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COMMISSION DELEGATED REGULATION (EU) No 667/2014

of 13 March 2014

supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to rules of procedure for penalties imposed on trade repositories by the European Securities and Markets Authority including rules on the right of defence and temporal provisions

(Text with EEA relevance)

(OJ L 179, 19.6.2014, p. 31)

Corrected by:

►C1 Corrigendum, OJ L 439, 29.12.2020, p. 33 (667/2014)

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Article 1

Subject matter

This Regulation lays down rules of procedure regarding fines and periodic penalty payments to be imposed by the European Securities and Markets Authority (ESMA) on trade repositories or other persons that are subject to ESMA's investigation and enforcement proceedings, including rules on the right of defence and limitation periods.

Article 2

Right to be heard by the investigation officer

1. Upon completion of the investigation and before submitting the file to ESMA pursuant to Article 3(1), the investigation officer shall inform the person subject to investigation in writing stating its findings and shall provide that person with the opportunity to make written submissions pursuant to paragraph 3. That statement of findings shall set out the facts liable to constitute one or more of the infringements listed in Annex I of Regulation (EU) No 648/2012, including any aggravating or mitigating factors of those infringements.

2. The statement of findings shall set a reasonable time limit within which the person subject to investigation may make its written submissions. The investigation officer shall not be obliged to take into account written submissions received after that time limit has expired.

3. In its written submissions, the person subject to investigation may set out all the facts known to it which are relevant to its defence. It shall attach any relevant documents as proof of the facts set out. It may propose that the investigation officer hear other persons who may corroborate the facts set out in the submissions of the person subject to investigation.

4. The investigation officer may also invite a person subject to investigation to which a statement of findings has been addressed to attend an oral hearing. The persons subject to investigation may be assisted by their lawyers or other qualified persons admitted by the investigation officer. Oral hearings shall not be held in public.

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Article 3

Right to be heard by ESMA with regard to fines and supervisory measures

1. The complete file to be submitted by the investigation officer to ESMA shall include at least the following documents:

— copy of the statement of findings addressed to the trade repository or the person subject to the investigation;

— copy of the written submissions by the trade repository or the person subject to the investigation;

— minutes of any oral hearing.

2. Where ESMA considers that the file submitted by the investigation officer is not complete, it shall send back the file to the investigation officer with reasoned request for additional documents.

3. Where ESMA considers, on the basis of a complete file, that the facts described in the statement of findings appear not to constitute an infringement with the meaning of Annex I of Regulation (EU) No 648/2012, it shall decide to close the case and it shall notify that decision to the persons subject to investigation.

4. Where ESMA does not agree with the findings of the investigation officer it shall submit a new statement of findings to the persons subject to investigation.

The statement of findings shall set a reasonable time limit within which the persons subject to investigation may make written submissions. ESMA shall not be obliged to take into account written submissions received after the expiry of that time limit for adopting a decision on the existence of an infringement and on supervisory measures and the imposition of a fine in accordance with Article 65 and 73 of Regulation (EU) No 648/2012.

ESMA may also invite the persons subject to investigation to which a statement of findings has been addressed to attend an oral hearing. The persons subject to investigation may be assisted by their lawyers or other qualified persons admitted by ESMA. Oral hearings shall not be held in public.

5. Where ESMA agrees with all or some of the findings of the investigation officer it shall inform the persons subject to investigation accordingly. Such communication shall set a reasonable time limit within which the person subject to investigation may make written submissions. ESMA shall not be obliged to take into account written submissions received after the expiry of that time limit for adopting a decision on the existence of an infringement and on supervisory measures and the imposition of a fine in accordance with Article 65 and 73 of Regulation (EU) No 648/2012.

ESMA may also invite the persons subject to investigation to which a statement of findings has been addressed to attend an oral hearing. The persons subject to investigation may be assisted by their lawyers or other qualified persons admitted by ESMA. Oral hearings shall not be held in public.

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6. If ESMA decides that one or more of the infringements listed in Annex I to Regulation (EU) No 648/2012 has been committed by a person subject to investigation and has adopted a decision imposing a fine in accordance with Article 65, it shall notify immediately that decision to the person subject to investigation.

Article 4

Right to be heard by ESMA with regard to periodic penalty payments

Before making a decision imposing a periodic penalty payment according to Article 66 of Regulation (EU) No 648/2012, ESMA shall submit a statement of findings to the person subject to the proceedings setting out the reasons justifying the imposition of a penalty payment and the amount of the penalty payment per day of non-compliance. The statement of findings shall set a time limit within which the person concerned may make written submissions. ESMA shall not be obliged to take into account written submissions received after the expiry of that time limit for deciding on the periodic penalty payment.

Once the trade repository or person concerned has complied with the relevant decision referred to in Article 66(1) of Regulation (EU) No 648/2012, a periodic penalty payment can no longer be imposed.

The decision imposing a periodic penalty payment shall indicate the legal basis and the reasons for the decision, the amount and the starting date of the periodic penalty payment.

ESMA may also invite the person subject to the proceedings to attend an oral hearing. The person subject to the proceedings may be assisted by their lawyers or other qualified persons admitted by ESMA. Oral hearings shall not be held in public.

Article 5

Access to the file and use of documents

1. If so requested, ESMA shall grant access to the file to the parties to whom the investigation officer or ESMA has sent a statement of findings. Access shall be granted following the notification of any statement of findings.

2. File documents accessed pursuant to paragraph 1 shall be used only for the purposes of judicial or administrative proceedings concerning the application of Regulation (EU) No 648/2012.

Article 6

Limitation periods for the imposition of penalties

1. The powers conferred on ESMA to impose fines and periodic penalty payments on trade repositories shall be subject to a limitation period of five years.

2. The limitation period referred to in paragraph 1 shall begin to run on the day following that on which the infringement is committed. However, in the case of continuing or repeated infringements, that limitation period shall begin to run on the day on which the infringement ceases.

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3. Any action taken by ESMA for the purpose of the investigation or proceedings in respect of an infringement of Regulation (EU) No 648/2012 shall interrupt the limitation period for the imposition of fines and periodic penalty payments. That limitation period shall be interrupted with effect from the date on which the action is notified to the trade repository or the person subject to the investigation or proceedings in respect of an infringement of Regulation (EU) No 648/2012.

4. Each interruption shall cause the limitation period to start running afresh. However, the limitation period shall expire at the latest on the day on which a period equal to twice the limitation period has elapsed without ESMA having imposed a fine or a periodic penalty payment. That period shall be extended by the time during which limitation is suspended pursuant to paragraph 5.

5. ►C1 The limitation period for imposing fines and periodic penalty payments shall be suspended for as long as the decision of ESMA is the subject of proceedings pending before the Board of Appeal, in accordance with Article 60 of Regulation (EU) No 1095/2010, and before the Court of Justice of the European Union, in accordance with Article 69 of Regulation (EU) No 648/2012. ◄

Article 7

Limitation periods for the enforcement of penalties

1. The power of ESMA to enforce decisions taken pursuant to Articles 65 and 66 of Regulation (EU) No 648/2012 shall be subject to a limitation period of five years.

2. The five-year period referred to in paragraph 1 shall start to run on the day following that on which the decision becomes final.

3. The limitation period for the enforcement of penalties shall be interrupted by:

(a) a notification by ESMA to the trade repository or other person concerned of a decision varying the original amount of the fine or periodic penalty payment;

(b) any action of ESMA or a Member State authority acting at the request of ESMA, designed to enforce payment or payment terms and conditions of the fine or periodic penalty payment.

4. Each interruption shall cause the limitation period to start running afresh.

5. The limitation period for the enforcement of penalties shall be suspended for so long as:

(a) time to pay is allowed;

(b) ►C1 enforcement of payment is suspended pursuant to a pending decision of ESMA Board of Appeal, in accordance with Article 60 of Regulation (EU) No 1095/2010, and the Court of Justice of the European Union, in accordance with Article 69 of Regulation (EU) No 648/2012. ◄

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Article 8

Collection of fines and periodic penalty payments

The amounts of fines and periodic penalty payments collected by ESMA shall be lodged to an interest bearing account opened by the accounting officer of ESMA until such time as they become final. Such amounts shall not be entered in ESMA's budget or recorded as budgetary amounts.

Once ESMA's Accounting Officer has established that the fines or periodic penalty payments have become final following the outcome of all possible legal challenges he shall transfer those amounts plus any interest accruing to the Commission. These amounts shall then be entered in the Union budget under general revenue.

ESMA's Accounting Officer shall report on a regular basis to the Authorising Officer of DG MARKT on the amounts of fines and periodic penalty payments imposed and their status.

Article 9

Calculation of periods, dates and time limits

Regulation (EEC, Euratom) No 1182/71 shall apply to periods of time, dates and time limits set out in this Regulation.

Article 10

This Regulation shall enter into force on the third 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.