b) where the financial statements of the applicant are subject to statutory audit within the meaning given in Article 2(1) of the Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts ⁽²⁾, the financial reports shall include the audit report on the annual and consolidated financial statements;

⁽¹⁾ OJ L 243, 11.9.2002, p. 1.

⁽²⁾ OJ L 157, 9.6.2006, p. 87.

(c) if the applicant is audited, the name and the national registration number of the external auditor;

(d) a financial business plan contemplating different business scenarios for the trade repository services, over a minimum three years reference period.

2. Where historical financial information referred to in paragraph 1 is not available, an application for registration as a trade repository shall contain the following information about the applicant:

- (a) the pro-forma statement demonstrating proper resources and expected business status in six months after registration is granted;
- (b) an interim financial report where the financial statements are not yet available for the requested period of time;
- (c) a statement of financial position, such as a balance sheet, income statement, changes in equity and of cash flows and notes comprising a summary of accounting policies and other explanatory notes.

3. An application for registration as a trade repository shall contain the audited annual financial statements of any parent undertaking for the three financial years preceding the date of the application.

4. An application for registration as a trade repository shall also contain the following financial information about the applicant:

- (a) an indication of future plans for the establishment of subsidiaries and their location;
- (b) a description of the business activities which the applicant plans to carry out, specifying the activities of any subsidiaries or branches.

SECTION 6

Conflicts of interest

Article 13

Management of conflicts of interest

An application for registration as a trade repository shall contain the following information on the policies and procedures to manage conflicts of interest put in place by the applicant:

- (a) policies and procedures with respect to the identification, management and disclosure of conflicts of interest and a description of the process used to ensure that the relevant persons are aware of the policies and procedures;

(b) any other measures and controls put in place to ensure the requirements referred to in point (a) on conflicts of interest management are met.

Article 14

Confidentiality

1. An application for registration as a trade repository shall contain the internal policies and mechanisms preventing any use of information stored in the prospective trade repository:

- (a) for illegitimate purposes;
- (b) for disclosure of confidential information;
- (c) not permitted for commercial use.

2. The latter shall include a description of the internal procedures on the staff permissions for using passwords to access the data, specifying the staff purpose, the scope of data being viewed and any restrictions on the use of data.

3. Applicants shall provide ESMA with information on the processes to keep a log identifying each staff member accessing the data, the time of access, the nature of data accessed and the purpose.

Article 15

Inventory and mitigation of conflicts of interest

1. An application for registration as a trade repository shall contain an up-to-date inventory, at the time of the application, of existing material conflicts of interest in relation to any ancillary or other related services provided by the applicant and a description of how these are being managed.

2. Where an applicant is part of a group, the inventory shall include any material conflicts of interest arising from other undertakings within the group and how these conflicts are being managed.

SECTION 7

Resources and procedures

Article 16

Information Technology resources and outsourcing

An application for registration as a trade repository shall contain a description of the following matters:

- (a) the systems and user facilities developed by the applicant in order to provide services to the clients, including a copy of any user manual and internal procedures;

(b) the investment and renewal policies on information technology resources of the applicant;

(c) outsourcing arrangements entered into by the applicant, together with the methods employed to monitor the service level of the outsourced functions and a copy of the contracts governing such arrangements.

Article 17

Ancillary services

Where an applicant, an undertaking within its group, or an undertaking with which the applicant has a material agreement relating to trading or post-trading service offers, or plans to offer any ancillary services, its application for registration as a trade repository shall contain a description of:

- (a) the ancillary services that the applicant, or its parent group, performs and a description of any agreement that the trade repository may have with companies offering trading, post-trading, or other related services, as well as copies of such agreements;
- (b) the procedures and policies that will ensure the operational separation between the applicant's trade repository services and other business lines, including in the case that a separate business line is run by the trade repository, a company belonging to its holding company, or any other company within which it has a material agreement in the context of the trading or post-trading chain or business line.

SECTION 8

Access rules

Article 18

Transparency about access rules

An application for registration as a trade repository shall contain:

- (a) the access policies and procedures pursuant to which users access data in a trade repository including any process by which users may need to amend or modify registered contracts;
- (b) a copy of the terms and conditions which determine the user's rights and obligations;
- (c) a description of the different categories of access available to users if more than one;
- (d) the access policies and procedures pursuant to which other services providers may have non-discriminatory access to information maintained by the trade repository where the relevant counterparties have provided their consent.

*Article 19***Transparency about compliance arrangements and accuracy of data**

An application for registration as a trade repository shall contain the procedures put in place by the applicant in order to verify:

- (a) the compliance of the reporting counterparty or submitting entity with the reporting requirements;
- (b) the correctness of the information reported;
- (c) that data can be reconciled between trade repositories if counterparties report to different trade repositories.

*Article 20***Pricing policy transparency**

An application for registration as a trade repository shall contain a description of the applicant's:

- (a) pricing policy, including any existing discounts and rebates and conditions to benefit from such reductions;
- (b) fee structure for providing any ancillary services including the estimated cost of the trade repository services and ancillary services, along with the details of the methods used to account the separate cost that the applicant may incur when providing trade repository services and ancillary services;
- (c) methods used in order to make the information available for clients, notably reporting entities, and prospective clients, including a copy of the fee structure where trade repository services and ancillary services shall be unbundled.

*SECTION 9***Operational reliability***Article 21***Operational risk**

An application for registration as a trade repository shall contain:

- (a) a detailed description of the resources available and procedures designed to identify and mitigate operational risk and any other material risk to which the applicant is exposed to, including a copy of any relevant manuals and internal procedures;

(b) a description of the liquid net assets funded by equity to cover potential general business losses in order to continue providing services as a going concern, and an assessment of the sufficiency of its financial resources with the aim of covering the operational costs of a wind-down or reorganisation of the critical operations and services over at least a six month period;

(c) the applicant's business continuity plan and an indication of the policy for updating the plan. In particular, the plan shall include:

(i) all business processes, escalation procedures and related systems which are critical to ensuring the services of the trade repository applicant, including any relevant outsourced service and including the trade repository strategy, policy and objectives towards the continuity of these processes;

(ii) the arrangements in place with other financial market infrastructure providers including other trade repositories;

(iii) the arrangements to ensure a minimum service level of the critical functions and the expected timing of the completion of the full recovery of those processes;

(iv) the maximum acceptable recovery time for business processes and systems, having in mind the deadline for reporting to trade repositories as provided for in Article 9 of Regulation (EU) No 648/2012 and the volume of data that the trade repository needs to process within that daily period;

(v) the procedures to deal with incident logging and reviews;

(vi) testing programme and the results of any tests;

(vii) the number of alternative technical and operational sites available, their location, the resources when compared with the main site and the business continuity procedures in place in the event that alternate sites need to be used;

(viii) information on access to a secondary business site to allow staff to ensure continuity of the service if a main office location is not available;

(d) a description of the arrangements for ensuring the applicant's trade repository activities in case of disruption and the involvement of trade repository users and other third parties in them.

SECTION 10

Recordkeeping

Article 22

Recordkeeping policy

1. An application for registration as a trade repository shall contain information about the receipt and administration of data, including any policies and procedures put in place by the applicant to ensure:

- (a) a timely and accurate registration of the information reported;
- (b) that the data is maintained both online and offline;
- (c) that the data is adequately copied for business continuity purposes.

2. An application for registration as a trade repository shall contain a description of the recordkeeping systems, policies and procedures that are used in order to ensure that information is modified appropriately and that positions are calculated correctly in accordance with relevant legislative or regulatory requirements.

SECTION 11

Data availability

Article 23

Data availability mechanisms

An application for registration as a trade repository shall contain a description of the resources, methods and channels that the applicant will use to facilitate access to the information in accordance with Article 81(1), (3) and (5) of Regulation (EU) No 648/2012 on transparency and data availability, together with:

- (a) a description of the resources, methods and channels that the trade repository will employ in order to facilitate the access to the data contained therein to the public

in accordance with Article 81(1) of Regulation (EU) No 648/2012, and the frequency of updates, along with a copy of the specific manuals and internal policies;

- (b) a description of the resources, methods and facilities that the trade repository will employ in order to facilitate the access to its information to the relevant authorities in accordance with Article 81(3) of Regulation (EU) No 648/2012, the frequency of the update and the controls and verifications that the trade repository may establish for the access filtering process, along with a copy of the specific manuals and internal procedures;
- (c) a description of the resources, methods and channels that the trade repository will employ in order to facilitate the access to its information to counterparties to contracts in accordance with Article 80(5) of Regulation (EU) No 648/2012 and the frequency of updates, along with a copy of the specific manuals and internal policies.

Article 24

Verification of the accuracy and completeness of the application

1. Any information submitted to ESMA during the registration process shall be accompanied by a letter signed by a member of the board of the trade repository and of the senior management, attesting that the submitted information is accurate and complete to the best of their knowledge, as of the date of that submission.

2. The information shall also be accompanied, where relevant, with the relevant corporate legal documentation certifying the accuracy of the data.

Article 25

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 19 December 2012.

For the Commission
The President
José Manuel BARROSO