

**TECHNICAL STANDARDS (EUROPEAN MARKET INFRASTRUCTURE
REGULATION) (EU EXIT) (No 1) INSTRUMENT 2019**

Powers exercised

- A. The Financial Conduct Authority (“the FCA”), being an appropriate regulator within the meaning of The Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (“the Regulations”), with the approval of the Treasury, makes this instrument in exercise of the powers conferred by regulation 3 of the Regulations.

Pre-conditions to making

- B. The FCA is the appropriate regulator for the EU Regulations specified in Part 1 of the Schedule to the Regulations.
- C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with regulation 5 of the Regulations.
- D. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

Interpretation

- E. Any reference in this instrument to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

Modifications

- F. The following EU Regulations are amended in accordance with Annexes A–C of this instrument.

(1)	(2)
Commission Implementing Regulation (EU) 1248/2012 of 19 December 2012 laying down implementing technical standards with regard to the format of applications for registration of trade repositories according to Regulation (EU) 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories.	Annex A
Commission Delegated Regulation (EU) 150/2013 of 19 December 2012 supplementing Regulation (EU) 648/2012 of the European Parliament and	Annex B

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.	
Commission Delegated Regulation (EU) 151/2013 of 19 December 2012 supplementing Regulation (EU) 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 data to be published and made available by trade repositories and operational standards for aggregating, comparing and accessing the data.	Annex C

Commencement

- G. This instrument comes into force on exit day as defined in the European Union (Withdrawal) Act 2018.

Citation

- H. This instrument may be cited as the Technical Standards (European Market Infrastructure Regulation) (EU Exit) (No 1) Instrument 2019.

By order of the Board
28 March 2019

In this instrument, underlining indicates new text and striking through indicates deleted text.

Annex A

COMMISSION IMPLEMENTING REGULATION (EU) No 1248/2012 of 19 December 2012 laying down implementing technical standards with regard to the format of applications for registration of trade repositories according to Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories

~~(Text with EEA relevance)~~

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Article 1

Format of the application

1. An application for registration shall be provided in an instrument which stores information in a durable medium as defined in Article 2(1)(m) of Directive 2009/65/EC of the European Parliament and of the Council.
2. An application for registration shall be submitted in the format set out in the Annex.
3. A trade repository shall give a unique reference number to each document it submits and shall ensure that the information submitted clearly identifies which specific requirement of the delegated act with regard to regulatory technical standards specifying the details of the application for registration of trade repositories adopted pursuant to Article 56(3) of Regulation (EU) No 648/2012 it refers to, in which document that information is provided and also provides a reason if the information is not submitted as outlined in the document references section of the Annex.

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

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Annex B

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)

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CHAPTER 1
REGISTRATION

SECTION 1

General

Article 1

Identification, legal status and class of derivatives

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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~~ UK;

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3. Upon request by ~~ESMA~~ the FCA, 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~~ and 58 of Regulation (EU) No 648/2012 and for ~~ESMA~~ the FCA to duly interpret and analyse the documentation to be submitted or already submitted.

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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:

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- (d) an indication of the procedure for reporting to ~~ESMA~~ the FCA any material breach of policies or procedures which may result in a breach of the conditions for initial registration.

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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~~ UK;

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2. Any information received by ~~ESMA~~ the FCA 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.

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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 accounting standards which are adopted for use within the United Kingdom by virtue of Chapter 2 or 3 of Part 2 of the International Accounting Standards and European Public Limited Liability Company (Amendment etc.) (EU Exit) Regulations 2019, or, in respect of a financial year beginning before exit day, 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 as they applied immediately before exit day;
 - (b) where the financial statements of the applicant are subject to statutory audit within the meaning of section 1210 of the Companies Act 2006~~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,~~ the financial reports shall include the audit report on the annual and consolidated financial statements;

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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~~ the FCA 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.

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Article 24

Verification of the accuracy and completeness of the application

1. Any information submitted to the ~~ESMA~~ FCA 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.

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

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Annex C

COMMISSION DELEGATED REGULATION (EU) No 151/2013 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 data to be published and made available by trade repositories and operational standards for aggregating, comparing and accessing the data

(Text with EEA relevance)

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Article 2

Data access by relevant authorities

1. ~~A trade repository shall provide access to all transaction data to the European Securities and Markets Authority (ESMA) FCA, the Bank of England and the Pensions Regulator for the purpose of fulfilling its their supervisory competences, respective responsibilities and mandates.~~
2. ~~ESMA The FCA, the Bank of England and the Pensions Regulator shall enact internal procedures in order to ensure the appropriate staff access and any relevant limitations of access as regards non-supervisory activities under ESMA's their respective responsibilities and mandates.~~
3. ~~A trade repository shall provide the Authority for the Cooperation of Energy Regulators (ACER) with access to all transaction data regarding derivatives where the underlying is energy or emission allowances.~~
4. ~~A trade repository shall provide a competent authority supervising a CCP and the relevant member of the European System of Central Banks (ESCB) overseeing the CCP, where applicable, with access to all the transaction data cleared or reported by the CCP.~~
5. ~~A trade repository shall provide a competent authority supervising the venues of execution of the reported contracts with access to all the transaction data on contracts executed on those venues.~~
6. ~~A trade repository shall provide a supervisory authority appointed under Article 4 of Directive 2004/25/EC with access to all the transaction data on derivatives where the underlying is a security issued by a company which meets one of the following conditions:~~
 - (a) ~~it is admitted to trading on a regulated market within their jurisdiction;~~
 - (b) ~~it has its registered office or, where it has no registered office, its head office, in their jurisdiction;~~

- (e) ~~it is an offeror for the entities provided for in points (a) or (b) and the consideration it offers includes securities.~~
7. ~~The data to be provided in accordance with paragraph 6 shall include information on:~~
- ~~(a) the underlying securities;~~
 - ~~(b) the derivative class;~~
 - ~~(c) the sign of the position;~~
 - ~~(d) the number of reference securities;~~
 - ~~(e) the counterparties to the derivative.~~
8. ~~A trade repository shall provide the relevant Union securities and markets authorities referred to in Article 81(3)(h) of Regulation (EU) No 648/2012 with access to all transaction data on markets, participants, contracts and underlyings that fall within the scope of that authority according to its respective supervisory responsibilities and mandates.~~
9. ~~A trade repository shall provide the European Systemic Risk Board, ESMA and the relevant members of the ESCB with transaction level data:~~
- ~~(a) for all counterparties within their respective jurisdictions;~~
 - ~~(b) for derivatives contracts where the reference entity of the derivative contract is located within their respective jurisdiction or where the reference obligation is sovereign debt of the respective jurisdiction.~~
10. ~~A trade repository shall provide a relevant ESCB member with access to position data for derivatives contracts in the currency issued by that member.~~
11. ~~A trade repository shall provide, for the prudential supervision of counterparties subject to the reporting obligation, the relevant entities listed in Article 81(3) of Regulation (EU) No 648/2012 with access to all transaction data of such counterparties.~~

Article 3

Third country authorities

1. In relation to a relevant authority of a third country that has ~~entered into an international agreement with the Union as referred to in Article 75 of Regulation (EU) No 648/2012~~ been prescribed by HM Treasury as one in which the arrangements for trade repositories are equivalent to those in the United Kingdom (in accordance with Article 75(1) (equivalence), a trade repository shall provide access to the data, taking account of the third country authority's mandate and responsibilities ~~and in line with the provisions of the relevant international agreement.~~
2. In relation to a relevant authority of a third country that has entered into a cooperation arrangement with ~~ESMA~~ the FCA as referred to in Article 76 of Regulation (EU) No 648/2012, a trade repository shall provide access to the data, taking account of the third country authority's mandate and responsibilities and in line with the provisions of the relevant cooperation arrangement.

Article 4

Operational standards for aggregation and comparison of data

1. A trade repository shall provide the entities listed in Article 81(3) of Regulation (EU) No 648/2012 with direct and immediate access, ~~including where delegation under Article 28 of Regulation (EU) No 1095/2010 exists,~~ to details of derivatives contracts in accordance with Articles 2 and 3 of this Regulation.

For the purposes of the first subparagraph, a trade repository shall use an XML format and a template developed in accordance with ISO 20022 methodology. A trade repository may in addition, after agreement with the entity concerned, provide access to details of derivatives contracts in another mutually agreed format.

Article 5

Operational standards for access to data

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3. A trade repository shall establish and maintain the necessary technical arrangements to enable the entities listed in Article 81(3) of Regulation (EU) No 648/2012 to connect using a secure machine-to-machine interface in order to submit data requests and to receive data.

For the purposes of the first subparagraph, a trade repository shall use the SSH File Transfer Protocol, except in relation to the FCA, for whom the use of Amazon S3 HTTPS API to upload/download files is required. The trade repository shall use standardised XML messages developed in accordance with the ISO 20022 methodology to communicate through that interface. A trade repository may in addition, after agreement with the entity concerned, set up a connection using another mutually agreed protocol.

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Article 6

Entry into force

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

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