



Brussels, 13.12.2018  
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**COMMISSION DELEGATED REGULATION (EU) .../...**

**of 13.12.2018**

**supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the application for registration and extension of registration as a trade repository**

(Text with EEA relevance)

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE DELEGATED ACT**

Regulation (EU) No 2365/2015 ('the Regulation')<sup>1</sup> requires that counterparties to securities financing transactions (SFTs) report the details of any SFT they have concluded, as well as any modification or termination thereof, to a trade repository. Against this background, Article 5(7) of the Regulation empowers the Commission to adopt, following submission of draft regulatory technical standards by the European Securities and Markets Authority ('ESMA'), and in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010<sup>2</sup> establishing ESMA, a delegated Regulation specifying the details of (i) procedures to be applied by trade repositories to verify the completeness and correctness of the details reported to them, (ii) the application for registration as a trade repository and (iii) the simplified application for an extension of registration as a trade repository.

In accordance with Article 10(1) of Regulation (EU) No 1095/2010, the Commission shall decide within three months of receipt of the draft standards whether to endorse the drafts submitted. The Commission may also endorse the draft standards in part only, or with amendments, where the Union's interests so require, having regard to the specific procedure laid down in this Article.

### **2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT**

In accordance with the third subparagraph of Article 10(1) of Regulation (EU) No 1095/2010, ESMA carried out two public consultations. First, on the basis of an initial Discussion Paper (11 March – 22 April 2016) and then on a consultation paper with draft regulatory technical standards to be submitted to the Commission in accordance with Article 5(7) of the Regulation. The Consultation Paper was published on 30 September 2016 and the consultation closed on 30 November 2016.

Moreover, ESMA's Securities and Markets Stakeholder Group set up in accordance with Article 37 of Regulation (EU) No 1095/2010 was consulted on the draft technical standards.

Additionally, ESMA involved the members of the European System of Central Banks (the ESCB) in the development of the draft regulatory technical standards as required under Article 5(7) of the Regulation.

Alongside the draft regulatory technical standards under Article 5(7) of the Regulation, ESMA submitted a report on how the outcome of these consultations has been taken into account in the development of the final draft regulatory technical standards submitted to the Commission.

Together with the draft regulatory technical standards, and in accordance with the third subparagraph of Article 10(1) of Regulation (EU) No 1095/2010, ESMA has also commissioned an external analysis of the costs and benefits related to the draft regulatory technical standard submitted to the Commission under Article 5(7) of the Regulation. This

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<sup>1</sup> Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (OJ L 337, 23.12.2015, p. 1).

<sup>2</sup> 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 (OJ L 331, 15.12.2010, p. 84).

analysis is available in Annex XII to the Final Report on draft technical standards under the Regulation that can be found at:

[https://www.esma.europa.eu/sites/default/files/library/esma70-708036281-82\\_2017\\_sftr\\_final\\_report\\_and\\_cba.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-708036281-82_2017_sftr_final_report_and_cba.pdf).

### **3. LEGAL ELEMENTS OF THE DELEGATED ACT**

Article 5(7) of the Regulation provides that ESMA shall develop draft regulatory technical standards specifying the details of (i) procedures to be applied by trade repositories to verify the completeness and correctness of the details reported to them, (ii) the application for registration as a trade repository and (iii) the simplified application for an extension of registration as a trade repository. The power to adopt a delegated regulation is provided in the last subparagraph of the same Article of the Regulation.

#### **3.1. Article 1 and 2**

The delegated regulation lays down the general information to be submitted in an application for registration as a trade repository (such as identification of the applicant, its legal status and the activities it intends to carry out). It also sets out general information requirements on policies and procedures provided as part of the application. These include indications that the policies and procedures have been approved by the applicant's board and senior management, a description how policies and procedures are communicated within the applicant and applicable measures in case of a breach of the policies and procedures.

#### **3.2. Article 3 and 4**

Concerning the ownership of the trade repository, the delegated regulation specifies the information to be provided on the persons or entities owning a significant share of the applicant's capital or voting rights and on the potential parent undertaking of the applicant, where applicable, including a chart showing ownership links between the parent undertaking, subsidiaries and any other associated entities or branches.

#### **3.3. Articles 5 to 9**

The delegated regulation details the organisational information to be provided by the applicant (organisational chart and key roles) and information on its corporate governance (procedures and terms governing its board and senior management as well as a code of conduct, if applicable). It also specifies the detailed information to be provided on the internal control system of the applicant, in particular its compliance function, risk assessment, internal control mechanisms and arrangements of its internal audit function. Furthermore, the delegated regulation includes information requirements regarding the applicant's policies and procedures for ensuring compliance with Regulation (EU) No 2015/2365 (SFTR). Finally, it specifies the detailed information to be provided by the applicant on the members of its board and senior management, including their knowledge and experience on IT matters.

#### **3.4. Articles 10 and 11**

Concerning staffing and remuneration, the delegated regulation foresees for the applicant to submit its remuneration policy and a description of measures to mitigate over-reliance on any given individual. It also requires information from the applicant on a general list of staff, detailed information on IT and audit personnel, an identification of dedicated staff and staff operating under outsourcing arrangements as well as details on staff training provided by the applicant.

### **3.5. Article 12**

The delegated regulation identifies the financial reports and business plans that need to be submitted in the application as a trade repository. These requirements include complete financial statements, including an audit report and the identity of the external auditor, where applicable. Where financial statements are not yet available, applicants need to submit pro-forma statements and an interim financial report as well as a statement of financial position. Requirements also comprise a financial business plan contemplating different business scenarios over a minimum three years' reference period. Finally, applicants need to submit audited annual financial statements of any parent undertaking as well as a description of the business activities which the applicant plans to carry out, including any future plans for the establishment of subsidiaries and their location.

### **3.6. Articles 13 to 15**

As regards confidentiality, the delegated regulation stipulates that applicants need to provide information on their policies and procedures to manage conflicts of interest as well as internal policies, procedures and mechanisms preventing any illegitimate use of information maintained in the trade repository. Finally, applicants have to submit an up-to-date inventory of existing material conflicts of interest in relation to any ancillary or other related services provided by the applicant, or, where applicable, other undertakings within the group, and a description of how these are being managed.

### **3.7. Articles 16 and 17**

The delegated regulation sets out information requirements on rules and procedures. More specifically, applicants have to submit a detailed description of their IT system, the user facilities developed by the applicant in order to provide services to the relevant users as well as investment and renewal policies on IT resources. Information on outsourcing arrangements also needs to be provided, including detailed definitions of the services to be provided, service level agreements and a copy of the outsourcing contracts. Where an applicant, or an undertaking within its group, offers any ancillary services, the applicant has to provide a description of the relevant ancillary services and the procedures and policies that will ensure the adequate level of operational separation in terms of resources, systems and procedures, between the applicant's trade repository services and other business lines.

### **3.8. Articles 18 to 20**

In terms of operational transparency, the delegated regulation obliges applicants to provide (i) the policies and procedures pursuant to which the different types of users report and access the data in the trade repository, (ii) the rights and obligations of the different types of users, (iii) a description of the different categories of access, (iv) the access policies and procedures pursuant to which other services providers may have access to information maintained by the trade repository and (v) a description of the channels and mechanisms used by the trade repository to publicly disclose information on the access to the trade repository. As regards the data reported to trade repositories, applicants have to provide the procedures to authenticate the users accessing the trade repository, to verify the completeness and correctness of the data, to reconcile the data between trade repositories where counterparties report to different trade repositories and to provide feedback to the counterparties on the verifications and reconciliations performed. Finally, applicants have to describe their pricing policy, fee structure for providing any trade repository and ancillary services as well as methods used in order to make this information available for all types of users.

### **3.9. Article 21**

Concerning operational reliability, the delegated regulation sets out that applicants have to submit a detailed description of the resources and procedures designed to identify and mitigate operational risk and any other material risk, a description of the liquid net assets funded by equity to cover potential general business losses as well as and an assessment of the sufficiency of its financial resources. Furthermore, the application has to include a business continuity plan together with an indication of the policy for updating the plan as well as a description of the arrangements for ensuring the applicant's trade repository activities in case of disruption. Finally, applications must include procedures to ensure the orderly substitution of the trade repository if its registration is withdrawn or if a reporting counterparty decides to report to another trade repository, including the transfer of data and the redirection of reporting flows to the other trade repository.

### **3.10. Article 22**

As regards recordkeeping, the delegated regulation sets out which information applicants need to submit in relation to the receipt and administration of data. It also stipulates that information has to be provided on the recordkeeping systems, policies and procedures that are used in order to ensure that the data reported is modified appropriately and that positions are calculated correctly in accordance with relevant legislative or regulatory requirements.

### **3.11. Articles 23 and 24**

The delegated regulation prescribes that applications as a trade repository have to contain a description of the resources, methods and channels that the applicant will use to collect data from counterparties in a timely structured and comprehensive manner and to provide access to this data to counterparties as well as the relevant authorities. Furthermore, applications have to include a procedure to calculate aggregate positions and the resources, methods and channels used to publish these positions. The application is also required to contain a procedure under which the authorities can have direct and immediate access to the details of SFTs maintained at the trade repositories, the terms and conditions of such access as well as a procedure to ensure the integrity of the data made available to the authorities.

### **3.12. Articles 25 to 27**

The delegated regulation sets out that the application as a trade repository has to contain proof of payment for the applicable registration fees. It also specifies the information required to apply for an extension of an existing registration as a trade repository for the purposes of derivative reporting under Regulation (EU) No 648/2012 (EMIR). Finally, the delegated regulation requires 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 together with the relevant corporate legal documentation certifying the accuracy of the data.

### **3.13. Article 28**

The delegated regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

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THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012<sup>1</sup>, and in particular Article 5(7) 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 or extension of registration as a trade repository.
- (2) Establishing a comprehensive and sound framework for registration and extension of registration of trade repositories is essential for the achievement of the objectives of Regulation (EU) 2015/2365 and for the efficient provision of repository functions.
- (3) The rules and standards for the registration and the extension of registration of trade repositories for the purposes of Regulation (EU) No 2365/2015 should build on pre-existing infrastructures, operational processes and formats which were introduced with regard to reporting derivative contracts to trade repositories, in order to minimise additional operational costs for market participants.
- (4) Experience in applying the provisions of Commission Delegated Regulation (EU) No 150/2013 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<sup>2</sup> has proved that the provisions for registration of trade repositories under Regulation (EU) No 648/2012 constitute a sound basis to build the framework for registration of trade repositories under Regulation (EU) 2015/2365. In order to further strengthen that framework, this Regulation should reflect the evolving nature of the industry.
- (5) Any application for registration as a trade repository should contain 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 sufficient to ensure compliance with the requirements for trade

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<sup>1</sup> OJ L 337, 23.12.2015, p. 1.

<sup>2</sup> OJ L 52, 23.2.2013, p. 25.

repositories set out in Regulation (EU) 2015/2365. Detailed information on the relevant internal control mechanisms and structures, the internal audit function as well as the audit work plan should be included in the application for registration in order to enable ESMA to assess the way in which those factors contribute to the efficient functioning of the trade repository.

- (6) Although trade repositories which operate through branches are not considered 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 robust enough to identify, evaluate and manage the branches' risks in an effective manner.
- (7) For the purpose of enabling ESMA to assess the good repute, experience and skills of the prospective trade repository's board members and senior management, an applicant trade repository should provide relevant information on those persons such as the curricula vitae, details regarding any criminal convictions, self-declarations of good repute and declarations of any potential conflicts of interests.
- (8) Any application for registration should contain information which demonstrates that the applicant has the necessary financial resources at its disposal for the performance of its functions as a trade repository on an on-going basis and effective business continuity arrangements.
- (9) Article 5(2) of Regulation (EU) 2015/2365 requires trade repositories to verify the completeness and correctness of data reported under Article 4 thereof. In order to be registered or be granted an extension of registration under Regulation (EU) 2015/2365, trade repositories should demonstrate that they have established systems and procedures which ensure their ability to verify the completeness and correctness of the details of the securities financing transactions (SFTs).
- (10) The use of common resources within a trade repository between SFT reporting services on the one hand and ancillary services or derivative reporting services on the other may lead to contagion of operational risks across services. Whereas the validation, reconciliation, processing and recordkeeping of data may require an effective operational separation to avoid such contagion of risks, practices such as a common front-end of systems, a common access point to data for authorities or the use of the same staff working in sales, compliance, or a client services helpdesk may be less prone to contagion and hence do not necessarily require operational separation. Trade repositories should therefore establish an appropriate level of operational separation between the resources, systems or procedures used in different business lines, including where those business lines comprise the provision of services subject to other Union or third country legislation, and ensure that detailed and clear information on the ancillary services, or other business lines that the trade repository offers outside its core activity of repository services under Regulation (EU) 2015/2365, is provided to ESMA in the application for registration or extension of registration.
- (11) The soundness, resilience and protection of the information technology systems of trade repositories are essential to ensure compliance with the objectives of Regulation (EU) 2015/2365. Accordingly, trade repositories should provide comprehensive and detailed information on those systems to allow ESMA to assess the soundness and resilience of their information technology systems. Where the provision of repository

functions is outsourced to third parties, either at the level of the group or outside the group, the trade repository should provide detailed information on the relevant outsourcing arrangements to allow the assessment of compliance with the conditions for registration, including information on any service level agreements, on metrics and on how those metrics are effectively monitored. Finally, information should be provided by trade repositories on the mechanisms and controls that they put in place to effectively manage potential cyber-risks and to protect the data they maintain from cyber-attacks.

- (12) Different types of users can report, access or modify the data maintained by the trade repository. The characteristics, as well as the rights and obligations of the different types of users should be clearly defined by the trade repository and should be provided as part of the application for registration. The information provided by the trade repositories should also clearly identify the different categories of access available. To ensure the confidentiality of data, but also its availability to third parties, a trade repository should provide information about how it ensures that only the data for which the relevant counterparties have provided their explicit, revocable and discretionary consent is made available to third parties. Finally, the trade repository should provide information in its application on the channels and mechanisms used to publicly disclose information on its access rules in order to ensure an informed decision by its service users.
- (13) The fees associated with the services provided by trade repositories are essential information for enabling market participants to make an informed choice and should therefore form part of the application for registration as a trade repository.
- (14) Given that market participants and authorities rely on the data maintained by trade repositories, strict and effective operational and record-keeping arrangements should be clearly described in a trade repository's application for registration. To demonstrate how the confidentiality and protection of data maintained by the trade repository is preserved as well as to allow for its traceability, a specific reference regarding the set-up of a reporting log needs to be included in the application for registration.
- (15) To achieve the objectives of Regulation (EU) 2015/2365 regarding the transparency of SFTs, trade repositories should demonstrate that they apply the procedure for terms and conditions of access in accordance with [OP: insert reference for C(2018)8330], that the integrity of the data provided to authorities is ensured and that they are in a position to provide access to the data in accordance with the relevant requirements included in [OP: insert reference for C(2018)8332].
- (16) The effective payment of the registration fees by trade repositories at the time of application is essential to cover ESMA's necessary expenditure relating to the registration or extension of registration of a trade repository.
- (17) A simplified application procedure for the extension of registration should be established to allow those trade repositories already registered under Regulation (EU) No 648/2012 to have that registration extended under Regulation (EU) 2015/2365. To avoid any duplicate requirements, the information to be provided by the trade repository as part of an extension of registration should include detailed information on the adaptations necessary to ensure it complies with the requirements under Regulation (EU) 2015/2365.
- (18) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority to the European Commission pursuant to

the procedure in Article 10 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)<sup>3</sup>.

- (19) ESMA has conducted open public consultations on these draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010,

HAS ADOPTED THIS REGULATION:

### *Article 1*

#### ***Identification, legal status and types of securities financing transactions***

1. For the purposes of Article 5(5)(a) of Regulation (EU) 2015/2365, the application for registration as a trade repository shall 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 types of securities financing transactions 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 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.
2. Upon request by ESMA, the applicants shall also provide additional information during the examination of the application for registration where such information is

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<sup>3</sup> OJ L 331, 15.12.2010, p. 84.

needed for the assessment of the applicants' capacity to comply with the requirements set out in Chapter III of Regulation (EU) 2015/2365 and for ESMA to duly interpret and analyse the documentation to be submitted or already submitted.

3. 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 and procedures is provided as part of an application, an applicant shall ensure that the application contains 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 is 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.

## *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 applicant's capital or of its voting rights or whose holding makes it possible to exercise a significant influence over the applicant's 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 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.

#### *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.

#### *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 contain 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 control***

1. An application for registration as a trade repository shall contain detailed information relating to the internal control system of the applicant, including information regarding its compliance function, risk assessment, internal control mechanisms and 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 respective procedures related to their consistent and effective implementation;

- (b) any policies, procedures and manuals regarding the monitoring and evaluation of the adequacy and effectiveness of the applicant's systems;
  - (c) any policies, procedures and manuals regarding the control and safeguard for the applicant's information processing systems;
  - (d) the identity of the internal bodies in charge of the evaluation of the relevant internal control findings.
3. An application for registration as a trade repository shall contain the following information with respect to the applicant's internal audit activities:
- (a) the composition of any Internal Audit Committee, its competences and responsibilities;
  - (b) its internal audit function charter, methodologies, standards and procedures;
  - (c) an explanation how its internal audit charter, methodology and procedures are developed and applied taking into account the nature and extent of the applicant's activities, complexities and risks;
  - (d) a work plan for three years following the date of application addressing the nature and extent of the applicant's activities, complexities and risks.

#### *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) 2015/2365:

- (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) 2015/2365, 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;

- (b) detailed information on the knowledge and experience in IT management, operations and development;
- (c) details regarding any criminal convictions in connection with the provision of financial or data services or in relation to acts of fraud or embezzlement, in particular in the form of an official certificate if available within the relevant Member State;
- (d) 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;
- (e) 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.

## Article 10

### ***Staffing policies and procedures***

An application for registration as a trade repository shall contain the following information:

- (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 directly employed by the trade repository, including their role and qualifications per role;
- (b) a specific description of the information technology staff directly employed to provide trade repository services, together with the role and the qualifications of each individual;
- (c) a description of the roles and qualifications of each individual who is responsible for internal audit, internal controls, compliance and risk assessment;
- (d) the identity of the dedicated staff members and those members of the staff that are operating under an outsourcing arrangement;
- (e) details of the training on the applicant's policies and procedures as well as the trade repository business, including any examination or other type of formal assessment required for staff regarding the conduct of trade repository activities.

The description referred to in point (b) shall include written evidence of the academic diploma and experience in information technology of at least one senior staff member responsible for IT matters.

## 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<sup>4</sup>;

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<sup>4</sup> Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p. 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<sup>5</sup>, the financial reports shall include the audit report on the annual and consolidated financial statements;
  - (c) if the applicant is audited, the name and the national registration number of the external auditor;
- 2. An application for registration as a trade repository shall contain a financial business plan contemplating different business scenarios for the trade repository services over a minimum three years' reference period and including the following additional information:
  - (a) the expected level of reporting activity in number of transactions;
  - (b) the relevant fixed and variable costs identified with respect to the provision of repository services under Regulation (EU) 2015/2365;
  - (c) positive and negative variations of at least 20 % from the base activity scenario identified.
- 3. Where the 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.
- 4. 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.
- 5. An application for registration as a trade repository shall also contain the following financial information about the applicant:
  - (a) an indication of any 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.

### *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:

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<sup>5</sup> 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 (OJ L 157, 9.6.2006, p. 87).

- (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, procedures and mechanisms preventing any use of information maintained in the prospective trade repository:
  - (a) for illegitimate purposes;
  - (b) for disclosure of confidential information;
  - (c) not permitted for commercial use.
2. The internal policies, procedures and mechanisms shall include 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, as well as detailed information on any mechanisms and controls in place to effectively manage potential cyber-risks and to protect the data maintained from cyber-attacks.
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.

#### *Article 16*

##### ***Information Technology resources and outsourcing***

An application for registration as a trade repository shall contain the following information relating to information technology resources:

- (a) a detailed description of the information technology system including the relevant business requirements, functional and technical specifications, system

- architectural and technical design, data model and data flows, and operations and administrative procedures and manuals;
- (b) user facilities developed by the applicant in order to provide services to the relevant users, including a copy of any user manual and internal procedures;
  - (c) the investment and renewal policies on information technology resources of the applicant;
  - (d) the outsourcing arrangements entered into by the applicant, including:
    - (i) detailed definitions of the services to be provided, including measurable scope of those services, the granularity of the activities as well as conditions under which those activities are rendered, and their timelines;
    - (ii) service level agreements with clear roles and responsibilities, metrics and targets for every key requirement of the trade repository that is outsourced, the methods employed to monitor the service level of the outsourced functions and the measures or actions to be taken in the event of not meeting service level targets;
    - (iii) 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 an agreement relating to trading or post-trading services offers, or plans to offer any ancillary services, its application for registration as a trade repository shall contain the following information:

- (a) a description of the ancillary services that the applicant, or the undertaking within its 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 ensure the necessary degree of operational separation in terms of resources, systems and procedures, between the applicant's trade repository services under Regulation (EU) 2015/2365 and other business lines, including those business lines that comprise the provision of services under Union or third country legislation, irrespective of whether that separate business line is run by the trade repository, a company belonging to its holding company, or any other company within which it has an agreement in the context of the trading or post-trading chain or business line.

#### *Article 18*

#### ***Transparency of access rules***

1. An application for registration as a trade repository shall contain the following information:
  - (a) the policies and procedures pursuant to which the different types of users report and access the data in a trade repository, including any process that the relevant

- users may need to access, consult, or modify the information maintained by the trade repository;
- (b) a copy of the terms and conditions which determine the rights and obligations of the different types of users in relation to the information maintained by the trade repository;
  - (c) a description of the different categories of access available to users;
  - (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 written, voluntary and revocable consent;
  - (e) a description of the channels and mechanisms used by the trade repository to publicly disclose information on the access to that trade repository.
2. The information referred to in points (a), (b) and (c) of paragraph 1 shall be specified for the following types of users:
- (a) internal users;
  - (b) reporting counterparties;
  - (c) report submitting entities;
  - (d) entities responsible for reporting;
  - (e) non-reporting counterparties;
  - (f) non-reporting third parties;
  - (g) entities listed in Article 12(2) of Regulation (EU) 2015/2365;
  - (h) other types of users, where applicable.

#### *Article 19*

##### ***Verification of completeness and correctness of data***

An application for registration as a trade repository shall contain the following information:

- (a) procedures for the authentication of the identity of the users accessing the trade repository in accordance with Article 1 of [OP: insert reference for C(2018)8332];
- (b) procedures for the verification of the use of an XML template complying with the ISO 20022 methodology in accordance with Article 1 of [OP: insert reference for C(2018)8332];
- (c) procedures for the verification of the authorisation and IT permission of the entity reporting on behalf of the reporting counterparty in accordance with Article 1 of [OP: insert reference for C(2018)8332];
- (d) procedures for verification that the logical sequence of the reported SFT details is maintained at all times in accordance with Article 1 of [OP: insert reference for C(2018)8332];
- (e) procedures for the verification of the completeness and correctness of the reported SFT details in accordance with Article 1 of [OP: insert reference for C(2018)8332];

- (f) procedures for the reconciliation of data between trade repositories where counterparties report to different trade repositories in accordance with Article 2 of [OP: insert reference for C(2018)8332];
- (g) procedures for the provision of feedback to the counterparties to the SFTs or the third parties reporting on their behalf, on the verifications performed under points (a) to (e) and the outcomes of the reconciliation process under point (f) in accordance with Article 3 of [OP: insert reference for C(2018)8332].

#### *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 trade repository and 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 to make the information publicly available to all types of users , including a copy of the fee structure in which trade repository services and ancillary services are unbundled.

#### *Article 21*

##### ***Operational risk***

1. 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, including a copy of any relevant policies, methodologies, internal procedures and manuals;
  - (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-months period;
  - (c) the applicant's business continuity plan and the policy for updating it, including the following:
    - (i) all business processes, resources, escalation procedures and related systems which are critical to ensuring the services of the trade repository applicant, including any relevant outsourced service and 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 4 of Regulation (EU) 2015/2365 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;
  - (ix) plans, procedures and arrangements for handling emergencies and ensuring personnel safety;
  - (x) plans, procedures and arrangements for the management of crises, including the coordination of the overall business continuity action and its timely and effective activation within a given recovery time objective;
  - (xi) plans, procedures and arrangements to recover the applicant's system, application and infrastructure components within the prescribed recovery time objective.
- (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.
2. An application for registration as a trade repository shall contain the procedures to ensure the orderly substitution of the original trade repository where requested by a reporting counterparty, or where requested by a third party reporting on behalf of non-reporting counterparties, or whereby such substitution is the result of a withdrawal of registration, and shall include the procedures for the transfer of data and the redirection of reporting flows to another trade repository.

## *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) a record-keeping of all reported information relating to the conclusion, modification or termination of an SFT in a reporting log;

- (c) that the data is maintained both online and offline;
  - (d) that the data is adequately copied for business continuity purposes.
2. An application for registration as a trade repository shall contain information on the recordkeeping systems, policies and procedures that are used in order to ensure that the data reported is modified appropriately and that positions are calculated correctly in accordance with relevant legislative or regulatory requirements.

### *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 uses to give access to the information in accordance with paragraphs 1, 2 and 3 of Article 12 of Regulation (EU) 2015/2365, and shall contain the following information:

- (a) a procedure to calculate the aggregate positions in accordance with Article 6 of [OP: insert reference for C(2018)8332] and a description of the resources, methods and channels that the trade repository will employ in order to facilitate access to the data contained therein to the public in accordance with Article 12(1) of Regulation (EU) 2015/2365, and a description of the frequency of updates, along with a copy of any specific manuals and internal policies;
- (b) a description of the resources, methods and facilities that the trade repository employs in order to facilitate the access to its information to the relevant authorities in accordance with Article 12(2) of Regulation (EU) 2015/2365, 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 any specific manuals and internal procedures;
- (c) a procedure and a description of the resources, methods and channels that the trade repository employs in order to facilitate the timely structured and comprehensive collection of data from counterparties, the access to its information to counterparties to SFTs in accordance with Article 4(6) of Regulation (EU) 2015/2365 and Article 80(5) of Regulation (EU) No 648/2012, along with a copy of the specific manuals and internal policies.

### *Article 24*

#### ***Direct and immediate access to data by authorities***

An application for registration as a trade repository shall contain information on the following:

- (a) the terms and conditions under which the authorities referred to in Article 12(2) of Regulation (EU) 2015/2365 are given direct and immediate access to the details of SFTs maintained at the trade repository in accordance with [OP: insert reference for C(2018)8330]
- (b) the procedure under which the authorities referred to in point (a) are given direct and immediate access to the details of SFTs maintained at the trade

repository in accordance with Articles 4 and 5 of [OP: insert reference for C(2018)8332]

- (c) the procedure to ensure the integrity of the data accessed by those authorities.

#### *Article 25*

#### ***Payment of fees***

An application for registration as a trade repository shall include proof of payment of the relevant registration fees established in [OP: insert reference for C(2018)8333].

#### *Article 26*

#### ***Information to be provided in the case of extension of registration***

For the purposes of Article 5(5)(b) of Regulation (EU) 2015/2365, the application for extension of an existing registration shall contain the information specified in:

- (a) Article 1, except point (k) of paragraph 1;
- (b) Article 2;
- (c) Article 5;
- (d) Article 7, except point (d) of paragraph 2;
- (e) Article 8(b);
- (f) Article 9(1)(b) and 9(1)(e);
- (g) Article 11;
- (h) Article 12(2);
- (i) Article 13;
- (j) Article 14(2);
- (k) Article 15;
- (l) Article 16, except point (c);
- (m) Article 17;
- (n) Article 18;
- (o) Article 19;
- (p) Article 20;
- (q) Article 21;
- (r) Article 22;
- (s) Article 23;
- (t) Article 24;
- (u) Article 25;
- (v) Article 27.

*Article 27*

***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 28*

***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, 13.12.2018

*For the Commission*  
*The President*  
**Jean-Claude JUNCKER**