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Additional Information

Level 1 Regulation
Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Level 2 Regulation
COMMISSION DELEGATED REGULATION (EU) No 153/2013 Regulatory technical standards on requirements for central counterparties

Topic
EU-CCPs

Additional Legal Reference
Article 26 of EMIR - old CCP question 13 dated 21/05/2014

Subject Matter

Organisational requirements (old CCP question 13 dated 21/05/2014)

Question

a) Article 3(3) of Commission Delegated Regulation No 2013/153 requires a CCP to ensure that the functions of the chief risk officer, chief compliance officer and chief technology officer are carried out by different individuals and provides that these positions shall be held by employees of the CCP entrusted with the exclusive responsibility of performing these functions. Can these officers have other duties in addition to taking responsibility for the risk, compliance and technology functions respectively?

b) Pursuant to Article 3(2) of RTS 153/2013, a CCP shall not share its staff with other group entities, unless under the terms of an outsourcing arrangement in accordance with Article 35 of EMIR. Does the term “staff” extend to the senior management of the CCP (for example the chief executive officer of the CCP) or is it limited to those individuals with clerical or administrative roles

ESMA Answer

21-05-2014

Original language

(a) Recital 13 of Commission Delegated Regulation No 2013/153 explains that the rationale for requiring CCPs to have at least a chief risk, chief compliance and chief technology officer is to ensure that CCPs operate with the necessary level of human resources, are accountable for the performance of their activities, and provide competent authorities with relevant contact points.

The reference to “exclusive responsibility” in Article 3(3) of Commission Delegated Regulation No 2013/153 should be read in light of this recital. In particular, “exclusive responsibility” pertains to the fact that one single individual should have sole responsibility for the function of risk, another distinct individual should have sole responsibility for the function of compliance and a third distinct individual should have sole responsibility for the function of technology. “Exclusive responsibility” does not require that these individuals only undertake

duties pertaining to their role as the chief risk, compliance or technology officer.

However, it should be carefully considered before these individuals take on any duties outside of the scope of the risk, compliance or technology functions to ensure that the individual is indeed appropriately dedicated to the function for which they are responsible.

b) In line with other European legislation, the term “staff” encompasses any person working for the CCP who is directly engaged in the services or activities which the CCP is authorised to provide or perform, and any natural person directly managing or supervising such persons. In particular, the Chief Executive Officer, although being a member of the board, is directly managing the CCP and therefore the provisions applicable to the staff should apply to the Chief Executive Officer.

Where a CCP maintains a two-tiered board system, the term “staff” does not encompass the members of the supervisory board.