

FSA Regulation no. 6 /2013
issued in accordance with the provisions of the Article 12(1) of Regulation (EU) no.
648/2012 on OTC derivatives, central counterparties and trade repositories

In accordance with the provisions of Article 1(2), Article 2(1)(a) and (d), Article 3(1)(b), Article 6(2), Article 14 of the Government Emergency Ordinance no. 93/2012 on setting up, organization and functioning of the Romanian Financial Supervisory Authority, approved with amendments by Law no. 113/2013, as subsequently amended,

Having regard to the Parliament Decision no. 60/2013 on the designation of the members of the Romanian Financial Supervisory Authority Board, published in the Official Journal of Romania, Part I, no. 680 of 5 November 2013,

Taking into account the provisions of Article 12 (1) of Regulation (EU) no. 648/2012 on OTC derivatives, central counterparties and trade repositories,

In accordance with the decision of the Romanian Financial Supervisory Authority Board of 9 December 2013,

The Romanian Financial Supervisory Authority has adopted the following

REGULATION

Art. 1. – This regulation establishes rules regarding the penalties regime applicable to infringements of the provisions under Title II of *Regulation (EU) no. 648/2012 on OTC derivatives, central counterparties and trade repositories*, hereinafter referred to as Regulation (EU) no. 648/2012, in accordance with the provisions of the Article 12(1) of the same Regulation.

Art. 2. – The terms and the expressions used in this regulation have the significance specified under Regulation (EU) No 648/2012, under the European norms issued for the application of Regulation (EU) No 648/2012, under *FSA Regulation no. 3/2013 on the authorization and functioning of central counterparties, issued in accordance with the provisions of Regulation (EU) no. 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories*, hereinafter referred to as FSA Regulation no. 3/2013.

Art. 3. – The Romanian Financial Supervisory Authority, hereinafter referred to as FSA, exercises its powers and takes the necessary measures as competent authority under Regulation

(EU) no 648/2012 responsible for supervising the application of the provisions of Regulation (EU) No 648/2012 in the case of:

a) financial counterparties as defined under Article 2(8) of Regulation (EU) no. 648/2012, authorized and supervised by the FSA, as well as members of their Management Board/Supervisory Board, directors/directorate members, and compliance officers, as the case may be;

b) central counterparties specified under Article 2(1) of Regulation (EU) no. 648/2012 and Article 2(2) of FSA Regulation no. 3/2013, authorized and supervised by the FSA, as well as the persons mentioned under Article 2 points 27-29 of Regulation (EU) no. 648/2012, and compliance officers, as the case may be;

c) market/system operators that administrate trading venues as defined under Article 2(4) of Regulation (EU) no. 648/2012, authorized and supervised by the FSA, as well as members of their Management Board/Supervisory Board, directors/directorate members, and compliance officers, as the case may be.

Art. 4. - FSA applies sanctions and administrative measures which are effective, proportionate and dissuasive, in case of non-compliance by the entities mentioned under Article 3(a) and (b) with the following requirements specified under Title II of Regulation (EU) no. 648/2012:

a) reporting the details of any derivative contract they have concluded and of any modification or termination of the contract to a trade repository, in accordance with Article 9(1) of Regulation (EU) no. 648/2012, by observing the provisions of *Commission Delegated Regulation (EU) No 148/2013 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 on the minimum details of the data to be reported to trade repositories*, hereinafter referred to as Commission Delegated Regulation (EU) no. 148/2013, and of *Commission Implementing Regulation (EU) No 1247/2012 of 19 December 2012 laying down implementing technical standards with regard to the format and frequency of trade reports to 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*, hereinafter referred to as Commission Implementing Regulation (EU) no. 1247/2012;

b) keeping a record of any derivative contract they have concluded and any modification for at least five years following the termination of the contract, in accordance with the provisions of Article 9(2) of Regulation (EU) no. 648/2012;

c) reporting the details of a derivative contract to ESMA under the conditions specified under Article 9(3) of Regulation (EU) no. 648/2012, by observing the provisions of Commission Delegated Regulation (EU) no. 148/2013, and of Commission Implementing Regulation (EU) no. 1247/2012.

Art. 5. – FSA applies sanctions and administrative measures which are effective, proportionate and dissuasive, in case of non-compliance by the entities mentioned under Article 3(a) with the following requirements specified under Title II of Regulation (EU) no. 648/2012:

a) clearing all OTC derivative contracts pertaining to a class of OTC derivatives that has been declared subject to the clearing obligation in accordance with Article 5(2) of Regulation (EU) no. 648/2012, *and under the conditions specified under Article 4 of Regulation (EU) no. 648/2012 and under Chapter II of Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of*

the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP, hereinafter referred to as Commission Delegated Regulation (EU) no. 149/2013;

b) elaboration of appropriate procedures and arrangements in accordance with the provisions of Article 11(1) of Regulation (EU) no. 648/2012, and with the provisions of Articles 12-15 of Commission Delegated Regulation (EU) no. 149/2013, in case that they enter into an OTC derivative contract not cleared by a central counterparty;

c) marking-to-market on a daily basis the value of outstanding contracts under the conditions specified under Article 11(2) of Regulation (EU) no. 648/2012 and under Articles 16 and 17 of Commission Delegated Regulation (EU) no. 149/2013, in case that they enter into an OTC derivative contract not cleared by a central counterparty;

d) elaboration of risk management procedures in accordance with Article 11(3) of Regulation (EU) no. 648/2012, under the conditions specified under Article 11(5)-(11) of the same regulation, and under Articles 18-20 of Commission Delegated Regulation (EU) no. 149/2013, in case that they enter into an OTC derivative contract not cleared by a central counterparty;

e) holding an appropriate and proportionate amount of capital to manage the risk not covered by appropriate exchange of collateral, in accordance with Article 11(4) of Regulation (EU) no. 648/2012, in case that they enter into an OTC derivative contract not cleared by a central counterparty.

Art. 6. - FSA applies sanctions and administrative measures that are efficient, proportionate and dissuasive in case of non-compliance by the entities mentioned under Article 3(b) of the following requirements specified under Title II of Regulation (EU) no. 648/2012:

a) clearing OTC derivative contracts on a non-discriminatory and transparent basis, regardless of the trading venue, in accordance with the provisions of Article 7(1) of Regulation (EU) no. 648/2012;

b) responding to a formal request for access by a trading venue within the timeframe specified under Article 7(2) of Regulation (EU) no. 648/2012, as well as granting the access within three months of a decision acceding to the trading venue's formal request, under the conditions specified under Article 7 of the same regulation;

c) providing the trading venue with full reasons for refusal of access, in case of a formal request for access by a trading venue, in accordance with the provisions of Article 7(3) of Regulation (EU) no. 648/2012.

Art. 7. – FSA applies sanctions and measures that are efficient, proportionate and dissuasive in case of non-compliance by the entities mentioned under Article 3(c) of the following requirements specified under Title II of Regulation (EU) no. 648/2012:

a) provision of trade feeds on a non-discriminatory and transparent basis to any central counterparty that has been authorised to clear OTC derivative contracts traded on that trading venue, in accordance with the provisions of Article 8(1) of Regulation (EU) no. 648/2012.

b) responding to a formal request for access by a central counterparty within the timeframe specified under Article 8(2) of Regulation (EU) no. 648/2012, as well as granting the access within three months of a positive response to a request for access, under the conditions specified under Article 8 of the same regulation, and under Chapter VI of Commission Delegated Regulation (EU) no. 149/2013.

c) providing the central counterparty with full reasons for refusal of access, in case of a formal request for access by a central counterparty, in accordance with the provisions of Article 8(3) of Regulation (EU) no. 648/2012.

Art. 8. – Committing the infringements specified under Articles 4-7, and under Regulation (EU) no. 648/2012 shall be sanctioned by the FSA in accordance with Title X of *Law no. 297/2004 on the capital market*, as subsequently amended.

Art. 9. - FSA shall publish all the sanctioning decisions made pursuant to the present regulation in the FSA Bulletin, except for the cases where their publication would seriously jeopardize the financial markets or cause disproportionate damage to the parties involved. Such disclosure shall not contain personal data within the meaning of Article 2(a) of Directive 95/46/CE.

Art. 10. - On an annual basis, FSA shall publish an assessment report on the effectiveness of the penalties regime applied in accordance with the present regulation. The information disclosed shall not contain personal data within the meaning of Article 2(a) of Directive 95/46/CE.

Art. 11. - This regulation shall enter into force on the date of its publication in the Official Journal of Romania, Part I.

PRESIDENT,

Dan Radu RUȘANU