

***KDPW S.A. comments to ESMA's Technical Advice to the Commission on Fees for Trade Repositories*****1) ESMA's consideration that the fact that a "TR offers ancillary services" is a criterion of classification of a trade repository in a specific category of trade repositories (HET, MET or LET) – point 16 in connection with point 36(c) and point 38(c):**

- it is unclear whether, in deciding that the fact that a "TR offers ancillary services" is a criterion of determining the expected level of turnover, ESMA considered the fact that a trade repository may provide services other than those listed in Article 78.5 of EMIR. This is particularly important from the perspective of the National Depository for Securities (KDPW S.A.), which is planning to apply for registration as a trade repository under Article 55 of EMIR. In addition to the activity of a trade repository, KDPW S.A. currently operates other business lines as well, where it offers services which it is authorised to provide as Poland's central securities depository. This activity is subject to supervision of the Polish Financial Supervision Authority. Considering that, after registration of the trade repository by ESMA, the remaining activity of KDPW S.A. will remain subject to supervision of the Polish Financial Supervision Authority, in the opinion of KDPW S.A., the determination of fees due to ESMA should take into account only such ancillary services which, under other regulations, have not been previously authorised or otherwise licensed by the national competent supervision authority. It is relevant to note that the powers of the Polish Financial Supervision Authority to charge fees for supervision of the services of KDPW S.A. supervised by the Polish Financial Supervision Authority are not being challenged. According to point 21 of the consultation material, the national supervision authority will be able to charge fees for supervision of services which are authorised or registered by the national competent authority under EU legislation or national law. If the national competent authority retains the supervision power over such services, then such services should not be included as the basis of fees for supervision activities performed by ESMA. According to Article 72.2 of EMIR, the amount of a fee charged to a trade repository shall cover all administrative costs incurred for its registration and supervision activities, and therefore should be linked to these costs, as well as being indirectly linked to administrative functions performed by the supervisory authority generating these costs.

In the opinion of KDPW, it should also be established that ancillary services provided by a trade repository, which are subject to supervision by the national competent authority in the country of seat, do not generate significant additional risks to the stability of the trade repository, referred to in point 19 of the consultation material.

We suggest two alternatives:

- 1) Establish that, for the purpose of determining fees to ESMA, ancillary services are only services of the same kind as services listed in Article 78.5 of EMIR; or

- 2) Exclude services that are subject to separate authorisation and being subject to supervision by the competent authority in the member state from the scope of ancillary services provided by a trade repository, for the purpose of determining fees to ESMA.

**2) ESMA's consideration of the "type of venue of execution" as a criterion of classification of a trade repository in a specific category of trade repositories (HET, MET or LET) – point 36(b) and point 38(a):**

- in the opinion of KDPW, the type of venue of execution should not be considered a criterion in determining the administrative costs of ESMA. First of all, EMIR and the Regulatory Technical Standards of EMIR provide no basis for a trade repository to be registered by ESMA for a specific market (i.e., regulated market or OTC) as registration concerns a specific class of derivatives irrespective of their trading market. This means that a trade repository which has been registered by ESMA may potentially accept trade reports irrespective of the trading market and that the scope of accepted trade reports in terms of markets may be changed after the registration of the trade repository without another registration by ESMA. In this context, doubts arise as to the scope of administrative activities of ESMA relating to a change of the classification of a trade repository as an entity which adds OTC trade reports to the scope of accepted trade reports. In line with our interpretation of the provisions of Article 72.2 of EMIR, which provides that the amount of a fee charged to a trade repository should be linked to the costs of the supervision authority involving registration and supervisory duties, at the same time we see no basis for ESMA to perform significant administrative activities in connection with the addition of an OTC market to the scope of activities of a trade repository.


We suggest the deletion of item (a) "A TR receives reports for derivatives traded over the counter" as a criterion of classification of a trade repository as LET, MET or HET.

**3) ESMA's consideration of the number of "derivative classes" as a criterion of classification of a trade repository in a specific category of trade repositories (HET, MET or LET) – point 38(b):**

- in principle, we agree that the number of derivative classes covered by a trade repository should be a factor of the level of turnover of the trade repository. In our opinion, however, it is wrong to assume that registration of data for three derivative classes should put a trade repository in the category of TRs with the highest level of turnover. Considering that there are 6 possible derivative classes (interest, credit, commodities, foreign exchange, equity and others) the fact that a trade repository covers at least three derivative classes cannot automatically imply a significantly higher level of turnover of the trade repository and put the trade repository in the category of TRs with the highest level of turnover.

We suggest to:

- 1) Increase the minimum number of derivative classes which put a trade repository in a specific category (LET, MET or HET); or

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- 2) Link the expected level of turnover only to the number of derivative classes covered by a trade repository (in consequence, delete the criteria in items (a) and (c)), imposing a rule that the number of covered derivative classes is the only criterion putting a trade repository in one of the three categories of trade repositories (LET, MET or HET) depending on the number of covered derivative classes.

**4) registration fee bands – point 44:**

- the consultation document does not specify clearly whether the final amount of the registration fee in a given category will be defined as set out in the proposal, i.e., as a band of fees (e.g., EUR 40-50 thousand for LET) with the exact amount set in the course of the registration procedure, or whether the final registration fee in a category will be set precisely in the Regulation, e.g., EUR 40 thousand for LET, while the current proposal only provides a framework for the fees.