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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	12 July 2013
To:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union
No. Cion doc.:	C(2013) 4289 final
Subject:	COMMISSION DELEGATED REGULATION (EU) No .../.. of 12.7.2013 amending Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to the list of exempted entities

Delegations will find attached document C(2013) 4289 final.

Encl.: C(2013) 4289 final



Brussels, 12.7.2013
C(2013) 4289 final

COMMISSION DELEGATED REGULATION (EU) No .../..

of 12.7.2013

**amending Regulation (EU) No 648/2012 of the European Parliament and of the Council
on OTC derivatives, central counterparties and trade repositories with regard to the list
of exempted entities**

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR) was adopted on 4 July 2012 and entered into force on 16 August 2012.

European central banks and Union public bodies charged with or intervening in the management of public debt are exempted from EMIR.

The European Commission is empowered under Article 1(6) of EMIR to adopt delegated acts in accordance with Article 82 to amend the list of entities to which EMIR shall not apply.

As required under Article 1(6) of EMIR, the European Commission has assessed the treatment of central banks and public bodies managing public debt by the most important third countries in terms of contracts traded. This analysis is presented in a report to the European Parliament and the Council that accompanies this delegated act. The report concludes that, at this juncture, central banks and public bodies charged with or intervening in the management of the public debt from Japan and the United States of America should be added to the list of exempted entities under EMIR.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

Article 1(6) of EMIR requires the Commission to assess the international treatment of central banks and of public bodies managing public debt, and more specifically, to conduct “*a comparative analysis of the treatment of those bodies and of central banks within the legal framework of a significant number of third countries, including at least the three most important jurisdictions as regards volumes of contracts traded, and the risk-management standards applicable to the derivative transactions entered into by those bodies and by central banks in those jurisdictions*”.

The Commission used detailed statistics provided by the Bank for International Settlements (BIS) to select the jurisdictions to be analysed. According to the data used, the three most important jurisdictions as regards volumes of contracts traded are the United States of America, Japan and Switzerland. With the view to include a larger number of third countries in the comparative analysis, the Commission also analysed the legislative frameworks of Australia, Canada and Hong Kong with respect to OTC derivatives markets, which are the next three most important jurisdictions as regards volumes of contracts traded.

The Commission services consulted these six jurisdictions to gather information on their relevant legal frameworks on OTC derivatives transactions applicable to central banks and public bodies charged with or intervening in the management of the public debt.

The Commission services also consulted the European Securities and Markets Authority (ESMA) and the European Central Bank.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Article 1 specifies the amendments to be made to the Regulation (EU) No 648/2012.

Article 2 provides that the Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal.

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(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 repositories¹, and in particular Article 1(6) thereof,

Whereas:

- (1) The Commission has assessed the international treatment of public bodies charged with or intervening in the management of public debt and central banks and presented its conclusions to the European Parliament and the Council². In particular, the Commission has conducted a comparative analysis of the treatment of such public bodies and central banks in the legal orders of a significant number of third countries, as well as of the risk-management standards applicable to the derivative transactions entered into by those bodies and by central banks in those jurisdictions.
- (2) Following this analysis, the Commission concluded that central banks and public bodies charged with or intervening in the management of public debt should be exempted from the clearing and reporting obligation applicable to over-the-counter (OTC) derivatives pursuant to the rules on OTC derivatives introduced in Japan and the United States of America.
- (3) Adding central banks and public bodies charged with or intervening in the management of the public debt from Japan and from the United States of America to the list of exempted entities referred to in Regulation (EU) No 648/2012 should promote neutral market conditions in the application of OTC derivatives reforms with regard to transactions with central banks across those jurisdictions and contribute to greater international coherence and consistency.
- (4) The exercise of monetary responsibilities and the management of sovereign debt have a combined impact on the functioning of interest rate markets and should be

¹ OJ L 201, 27.7.2012, p. 1.

² COM/2013/0158 final

coordinated to ensure that these two functions are performed efficiently. As Regulation (EU) No 648/2012 excludes from its scope Union central banks and other Union public bodies managing debt so as not to impede their ability to perform tasks of common interest, the application of different rules to such functions when they are exercised by third-country entities would be detrimental to their effectiveness. In order to ensure that third country central banks and other public bodies charged with or intervening in the management of the public debt continue to be in a position to perform their tasks adequately, third-country public bodies charged with or intervening in the management of the public debt should also be exempted from Regulation (EU) No 648/2012,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 1(4) of Regulation (EU) No 648/2012, the following point (c) is added:

"(c) the central banks and public bodies charged with or intervening in the management of the public debt in the following countries:

- (i) Japan;
- (ii) United States of America."

Article 2

This Regulation shall enter into force on the twentieth 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.

Done at Brussels, 12.7.2013

For the Commission
The President
José Manuel BARROSO