

II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2021/822

of 24 March 2021

amending Delegated Regulations (EU) No 1003/2013 and (EU) 2019/360 as regards the annual supervisory fees charged by the European Securities and Markets Authority to trade repositories for 2021

(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 72(3) thereof,

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 ⁽²⁾, and in particular Article 11(2) thereof,

Whereas:

- (1) Fees paid to ESMA by trade repositories are calculated using a methodology established in Commission Delegated Regulations (EU) No 1003/2013 ⁽³⁾ and (EU) 2019/360 . The reference period for the applicable turnover in those Delegated Regulations ⁽⁴⁾ is the year previous to the year in which the revenues are paid.
- (2) On 1 February 2020, the United Kingdom withdrew from the European Union and from the European Atomic Energy Community. In accordance with the transition period set out in Article 126 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, the Union law ceased to apply to and in the United Kingdom from 31 December 2020.
- (3) Two trade repositories established in the United Kingdom transferred part of their services and activities to the Union in order to be able to continue providing their services and activities to counterparties established in the Union. That has significantly changed the number of trade repositories active in the Union.

⁽¹⁾ OJ L 201, 27.7.2012, p. 1.

⁽²⁾ OJ L 337, 23.12.2015, p. 1.

⁽³⁾ Commission Delegated Regulation (EU) No 1003/2013 of 12 July 2013 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to trade repositories (OJ L 279, 19.10.2013, p. 4).

⁽⁴⁾ Commission Delegated Regulation (EU) 2019/360 of 13 December 2018 supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to trade repositories (OJ L 81, 22.3.2019, p. 58).

- (4) The new Union trade repositories have effectively started their activity in the Union in January 2021, their level of activity in 2020 being almost non-existent. Their annual supervisory fee for 2021 would thus be negligible, although their activities are likely to be significant. To ensure that they pay a fee which is proportionate to their actual turnover in the Union, their annual supervisory fee for 2021 should be calculated on the basis of their applicable turnover during the first half of 2021.
- (5) In order to allow ESMA to charge fees to trade repositories in 2021 in a proportionate manner while covering all its cost related to their supervision, it is necessary to change the reference period for the calculation of annual fees paid by trade repositories to ESMA in 2021. Since the relevant trade repositories are registered with ESMA under both Regulations (EU) No 648/2012 and (EU) 2015/2365, the amendments to that reference period should be made at the same time.
- (6) Delegated Regulations (EU) No 1003/2013 and (EU) 2019/360 should therefore be amended accordingly.
- (7) In order to immediately facilitate effective and efficient supervisory and enforcement activity, this Regulation should enter into force as a matter of urgency,

HAS ADOPTED THIS REGULATION:

Article 1

Amendment to Delegated Regulation (EU) No 1003/2013

The following Article 15a is inserted in Delegated Regulation (EU) No 1003/2013:

Article 15a

Annual supervisory fee for 2021 for trade repositories registered as of 31 December 2020

1. Trade repositories already registered with ESMA as of 31 December 2020 shall be charged an annual supervisory fee for 2021 calculated in accordance with Article 7. However, for the purposes of Article 7(2)(c), the applicable turnover of trade repositories shall be calculated in accordance with paragraph 2.
2. For the purposes of paragraph 1, the applicable turnover of a trade repository shall be the sum of one third of each of the following:
 - (a) the revenues generated from the core functions of centrally collecting and maintaining records of derivatives of the trade repository during the period from 1 January 2021 to 30 June 2021, divided by the total revenues generated from the core functions of centrally collecting and maintaining records of derivatives of all registered trade repositories during the period from 1 January 2021 to 30 June 2021;
 - (b) the number of trades reported to the trade repository during the period from 1 January 2021 to 30 June 2021, divided by the total number of trades reported to all registered trade repositories during the period from 1 January 2021 to 30 June 2021;
 - (c) the number of recorded outstanding trades on 30 June 2021, divided by the total number of recorded outstanding trades on 30 June 2021 in all registered trade repositories.
3. The amount of the annual supervisory fee referred to in paragraph 1 shall be reduced by any amount already paid by the trade repository pursuant to Article 11(1) before 26 May 2021.

Where the amount already paid by a trade repository pursuant to Article 11(1) before 26 May 2021 is higher than the annual supervisory fee calculated in accordance with paragraph 1, ESMA shall reimburse the difference to the trade repository.

4. By way of derogation from Article 11(1), the annual supervisory fee for 2021 for the trade repositories referred to in paragraph 1 shall be due on 31 October 2021.
5. ESMA shall send the invoice for the annual supervisory fee for 2021 to the trade repositories referred to in paragraph 1 at least 30 days before the payment date.

6. When the audited accounts for 2021 become available, trade repositories referred to in paragraph 1 shall report to ESMA the indicators referred to in Article 3(1) for 2021.

Trade repositories shall be charged any difference between the annual supervisory fee for 2021 actually paid and the annual supervisory fee that would have been due for 2021 if the calculation of the applicable turnover had been based on the indicators reported pursuant to the first subparagraph.

ESMA shall send the invoice for any additional payment pursuant to the second subparagraph at least 30 days before the respective payment date.'

Article 2

Amendment to Delegated Regulation (EU) 2019/360

The following Article 15a is inserted in Delegated Regulation (EU) 2019/360:

'Article 15a

Annual supervisory fee for 2021 for trade repositories registered as of 31 December 2020

1. Trade repositories already registered with ESMA as of 31 December 2020 shall be charged an annual supervisory fee for 2021 calculated in accordance with Article 6. However, for the purposes of Article 6(2)(b) the applicable turnover of trade repositories shall be calculated in accordance with paragraph 2.

2. For the purposes of paragraph 1, the applicable turnover of the trade repository shall be the sum of:

- the revenues generated from the core functions of centrally collecting and maintaining records of SFTs during the period from 1 January 2021 to 30 June 2021, and
- the applicable revenues from ancillary services of the trade repository in accordance with paragraphs 1 and 2 of Article 2 during the period from 1 January 2021 to 30 June 2021,

divided by the sum of:

- the total revenues generated from the core functions of centrally collecting and maintaining records of SFTs during the period from 1 January 2021 to 30 June 2021 of all registered trade repositories, and
- the applicable revenues from ancillary services in accordance with paragraphs 1 and 2 of Article 2 during the period from 1 January 2021 to 30 June 2021 of all registered trade repositories.

3. The amount of the annual supervisory fee referred to in paragraph 1 shall be reduced by any amount already paid by the trade repository pursuant to Article 10(1) before 26 May 2021.

Where the amount already paid by a trade repository pursuant to Article 10(1) before 26 May 2021 is higher than the annual supervisory fee calculated in accordance with paragraph 1, ESMA shall reimburse the difference to the trade repository.

4. By way of derogation from Article 10(1), the annual supervisory fee for 2021 for the trade repositories referred to in paragraph 1 shall be due on 31 October 2021.

5. ESMA shall send the invoice for the annual supervisory fee for 2021 to the trade repositories referred to in paragraph 1 at least 30 days before the payment date.

6. When the audited accounts for 2021 become available, trade repositories referred to in paragraph 1 shall report to ESMA the indicators referred to in Article 2(3) for 2021.

Trade repositories shall be charged any difference between the annual supervisory fee for 2021 actually paid and the annual supervisory fee that would have been due for 2021 if the calculation of the applicable turnover had been based on the indicators reported pursuant to the first subparagraph.

ESMA shall send the invoice for any additional payment pursuant to the second subparagraph at least 30 days before the respective payment date.'

Article 3

Entry into force

This Regulation shall enter into force on the 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 the Member States.

Done at Brussels, 24 March 2021.

For the Commission
The President
Ursula VON DER LEYEN
