II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2016/822

of 21 April 2016

amending Delegated Regulation (EU) No 153/2013 as regards the time horizons for the liquidation period to be considered for the different classes of financial instruments

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

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 ([1]), and in particular Article 41(5) thereof,

Whereas:

(1) Commission Delegated Regulation (EU) No 153/2013 ([2]) lays down regulatory technical standards on requirements for central counterparties (CCPs) regarding the time horizons for the liquidation period to be considered for the different classes of financial instruments. It is necessary to keep those regulatory technical standards up to date with relevant regulatory developments.

(2) For the purposes of calculating margin requirements necessary to cover a CCP's exposure to market risk, certain account structures based on a minimum of a one-day liquidation period calculated on a gross basis provide a sufficient level of coverage to the CCPs and better protect clients and mitigate systemic risks. That minimum liquidation period should therefore be permitted for the clearing of clients' positions on financial instruments other than over-the-counter (OTC) derivatives where certain conditions are met.

(3) Considering that individual segregated accounts ensure an even greater level of protection to clients than gross omnibus accounts, individual segregated accounts should benefit from a minimum liquidation period for calculating margins of the same length as gross omnibus accounts.

(4) For CCPs that during the day do not allocate the trades to each client, the reduction of the minimum liquidation period from two days to one day might imply that for new trades cleared during the day and not allocated to individual clients the CCP is margining them on a one-day net basis. This may expose the CCP to significant losses in case of intraday price movements that do not trigger the call of intraday margins. Therefore, a specific threshold needs to be set to ensure that CCPs call intraday margins and remain sufficiently protected notwithstanding the reduction of the liquidation period.

(5) Delegated Regulation (EU) No 153/2013 should therefore be amended accordingly.

([1]) OJ L 201, 27.7.2012, p. 1.
([2]) Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on requirements for central counterparties (OJ L 52, 23.2.2013, p. 41).

(6) This Regulation is based on draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission following consultation of the European Banking Authority and the European System of Central Banks.

(7) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council [1], ESMA has conducted open public consultations 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 in accordance with Article 37 of Regulation (EU) No 1095/2010,

HAS ADOPTED THIS REGULATION:

Article 1

Article 26 of Delegated Regulation (EU) No 153/2013 is amended as follows:

(1) paragraphs 1 and 2 are replaced by the following:

'1. For the purposes of Article 41 of Regulation (EU) No 648/2012, a CCP shall determine the appropriate time horizons for the liquidation period taking into account the characteristics of the financial instrument cleared, of the type of account in which the financial instrument is held, of the market where the financial instrument is traded, and the following minimum time horizons for the liquidation period:

(a) five business days for OTC derivatives;

(b) two business days for financial instruments other than OTC derivatives held in accounts not meeting the conditions laid down in point (c);

(c) one business day for financial instruments other than OTC derivatives held in omnibus client accounts or in individual client accounts provided that the following conditions are met:

(i) the CCP keeps separate records of the positions of each client at least at the end of each day, calculates the margins in respect of each client, and collects the sum of the margin requirements applicable to each client on a gross basis;

(ii) the identity of all the clients is known to the CCP;

(iii) the positions held in the account are not proprietary positions of undertakings of the same group as the clearing member;

(iv) the CCP measures the exposures and calculates for each account initial and variation margin requirements on a near to real-time basis and at least every one hour during the day using updated positions and prices;

(v) where the CCP does not allocate new trades to each client during the day, the CCP collects the margins within one hour where the margin requirements calculated in accordance with point (iv) are higher than 110 % of the updated available collateral in accordance with Chapter X, unless the amount of the intraday margins to be paid to the CCP is not material on the basis of predefined amount defined by the CCP and agreed by the competent authority, and to the extent that trades previously allocated to clients are margined separately from trades that are not allocated during the day.

2. In all cases, for determining the appropriate time horizons for the liquidation period, the CCP shall evaluate and sum at least the following:

(a) the longest possible period that may elapse from the last collection of margins up to the declaration of default by the CCP or activation of the default management process by the CCP;

[1] 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).

(b) the estimated period needed to design and execute the strategy for the management of the default of a clearing member according to the particularities of each class of financial instrument, including its level of liquidity and the size and concentration of the positions, and the markets the CCP will use to close-out or hedge completely a clearing member position;

(c) where relevant, the period needed to cover the counterparty risk to which the CCP is exposed.';

(2) paragraph 4, point (b) is replaced by the following:

'(b) such time horizon is at least two business days, or one business day where the conditions laid down in paragraph 1(c) are met.'.

Article 2

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, 21 April 2016.

For the Commission

The President

Jean-Claude JUNCKER