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Price: EUR 4

(Continued overleaf)

⁽¹⁾ Text with EEA relevance

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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⁽¹⁾ Text with EEA relevance

II

(Non-legislative acts)

REGULATIONS

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

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the opinion of the European Central Bank ⁽¹⁾,

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 repositories ⁽²⁾, and in particular Article 9(5) thereof,

Whereas:

(1) In order to allow flexibility, a counterparty should be able to delegate the reporting of a contract to the other counterparty or to a third party. Counterparties should also be able to agree to delegate reporting to a common third entity including a central counterparty (CCP), the latter submitting one report, including the relevant table of fields, to the trade repository. In these circumstances and in order to ensure data quality, the report should indicate that it is made on behalf of both counterparties and contain the full set of details that would have been reported had the contract been reported separately.

(2) To avoid inconsistencies in the Common Data tables, each counterparty to a derivative contract should ensure that the Common Data reported is agreed between both parties to the trade. A unique trade identifier will help with the reconciliation of the data in the case that the counterparties are reporting to different trade repositories.

(3) To avoid duplicate reporting and to reduce the reporting burden, where one counterparty or CCP reports on behalf of both counterparties, the counterparty or CCP should be able to send one report to the trade repository containing the relevant information.

(4) Valuation of derivative contracts is essential to allow regulators to fulfil their mandates, in particular when it comes to financial stability. The mark to market or mark to model value of a contract indicates the sign and size of the exposures related to that contract, and complements the information on the original value specified in the contract.

(5) Gathering information on the collateral pertaining to a particular contract is essential to ensuring the proper monitoring of exposures. To enable this, counterparties that collateralise their transactions should report such collateralisation details on a transaction level basis. Where collateral is calculated on the basis of net positions resulting from a set of contracts, and is therefore not posted on a transaction level basis but on a portfolio basis, counterparties should be able to report the portfolio using a unique code or numbering system as determined by the counterparty. That unique code should identify the specific portfolio over which the collateral is exchanged where the counterparty has more than one portfolio and should also ensure that a derivative contract can be linked to a particular portfolio over which collateral is being held.

(6) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission and it reflects the relevance of the role of trade repositories to improve transparency of markets towards the public and regulators, the data to be reported to, collected by and made available by trade repositories depending on derivative class and the nature of the trade.

⁽¹⁾ Not yet published in the Official Journal.

⁽²⁾ OJ L 201, 27.7.2012, p. 1.

- (7) ESMA has consulted the relevant authorities and the members of the European System of Central Banks (ESCB) before submitting the draft regulatory technical standards on which this Regulation is based. In accordance with Article 10 of Regulation (EU) No 1095/2010, of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority) ⁽¹⁾, ESMA has also conducted open public consultations on such draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the ESMA Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Details to set out in reports pursuant to Article 9(1) and (3) of Regulation (EU) No 648/2012

1. Reports to a trade repository shall include:
 - (a) the details set out in Table 1 of the Annex which contains information relating to the counterparties to a contract;
 - (b) the information set out in Table 2 of the Annex which contains details pertaining to the derivative contract concluded between the two counterparties.
2. For the purposes of paragraph 1, conclusion of a contract shall mean 'execution of a transaction' as referred to in Article 25(3) of Directive 2004/39/EC of the European Parliament and of the Council ⁽²⁾.
3. Where one report is made on behalf of both counterparties, it shall contain the information set out in Table 1 of the Annex in relation to each of the counterparties. The information set out in Table 2 of the Annex shall be submitted only once.
4. Where one report is made on behalf of both counterparties it shall indicate this fact, as set out in field 9 of Table 1 of the Annex.
5. Where one counterparty reports the details of a contract to a trade repository on behalf of the other counterparty, or a third entity reports a contract to a trade repository on behalf of one or both counterparties, the details reported shall include the full set of details that would have been reported had the contracts been reported to the trade repository by each counterparty separately.

6. Where a derivative contract includes features typical of more than one underlying asset as specified in Table 2 of the Annex, a report shall indicate the asset class that the counterparties agree the contract most closely resembles before the report is sent to a trade repository.

Article 2

Cleared trades

1. Where an existing contract is subsequently cleared by a CCP, clearing should be reported as a modification of the existing contract.
2. Where a contract is concluded in a trading venue and cleared by a CCP such that a counterparty is not aware of the identity of the other counterparty, the reporting counterparty shall identify that CCP as its counterparty.

Article 3

Reporting of exposures

1. The data on collateral required under Table 1 of the Annex shall include all posted collateral.
2. Where a counterparty does not collateralise on a transaction level basis, counterparties shall report to a trade repository collateral posted on a portfolio basis.
3. Where the collateral related to a contract is reported on a portfolio basis, the reporting counterparty shall report to the trade repository a code identifying the portfolio of collateral posted to the other counterparty related to the reported contract.
4. Non-financial counterparties other than those referred to in Article 10 of Regulation (EU) No 648/2012 shall not be required to report collateral, mark to market, or mark to model valuations of the contracts referred to in Table 1 of the Annex.
5. For contracts cleared by a CCP, mark to market valuations shall only be provided by the CCP.

Article 4

Reporting log

Modifications to the data registered in trade repositories shall be kept in a log identifying the person or persons that requested the modification, including the trade repository itself if applicable, the reason or reasons for such modification, a date and timestamp and a clear description of the changes, including the old and new contents of the relevant data as set out in fields 58 and 59 of Table 2 of the Annex.

⁽¹⁾ OJ L 331, 15.12.2010, p. 84.

⁽²⁾ OJ L 145, 30.4.2004, p. 1.

*Article 5***Entry into force**

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, 19 December 2012.

For the Commission
The President
José Manuel BARROSO

ANNEX

Details to be reported to trade repositories

Table 1

Counterparty Data

	Field	Details to be reported
	Parties to the contract	
1	Reporting timestamp	Date and time of reporting to the trade repository.
2	Counterparty ID	Unique code identifying the reporting counterparty. In case of an individual, a client code shall be used.
3	ID of the other counterparty	Unique code identifying the other counterparty of the contract. This field shall be filled from the perspective of the reporting counterparty. In case of an individual, a client code shall be used.
4	Name of the counterparty	Corporate name of the reporting counterparty. This field can be left blank in case the counterparty ID already contains this information.
5	Domicile of the counterparty	Information on the registered office, consisting of full address, city and country of the reporting counterparty. This field can be left blank in case the counterparty ID already contains this information.
6	Corporate sector of the counterparty	Nature of the reporting counterparty's company activities (bank, insurance company, etc.). This field can be left blank in case the counterparty ID already contains this information.
7	Financial or non-financial nature of the counterparty	Indicate if the reporting counterparty is a financial or non-financial counterparty in accordance with points 8 and 9 of Article 2 of Regulation (EU) No 648/2012.
8	Broker ID	In case a broker acts as intermediary for the reporting counterparty without becoming a counterparty, the reporting counterparty shall identify this broker by a unique code. In case of an individual, a client code shall be used.
9	Reporting entity ID	In case the reporting counterparty has delegated the submission of the report to a third party or to the other counterparty, this entity has to be identified in this field by a unique code. Otherwise this field shall be left blank. In case of an individual, a client code shall be used, as assigned by the legal entity used by the individual counterparty to execute the trade.
10	Clearing member ID	In case the reporting counterparty is not a clearing member, its clearing member shall be identified in this field by a unique code. In case of an individual, a client code, as assigned by the CCP, shall be used.
11	Beneficiary ID	The party subject to the rights and obligations arising from the contract. Where the transaction is executed via a structure, such as a trust or fund, representing a number of beneficiaries, the beneficiary should be identified as that structure. If the beneficiary of the contract is not a counterparty to this contract, the reporting counterparty has to identify this beneficiary by a unique code or, in case of individuals, by a client code as assigned by the legal entity used by the individual.

	Field	Details to be reported
12	Trading capacity	Identifies whether the reporting counterparty has concluded the contract as principal on own account (on own behalf or behalf of a client) or as agent for the account of and on behalf of a client.
13	Counterparty side	Identifies whether the contract was a buy or a sell. In the case of an interest rate derivative contract, the buy side will represent the payer of leg 1 and the sell side will be the payer of leg 2.
14	Contract with non-EEA counterparty	Indicates whether the other counterparty is domiciled outside the EEA.
15	Directly linked to commercial activity or treasury financing	Information on whether the contract is objectively measurable as directly linked to the reporting counterparty's commercial or treasury financing activity, as referred to in Article 10(3) of Regulation (EU) No 648/2012. This field shall be left blank in case the reporting counterparty is a financial counterparty, as referred to in point 8 of Article 2 Regulation (EU) No 648/2012.
16	Clearing threshold	Information on whether the reporting counterparty is above the clearing threshold as referred to in Article 10(2) of Regulation (EU) No 648/2012. This field shall be left blank in case the reporting counterparty is a financial counterparty, as referred to in point 8 of Article 2 Regulation (EU) No 648/2012.
17	Mark to market value of contract	Mark to market valuation of the contract, or mark to model valuation where applicable under Article 11(2) of Regulation (EU) No 648/2012.
18	Currency of mark to market value of the contract	The currency used for the mark to market valuation of the contract, or mark to model valuation where applicable under Article 11(2) of Regulation (EU) No 648/2012.
19	Valuation date	Date of the last mark to market or mark to model valuation.
20	Valuation time	Time of the last mark to market or mark to model valuation.
21	Valuation type	Indicate whether valuation was performed mark to market or mark to model.
22	Collateralisation	Whether collateralisation was performed.
23	Collateral portfolio	Whether the collateralisation was performed on a portfolio basis. Portfolio means the collateral calculated on the basis of net positions resulting from a set of contracts, rather than per trade.
24	Collateral portfolio code	If collateral is reported on a portfolio basis, the portfolio should be identified by a unique code determined by the reporting counterparty.
25	Value of the collateral	Value of the collateral posted by the reporting counterparty to the other counterparty. Where collateral is posted on a portfolio basis, this field should include the value of all collateral posted for the portfolio.
26	Currency of the collateral value	Specify the value of the collateral for field 25.

Table 2
Common Data

	Field	Details to be reported	Applicable types of derivative contract
	Section 2a — Contract type		All contracts
1	Taxonomy used	The contract shall be identified by using a product identifier.	
2	Product ID 1	The contract shall be identified by using a product identifier.	
3	Product ID 2	The contract shall be identified by using a product identifier.	
4	Underlying	The underlying shall be identified by using a unique identifier for this underlying. In case of baskets or indices, an indication for this basket or index shall be used where a unique identifier does not exist.	
5	Notional currency 1	The currency of the notional amount. In the case of an interest rate derivative contract, this will be the notional currency of leg 1.	
6	Notional currency 2	The currency of the notional amount. In the case of an interest rate derivative contract, this will be the notional currency of leg 2.	
7	Deliverable currency	The currency to be delivered.	
	Section 2b — Details on the transaction		All contracts
8	Trade ID	A Unique Trade ID agreed at the European level, which is provided by the reporting counterparty. If there is no unique trade ID in place, a unique code should be generated and agreed with the other counterparty.	
9	Transaction reference number	A unique identification number for the transaction provided by the reporting entity or a third party reporting on its behalf.	
10	Venue of execution	The venue of execution shall be identified by a unique code for this venue. In case of a contract concluded OTC, it has to be identified whether the respective instrument is admitted to trading but traded OTC or not admitted to trading and traded OTC.	
11	Compression	Identify whether the contract results from a compression exercise.	
12	Price/rate	The price per derivative excluding, where applicable, commission and accrued interest.	
13	Price notation	The manner in which the price is expressed.	
14	Notional amount	Original value of the contract.	

	Field	Details to be reported	Applicable types of derivative contract
15	Price multiplier	The number of units of the financial instrument which are contained in a trading lot; for example, the number of derivatives represented by one contract.	
16	Quantity	Number of contracts included in the report, where more than one derivative contract is reported.	
17	Up-front payment	Amount of any up-front payment the reporting counterparty made or received.	
18	Delivery type	Indicates whether the contract is settled physically or in cash.	
19	Execution timestamp	As defined in Article 1(2).	
20	Effective date	Date when obligations under the contract come into effect.	
21	Maturity date	Original date of expiry of the reported contract. An early termination shall not be reported in this field.	
22	Termination date	Termination date of the reported contract. If not different from maturity date, this field shall be left blank.	
23	Date of Settlement	Date of settlement of the underlying. If more than one, further fields may be used (e.g. 23A, 23B, 23C, etc.).	
24	Master Agreement type	Reference to the name of the relevant master agreement, if used for the reported contract (e.g. ISDA Master Agreement; Master Power Purchase and Sale Agreement; International ForEx Master Agreement; European Master Agreement or any local Master Agreements).	
25	Master Agreement version	Reference to the year of the master agreement version used for the reported trade, if applicable (e.g. 1992, 2002, etc.).	
	Section 2c — Risk mitigation/Reporting		All contracts
26	Confirmation timestamp	Date and time of the confirmation, as defined under Commission Delegated Regulation (EU) No 149/2013 ⁽¹⁾ indicating time zone in which the confirmation has taken place.	
27	Confirmation means	Whether the contract was electronically confirmed, non-electronically confirmed or remains unconfirmed.	
	Section 2d — Clearing		All contracts
28	Clearing obligation	Indicates, whether the reported contract is subject to the clearing obligation under Regulation (EU) No 648/2012.	

	Field	Details to be reported	Applicable types of derivative contract
29	Cleared	Indicates, whether clearing has taken place.	
30	Clearing timestamp	Time and date when clearing took place.	
31	CCP	In case of a contract that has been cleared, the unique code for the CCP that has cleared the contract.	
32	Intragroup	Indicates whether the contract was entered into as an intragroup transaction, defined in Article 3 of Regulation (EU) No 648/2012.	
	Section 2e Interest Rates	If a UPI is reported and contains all the information below, this is not required to be reported.	Interest rate derivatives
33	Fixed rate of leg 1	An indication of the fixed rate leg 1 used, if applicable.	
34	Fixed rate of leg 2	An indication of the fixed rate leg 2 used, if applicable.	
35	Fixed rate day count	The actual number of days in the relevant fixed rate payer calculation period, if applicable.	
36	Fixed leg payment frequency	Frequency of payments for the fixed rate leg, if applicable.	
37	Floating rate payment frequency	Frequency of payments for the floating rate leg, if applicable.	
38	Floating rate reset frequency	Frequency of floating rate leg resets, if applicable.	
39	Floating rate of leg 1	An indication of the interest rates used which are reset at predetermined intervals by reference to a market reference rate, if applicable.	
40	Floating rate of leg 2	An indication of the interest rates used which are reset at predetermined intervals by reference to a market reference rate, if applicable.	
	Section 2f — Foreign Exchange	If a UPI is reported and contains all the information below, this is not required to be reported.	Currency derivatives
41	Currency 2	The cross currency, if different from the currency of delivery.	
42	Exchange rate 1	The contractual rate of exchange of the currencies.	
43	Forward exchange rate	Forward exchange rate on value date.	
44	Exchange rate basis	Quote base for exchange rate.	

	Field	Details to be reported	Applicable types of derivative contract
	Section 2g — Commodities	If a UPI is reported and contains all the information below, this is not required to be reported unless to be reported according to Regulation (EU) No 1227/2011 of the European Parliament and of the Council ⁽²⁾.	Commodity derivatives
	General		
45	Commodity base	Indicates the type of commodity underlying the contract.	
46	Commodity details	Details of the particular commodity beyond field 45.	
	Energy	Information to be reported according to Regulation (EU) No 1227/2011, if applicable.	
47	Delivery point or zone	Delivery point(s) of market area(s).	
48	Interconnection Point	Identification of the border(s) or border point(s) of a transportation contract.	
49	Load type	Repeatable section of fields 50-54 to identify the product delivery profile which correspond to the delivery periods of a day.	
50	Delivery start date and time	Start date and time of delivery.	
51	Delivery end date and time	End date and time of delivery.	
52	Contract capacity	Quantity per delivery time interval.	
53	Quantity Unit	Daily or hourly quantity in MWh or kWh/d which corresponds to the underlying commodity.	
54	Price/time interval quantities	If applicable, price per time interval quantities.	
	Section 2h — Options	If a UPI is reported and contains all the information below, this is not required to be reported.	Contracts that contain an option
55	Option type	Indicates whether the contract is a call or a put.	
56	Option style (exercise)	Indicates whether the option may be exercised only at a fixed date (European, and Asian style), a series of pre-specified dates (Bermudan) or at any time during the life of the contract (American style).	
57	Strike price (cap/floor rate)	The strike price of the option.	

	Field	Details to be reported	Applicable types of derivative contract
	Section 2i — Modifications to the report		All contracts
58	Action type	Whether the report contains: — a derivative contract or post-trade event for the first time, in which case it will be identified as 'new'; — a modification of details of a previously reported derivative contract, in which case it will be identified as 'modify'; — a cancellation of a wrongly submitted report, in which case, it will be identified as 'error'; — a termination of an existing contract, in which case it will be identified as 'cancel'; — a compression of the reported contract, in which case it will be identified as 'compression'; — an update of a contract valuation, in which case it will be identified as 'valuation update'; — any other amendment to the report, in which case it will be identified as 'other'.	
59	Details of action type	Where field 58 is reported as 'other' the details of such amendment should be specified here.	

(¹) See page 11 of this Official Journal.

(²) OJ L 326, 8.12.2011, p. 1.

**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

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

to specify technical terms necessary for developing this technical standard, a number of terms should be defined.

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the opinion of the European Central Bank ⁽¹⁾,

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 repositories ⁽²⁾, and in particular Articles 4(4), 5(1), 6(4), 8(5), 10(4) and 11(14) thereof,

Whereas:

(1) A framework should be provided to encompass rules applicable to the clearing obligation, its application, possible exemptions and risk mitigation techniques to be established when clearing with a central counterparty (CCP) cannot take place. To ensure coherence between those provisions, which should enter into force at the same time, and to facilitate a comprehensive view and efficient access for stakeholders and in particular those subject to the obligations, it is desirable to include most of the regulatory technical standards required under Title II of Regulation (EU) No 648/2012 in a single Regulation.

(2) In view of the global nature of the over the counter (OTC) derivatives market, this Regulation should take into account the relevant internationally agreed guidelines and recommendations on OTC derivatives market reforms and mandatory clearing as well as the related rules developed in other jurisdictions. In particular the framework for the determination of a clearing obligation takes into account the Mandatory Clearing requirements published by the International Organization of Securities Commissions. This will support, as much as possible, convergence with the approach in other jurisdictions.

(3) In order to clearly identify a limited number of concepts stemming from Regulation (EU) No 648/2012, as well as

(4) An indirect clearing arrangement should not expose a CCP, clearing member, client or indirect client to additional counterparty risk and the assets and positions of the indirect client should benefit from an appropriate level of protection. It is therefore essential that any type of indirect clearing arrangements comply with minimum conditions for ensuring their safety. To that end, the parties involved in indirect clearing arrangements shall be subject to specific obligations. Such arrangements extend beyond the contractual relationship between indirect clients and the client of a clearing member that provides indirect clearing services.

(5) Regulation (EU) No 648/2012 requires a CCP to be a designated system under Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems ⁽³⁾. This implies that clearing members of CCPs should qualify as participants within the meaning of that Directive. Therefore to ensure an equivalent level of protection to indirect clients as granted to clients under Regulation (EU) No 648/2012, it is necessary to ensure that clients providing indirect clearing services are credit institutions, investment firms, or equivalent third country credit institutions or investment firms.

(6) Indirect clearing arrangements should be established so as to ensure that indirect clients can obtain an equivalent level of protection as direct clients in a default scenario. Following the failure of a clearing member that facilitates an indirect clearing arrangement, indirect clients should be included in the transfer of client positions to an alternative clearing member under the portability requirements established by Articles 39 and 48 of Regulation (EU) No 648/2012. Appropriate safeguards against client failure should also exist within indirect clearing arrangements and should support transferring indirect client positions to an alternative provider of clearing services.

⁽¹⁾ Not yet published in the Official Journal.

⁽²⁾ OJ L 201, 27.7.2012, p. 1.

⁽³⁾ OJ L 166, 11.6.1998, p. 45.

- (7) As indirect clearing arrangements may give rise to specific risks, all the parties included in an indirect clearing arrangement, including clearing members and CCPs, should routinely identify, monitor and manage any material risks arising from the arrangement. Appropriate sharing of information between clients that provide indirect clearing services and clearing members that facilitate those services is especially important in this context. Clearing members should use information provided by clients for risk management purposes only and should prevent the misuse of commercially sensitive information, including through the use of effective barriers between different divisions of a financial institution to avoid conflicts of interest.
- (8) When it authorises a CCP to clear a class of OTC derivatives, the competent authority is required to notify the European Securities and Markets Authority (ESMA). This notification should include detailed information which is necessary for ESMA to carry out its assessment process, including information on liquidity and volume of the relevant class of OTC derivatives. Although the information flows from the competent authority to ESMA, it is the CCP having requested the authorisation that should initially provide the required information to the competent authorities which may then complement it.
- (9) Although all information to be included in the notification from the competent authority to ESMA for the purpose of the clearing obligation may not always be available, especially for new products, estimates that are available should be provided, including a clear indication of the assumptions made. The notification should also contain information pertaining to the counterparties, such as the type and number of counterparties, the steps required to start clearing with a CCP, their legal and operational capacity or their risk management framework in order to allow ESMA to assess the ability of the active counterparties to comply with the clearing obligation without disruption to the market.
- (10) The notification from the competent authority to ESMA should contain information on the degree of standardisation, liquidity and price availability, in order for ESMA to assess whether a class of OTC derivatives should be subject to the clearing obligation. The criteria related to the standardisation of the contractual terms and operational processes of a relevant class of OTC are an indicator of the standardisation of the economic terms of a class of OTC derivatives as it is only when such economic terms are standardised that the contractual terms and operational processes can be standardised. The criteria related to liquidity and price availability are assessed by ESMA with different considerations than the assessment made by the competent authority while authorising the CCP. Liquidity in this context is assessed on a wider perspective and differs from the liquidity after the clearing obligation would apply. In particular, the fact that a contract is sufficiently liquid to be cleared by one CCP does not necessarily imply that it should be subject to the clearing obligation. ESMA's assessment should not replicate or duplicate the review already performed by the competent authority.
- (11) The information to be provided by the competent authority for the purpose of the clearing obligation should enable ESMA to assess the availability of pricing information. In this respect, the access of a CCP to pricing information at one point in time does not mean that market participants could access pricing information in the future. As a result, the fact that a CCP has access to the necessary price information to manage the risks of clearing derivative contracts within a certain class of OTC derivatives does not automatically imply that this class of OTC derivatives should be subject to the clearing obligation.
- (12) The level of details available in the register of classes of OTC derivative contracts subject to the clearing obligation depends on the relevance of these details to identify each class of OTC derivative contracts. As a result the level of details in the register may differ for different classes of OTC derivative contracts.
- (13) Allowing access by multiple CCPs to a trading venue could broaden participant access to that venue and therefore enhance overall liquidity. It is nonetheless necessary in such circumstances to specify the notion of liquidity fragmentation within a venue in the case that it may threaten the smooth and orderly functioning of markets for the class of financial instruments for which the request is made.
- (14) The assessment of the competent authority of the trading venue to which a CCP has requested access and of the competent authority of the CCP should be based on the mechanisms available to prevent liquidity fragmentation within a trading venue.
- (15) To prevent liquidity fragmentation all participants in a trading venue should be able to clear all transactions executed between them. However, it would not be proportionate to require all clearing members of an existing CCP to become also clearing members of any new CCP serving such trading venue. Where there are entities which are clearing members of both CCPs, they may facilitate the transfer and clearing of transactions executed by market participants separately served by the two CCPs, to limit the risk of liquidity fragmentation. Nevertheless, it is important that a request to access a

trading venue by a CCP does not fragment liquidity in a manner that would increase the risks to which the existing CCP is exposed.

- (16) According to Article 8(4) of Regulation (EU) No 648/2012, a request to access a trading venue by a CCP should not require interoperability, and, consequently, this Regulation should not prescribe interoperability as the only way to resolve liquidity fragmentation. However, this Regulation should not preclude CCPs from entering into such an arrangement on a voluntary basis if the necessary conditions for its establishment are fulfilled.
- (17) In order to establish which OTC derivative contracts are objectively measurable as reducing risks directly relating to commercial activity or treasury financing activity, non-financial counterparties should apply one of the criteria provided for in this Regulation including the accounting definition based on International Financial Reporting Standards (IFRS) rules. The accounting definition can be used by counterparties even though they do not apply IFRS rules. For those non-financial counterparties that may use local accounting rules, it is expected that most of the contracts classified as hedging under such local accounting rules would fall within the general definition of contracts reducing risks directly related to commercial activity or treasury financing activity provided for in this Regulation.
- (18) In some circumstances, it may not be possible to hedge a risk by using a directly related derivative contract, a contract with exactly the same underlying and settlement date as the risk being covered. In such case, the non-financial counterparty may use proxy hedging through a closely correlated instrument to cover its exposure such as an instrument with a different but very close underlying in terms of economic behaviour. Additionally, certain groups of non-financial counterparties which enter into OTC derivative contracts, via a single entity, to hedge their risk in relation to the overall risks of the group may use macro or portfolio hedging. Those macro, portfolio or proxy hedging OTC derivative contracts may constitute hedging for the purpose of this Regulation and should be considered against the criteria for establishing which OTC derivative contracts are objectively reducing risks.
- (19) A risk may evolve over time and in order to adapt to the evolution of the risk, OTC derivative contracts initially executed for reducing risk related to commercial or treasury financing activity may have to be offset through the use of additional OTC derivative contracts. As a result, hedging of a risk may be achieved by a combination of OTC derivative contracts including offsetting OTC derivative contracts that close out those OTC derivative contracts that have become unrelated to the commercial or treasury financing risk.
- (20) The range of risks directly related to commercial and treasury financing activities is very wide and varies across different economic sectors. Risks related to commercial activities are typically attached to inputs to the production function of a company as well as products and services that it sells or provides. Treasury financing activities typically relate to the management of the short- and long-term funding of an entity, including its debt, and the ways it invests the financial resources it generates or holds, including cash management. Treasury financing and commercial activities can be affected by common sources of risks, such as foreign exchange, commodity prices, inflation or credit risk. Given that OTC derivatives are concluded to hedge a particular risk, when analysing the risks directly related to commercial or treasury financing activities, those risks should be defined in a consistent manner covering both activities. In addition, separating the two concepts might have unintended consequences, given that depending on the sector in which non-financial counterparties operate, a particular risk would be hedged under treasury financing or commercial activity.
- (21) While the clearing thresholds should be set taking into account the systemic relevance of the related risks, it is important to consider that the OTC derivatives that reduce risks are excluded from the computation of the clearing thresholds and that the clearing thresholds allow an exception to the principle of the clearing obligation for those OTC derivative contracts which may be considered as not concluded for hedging purposes. More specifically, the value of the clearing thresholds should be reviewed periodically and should be determined by class of OTC derivative contracts. The classes of OTC derivatives determined for the purpose of the clearing thresholds may be different from the classes of OTC derivatives for the purpose of the clearing obligation. In setting the value of the clearing thresholds, due consideration should be given to the need to define a single indicator reflecting the systemic relevance of the sum of net positions and exposures

per counterparty and per asset class of OTC derivatives. Furthermore, the clearing thresholds being used by non-financial counterparties should be simple to implement.

- (22) The determination of the value of the clearing thresholds should take into account the systemic relevance of the sum of net positions and exposures per counterparty and per class of OTC derivatives in accordance with Regulation (EU) No 648/2012. However, it should be considered that these net positions and exposures are different from a net exposure across counterparties and across asset class. Furthermore, in accordance with Regulation (EU) No 648/2012 these net positions should be added up in order to determine the data to be considered for the setting of the clearing thresholds. It is the total gross sum resulting from the addition of these net positions that should be considered when setting the clearing thresholds. The gross notional value resulting from that addition should be used as a reference for setting the clearing thresholds.
- (23) In addition, the structure of the OTC derivatives activity of non-financial counterparties usually leads to a low level of netting as OTC derivative contracts are concluded in the same direction. As a result, the difference between the sum of the net positions and exposures per counterparty and per class of OTC derivatives would be very close to the gross value of contracts. Therefore, and in order to reach the objective of simplicity, the gross value of OTC derivative contracts should be used as a valid proxy of the measure to be taken into account in the determination of the clearing threshold.
- (24) Given that non-financials that do not exceed the clearing threshold are not required to mark-to-market their OTC derivative contracts, it would not be reasonable to use this measure to determine the clearing thresholds as this would impose a heavy burden on non-financial counterparties which would not be proportionate with the risk addressed. Instead, using the notional value of OTC derivative contracts would allow a simple approach which is not exposed to external events for non-financials.
- (25) The excess of one of the values set for a class of OTC derivatives should trigger the excess of the clearing threshold for all classes, given that OTC derivative contracts reducing risks are excluded from the calculation of the clearing threshold, the consequences of exceeding the clearing threshold are not only related to the clearing obligation but extend to risk mitigation techniques, and the approach for the relevant obligations under Regulation (EU) No 648/2012 applicable to non-financial counterparties should be simple in view of the non-sophisticated nature of most of them.
- (26) For those OTC derivative contracts that are not cleared, risk mitigation techniques such as timely confirmation should apply. The confirmation of OTC derivative contracts may refer to one or more master agreements, master confirmation agreements, or other standard terms. It may take the form of an electronically executed contract or a document signed by both counterparties.
- (27) It is essential that counterparties confirm the terms of their transactions as soon as possible following the execution of the transaction, especially when the transaction is electronically executed or processed, in order to ensure common understanding and legal certainty of the terms of the transaction. Counterparties entering into non-standard or complex OTC derivative contracts, in particular, may need to implement tools in order to comply with the requirement to confirm their OTC derivative contracts in a timely manner. The timely confirmation would also anticipate that relevant market practices would evolve in this area.
- (28) To further mitigate risks, portfolio reconciliation enables each counterparty to undertake a comprehensive review of a portfolio of transactions as seen by its counterparty in order to promptly identify any misunderstandings of key transaction terms. Such terms should include the valuation of each transaction and may also include other relevant details such as the effective date, the scheduled maturity date, any payment or settlement dates, the notional value of the contract and currency of the transaction, the underlying instrument, the position of the counterparties, the business day convention and any relevant fixed or floating rates of the OTC derivative contract.

- (29) In view of the different risk profiles and in order for the portfolio reconciliation to be a proportionate risk mitigation technique, the frequency of the reconciliation and size of the portfolio to consider should be different depending on the nature of the counterparties. More demanding requirements should apply to both financial counterparties and non-financial counterparties that exceed the clearing threshold while lower reconciliation frequency should apply for non-financial counterparties that would not exceed the clearing threshold irrespective of the category of its counterparty who would also benefit from this less frequent reconciliation for that part of its portfolio.
- (30) Portfolio compression may also be an efficient tool for risk mitigation purposes depending on circumstances such as the size of the portfolio with a counterparty, the maturity, purpose and degree of standardisation of OTC derivative contracts. Financial counterparties and non-financial counterparties that have a portfolio of OTC derivative contracts not cleared by a CCP above the level determined in this Regulation should have procedures in place in order to analyse the possibility to use portfolio compression that would allow them to reduce their counterparty credit risk.
- (31) Dispute resolution aims at mitigating risks stemming from contracts that are not centrally cleared. When entering into OTC derivative transactions with one another, counterparties should have an agreed framework for resolving any related dispute that may arise. The framework should refer to resolution mechanisms such as third party arbitration or market polling mechanism. The framework intends to avoid unresolved disputes escalating and exposing counterparties to additional risks. Disputes should be identified, managed and appropriately disclosed.
- (32) For the purpose of specifying market conditions that prevent marking-to-market, it is necessary to specify inactive markets. A market may be inactive for several reasons including when there are no regularly occurring market transactions on an arm's length basis, where an arm's length basis should have the same meaning as for accounting purposes.
- (33) This Regulation applies to financial counterparties and non-financial counterparties above the clearing threshold and takes into consideration Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on capital adequacy of investment firms and credit institutions⁽¹⁾, which also sets requirements to be complied with when marking-to-model.
- (34) Although the design of the model used for the marking-to-model may be developed internally or externally, in order to ensure appropriate accountability, the approval of the model is the responsibility of the board of directors or the delegated committee of such board.
- (35) When counterparties can apply the intragroup exemption following their notification to the competent authorities but without waiting for the end of the non-objection period by such competent authorities, it is important to ensure that the competent authorities get timely, appropriate and sufficient information in order to assess whether it should object to the use of the exemption.
- (36) The anticipated size, volumes and frequency of intragroup OTC derivative contracts may be determined on the basis of the historical intragroup transactions of the counterparties as well as the anticipated model and activity expected for the future.
- (37) When counterparties apply an intragroup exemption, they should publicly disclose information in order to ensure transparency in respect of market participants and potential creditors. This is particularly important for the potential creditors of the counterparties in terms of assessing risks. The disclosure aims at preventing misperception that OTC derivative contracts are centrally cleared or subject to risk mitigation techniques when it is not the case.
- (38) The timeframe to achieve timely confirmation requires adaptation efforts including changes of market practice and enhancement of IT systems. Given that the pace of adaptation to compliance may differ depending on the category of counterparties and the asset class of OTC derivatives, setting progressive dates of application which cater for these differences would allow enhancing the timeframe of the confirmation for those counterparties and products that could be ready more rapidly.
- (39) The standards set for portfolio reconciliation, portfolio compression or dispute resolution would require counterparties to set up procedures, policies, processes, and amend documentation which would require time. The entry into force of the related requirements should be delayed in order to grant time for the counterparties to take the necessary steps for compliance purposes.
- (40) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority to the Commission.

⁽¹⁾ OJ L 177, 30.6.2006, p. 201.

- (41) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council ⁽¹⁾, ESMA has conducted open public consultations on the draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL

Article 1

Definitions

For the purposes of this Regulation the following definitions apply:

- (a) 'indirect client' means the client of a client of a clearing member;
- (b) 'indirect clearing arrangement' means the set of contractual relationships between the central counterparty (CCP), the clearing member, the client of a clearing member and indirect client that allows the client of a clearing member to provide clearing services to an indirect client;
- (c) 'confirmation' means the documentation of the agreement of the counterparties to all the terms of an over the counter (OTC) derivative contract.

CHAPTER II

INDIRECT CLEARING ARRANGEMENTS

(Article 4(4) of Regulation (EU) No 648/2012)

Article 2

Structure of indirect clearing arrangements

1. Where a clearing member is prepared to facilitate indirect clearing, any client of such clearing member shall be permitted to provide indirect clearing services to one or more of its own clients, provided that the client of the clearing member is an authorised credit institution, investment firm or an equivalent third country credit institution or investment firm.
2. The contractual terms of an indirect clearing arrangement shall be agreed between the client of a clearing member and the indirect client, after consultation with the clearing member on the aspects that can impact the operations of the clearing member. They shall include contractual requirements on the client to honour all obligations of the indirect client towards the clearing member. These requirements shall refer only to

transactions arising as part of the indirect clearing arrangement, the scope of which shall be clearly documented in the agreed contracts.

Article 3

Obligations of CCPs

1. Indirect clearing arrangements shall not be subject to business practices of the CCP which act as a barrier to their establishment on reasonable commercial terms. At the request of a clearing member, the CCP shall maintain separate records and accounts enabling each client to distinguish in accounts held with the CCP the assets and positions of the client from those held for the accounts of the indirect clients of the client.
2. A CCP shall identify, monitor and manage any material risks arising from indirect clearing arrangements that could affect the resilience of the CCP.

Article 4

Obligations of clearing members

1. A clearing member that offers to facilitate indirect clearing services shall do so on reasonable commercial terms. Without prejudice to the confidentiality of contractual arrangements with individual clients, the clearing member shall publicly disclose the general terms on which it is prepared to facilitate indirect clearing services. These terms may include minimum operational requirements for clients that provide indirect clearing services.
2. When facilitating indirect clearing arrangements, a clearing member shall implement any of the following segregation arrangements as indicated by the client:
 - (a) keep separate records and accounts enabling each client to distinguish in accounts with the clearing member the assets and positions of the client from those held for the accounts of its indirect clients;
 - (b) keep separate records and accounts enabling each client to distinguish in accounts with the clearing member the assets and positions held for the account of an indirect client from those held for the account of other indirect clients.
3. The requirement to distinguish assets and positions with the clearing member shall be considered to be met if the conditions specified in Article 39(9) of Regulation (EU) No 648/2012 are satisfied.
4. A clearing member shall establish robust procedures to manage the default of a client that provides indirect clearing services. These procedures shall include a credible mechanism for transferring the positions and assets to an alternative client or clearing member, subject to the agreement of the indirect clients affected. A client or clearing member shall not be obliged to accept these positions unless it has entered into a prior contractual agreement to do so.

⁽¹⁾ OJ L 331, 15.12.2010, p. 84.

5. The clearing member shall also ensure that its procedures allow for the prompt liquidation of the assets and positions of indirect clients and the clearing member to pay all monies due to the indirect clients following the default of the client.

6. A clearing member shall identify, monitor and manage any risks arising from facilitating indirect clearing arrangements, including using information provided by clients under Article 4(3). The clearing member shall establish robust internal procedures to ensure this information cannot be used for commercial purposes.

Article 5

Obligations of clients

1. A client that provides indirect clearing services shall keep separate records and accounts that enable it to distinguish between its own assets and positions and those held for the account of its indirect clients. It shall offer indirect clients a choice between the alternative account segregation options provided for in Article 4(2) and shall ensure that indirect clients are fully informed of the risks associated with each segregation option. The information provided by the client to indirect clients shall include details of arrangements for transferring positions and accounts to an alternative client.

2. A client that provides indirect clearing services shall request the clearing member to open a segregated account at the CCP. The account shall be for the exclusive purpose of holding the assets and positions of its indirect clients.

3. A client shall provide the clearing member with sufficient information to identify, monitor and manage any risks arising from facilitating indirect clearing arrangements. In the event of default of the client, all information held by the client in respect of its indirect clients shall be made immediately available to the clearing member.

CHAPTER III

NOTIFICATION TO ESMA FOR THE PURPOSE OF THE CLEARING OBLIGATION

(Article 5(1) of Regulation (EU) No 648/2012)

Article 6

Details to be included in the notification

1. The notification for the purpose of the clearing obligation shall include the following information:

- (a) the identification of the class of OTC derivative contracts;
- (b) the identification of the OTC derivative contracts within the class of OTC derivative contracts;

(c) other information to be included in the public register in accordance with Article 8;

(d) any further characteristics necessary to distinguish OTC derivative contracts within the class of OTC derivative contracts from OTC derivative contracts outside that class;

(e) evidence of the degree of standardisation of the contractual terms and operational processes for the relevant class of OTC derivative contracts;

(f) data on the volume of the class of OTC derivative contracts;

(g) data on the liquidity of the class of OTC derivative contracts;

(h) evidence of availability to market participants of fair, reliable and generally accepted pricing information for contracts in the class of OTC derivative contracts;

(i) evidence of the impact of the clearing obligation on availability to market participants of pricing information.

2. For the purpose of assessing the date or dates from which the clearing obligation takes effect, including any phasing-in and the categories of counterparties to which the clearing obligation applies, the notification for the purpose of the clearing obligation shall include:

(a) data relevant for assessing the expected volume of the class of OTC derivative contracts if it becomes subject to the clearing obligation;

(b) evidence of the ability of the CCP to handle the expected volume of the class of OTC derivative contracts if it becomes subject to the clearing obligation and to manage the risk arising from the clearing of the relevant class of OTC derivative contracts, including through client or indirect client clearing arrangements;

(c) the type and number of counterparties active and expected to be active within the market for the class of OTC derivative contracts if it becomes subject to the clearing obligation;

(d) an outline of the different tasks to be completed in order to start clearing with the CCP, together with the determination of the time required to fulfil each task;

(e) information on the risk management, legal and operational capacity of the range of counterparties active in the market for the class of OTC derivative contracts if it becomes subject to the clearing obligation.

3. The data pertaining to the volume and the liquidity shall contain for the class of OTC derivative contracts and for each derivative contract within the class, the relevant market information, including historical data, current data as well as any change that is expected to arise if the class of OTC derivative contracts becomes subject to the clearing obligation, including:

(a) the number of transactions;

(b) the total volume;

(c) the total open interest;

(d) the depth of orders including the average number of orders and of requests for quotes;

(e) the tightness of spreads;

(f) the measures of liquidity under stressed market conditions;

(g) the measures of liquidity for the execution of default procedures.

4. The information related to the degree of standardisation of the contractual terms and operational processes for the relevant class of OTC derivative contracts provided in point (e) of paragraph 1 shall include, for the class of OTC derivative contracts and for each derivative contract within the class, data on the daily reference price as well as the number of days per year with a reference price it considers reliable over at least the previous 12 months.

CHAPTER IV

CRITERIA FOR THE DETERMINATION OF THE CLASSES OF OTC DERIVATIVE CONTRACTS SUBJECT TO THE CLEARING OBLIGATION

(Article 5(4) of Regulation (EU) No 648/2012)

Article 7

Criteria to be assessed by ESMA

1. In relation to the degree of standardisation of the contractual terms and operational processes of the relevant

class of OTC derivative contracts, the European Securities and Markets Authority (ESMA) shall take into consideration:

(a) whether the contractual terms of the relevant class of OTC derivative contracts incorporate common legal documentation, including master netting agreements, definitions, standard terms and confirmations which set out contract specifications commonly used by counterparties;

(b) whether the operational processes of that relevant class of OTC derivative contracts are subject to automated post-trade processing and lifecycle events that are managed in a common manner according to a timetable which is widely agreed among counterparties.

2. In relation to the volume and liquidity of the relevant class of OTC derivative contracts, ESMA shall take into consideration:

(a) whether the margins or financial requirements of the CCP would be proportionate to the risk that the clearing obligation intends to mitigate;

(b) the stability of the market size and depth in respect of the product over time;

(c) the likelihood that market dispersion would remain sufficient in the event of the default of a clearing member;

(d) the number and the value of the transactions.

3. In relation to the availability of fair, reliable and generally accepted pricing information in the relevant class of OTC derivative contracts, ESMA shall take into consideration whether the information needed to accurately price the contracts within the relevant class of OTC derivative contracts is easily accessible to market participants on a reasonable commercial basis and whether it would continue to be easily accessible if the relevant class of OTC derivative contracts became subject to the clearing obligation.

CHAPTER V

PUBLIC REGISTER

(Article 6(4) of Regulation (EU) No 648/2012)

Article 8

Details to be included in ESMA's Register

1. The ESMA public register shall include for each class of OTC derivative contracts subject to the clearing obligation:

(a) the asset class of OTC derivative contracts;

- (b) the type of OTC derivative contracts within the class;
- (c) the underlyings of OTC derivative contracts within the class;
- (d) for underlyings which are financial instruments, an indication of whether the underlying is a single financial instrument or issuer or an index or portfolio;
- (e) for other underlyings an indication of the category of the underlying;
- (f) the notional and settlement currencies of OTC derivative contracts within the class;
- (g) the range of maturities of OTC derivative contracts within the class;
- (h) the settlement conditions of OTC derivative contracts within the class;
- (i) the range of payment frequency of OTC derivative contracts within the class;
- (j) the product identifier of the relevant class of OTC derivative contracts;
- (k) any other characteristic required to distinguish one contract in the relevant class of OTC derivative contracts from another.

2. In relation to CCPs that are authorised or recognised for the purpose of the clearing obligation, the ESMA public register shall include for each CCP:

- (a) the identification code, in accordance with Article 3 of Implementing Commission Regulation (EU) No 1247/2012 ⁽¹⁾;
- (b) the full name;
- (c) the country of establishment;
- (d) the competent authority designated in accordance with Article 22 of Regulation (EU) No 648/2012.

3. In relation to the dates from which the clearing obligation takes effect, including any phased-in implementation, the ESMA public register shall include:

- (a) the identification of the categories of counterparties to which each phase-in period applies;

- (b) any other condition required pursuant to the regulatory technical standards adopted under Article 5(2) of Regulation (EU) No 648/2012, in order for the phase-in period to apply.

4. The ESMA public register shall include the reference of the regulatory technical standards adopted under Article 5(2) of Regulation (EU) No 648/2012, according to which each clearing obligation was established.

5. In relation to the CCP that has been notified to ESMA by the competent authority, the ESMA public register shall include at least:

- (a) the identification of the CCP;
- (b) the asset class of OTC derivative contracts that are notified;
- (c) the type of OTC derivative contracts;
- (d) the date of the notification;
- (e) the identification of the notifying competent authority.

CHAPTER VI

LIQUIDITY FRAGMENTATION

(Article 8(5) of Regulation (EU) No 648/2012)

Article 9

Specification of the notion of liquidity fragmentation

1. Liquidity fragmentation shall be deemed to occur when the participants in a trading venue are unable to conclude a transaction with one or more other participants in that venue because of the absence of clearing arrangements to which all participants have access.

2. Access by a CCP to a trading venue which is already served by another CCP shall not be deemed to give rise to liquidity fragmentation within the trading venue if, without the need to impose a requirement on clearing members of the incumbent CCP to become clearing members of the requesting CCP, all participants to the trading venue can clear, directly or indirectly, through one of the following:

- (a) at least one CCP in common;
- (b) clearing arrangements established by the CCPs.

3. The arrangements for the fulfilment of the conditions under point (a) or (b) of paragraph 2 shall be established before the requesting CCP starts providing clearing services to the relevant trading venue.

4. Access to a common CCP as referred to in point (a) of paragraph 2 may be established through two or more clearing members, or two or more clients or through indirect clearing arrangements.

⁽¹⁾ OJ L 352, 21.12.2012, p. 20.

5. Clearing arrangements referred to in point (b) of paragraph 2 may foresee the transfer of transactions executed by such market participants to clearing members of other CCPs. Although access by a CCP to a trading venue should not require interoperability, an interoperability arrangement which has been agreed by the relevant CCPs and approved by the relevant competent authorities may be used to fulfil the requirement for access to common clearing arrangements.

CHAPTER VII

NON-FINANCIAL COUNTERPARTIES

Article 10

(Article 10(4)(a) of Regulation (EU) No 648/2012)

Criteria for establishing which OTC derivative contracts are objectively reducing risks

1. An OTC derivative contract shall be objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the non-financial counterparty or of that group, when, by itself or in combination with other derivative contracts, directly or through closely correlated instruments, it meets one of the following criteria:

- (a) it covers the risks arising from the potential change in the value of assets, services, inputs, products, commodities or liabilities that the non-financial counterparty or its group owns, produces, manufactures, processes, provides, purchases, merchandises, leases, sells or incurs or reasonably anticipates owning, producing, manufacturing, processing, providing, purchasing, merchandising, leasing, selling or incurring in the normal course of its business;
- (b) it covers the risks arising from the potential indirect impact on the value of assets, services, inputs, products, commodities or liabilities referred to in point (a), resulting from fluctuation of interest rates, inflation rates, foreign exchange rates or credit risk;
- (c) it qualifies as a hedging contract pursuant to International Financial Reporting Standards (IFRS) adopted in accordance with Article 3 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council⁽¹⁾.

Article 11

(Article 10(4)(b) of Regulation (EU) No 648/2012)

Clearing thresholds

The clearing thresholds values for the purpose of the clearing obligation shall be:

- (a) EUR 1 billion in gross notional value for OTC credit derivative contracts;

- (b) EUR 1 billion in gross notional value for OTC equity derivative contracts;

- (c) EUR 3 billion in gross notional value for OTC interest rate derivative contracts;

- (d) EUR 3 billion in gross notional value for OTC foreign exchange derivative contracts;

- (e) EUR 3 billion in gross notional value for OTC commodity derivative contracts and other OTC derivative contracts not provided for under points (a) to (d).

CHAPTER VIII

RISK-MITIGATION TECHNIQUES FOR OTC DERIVATIVE CONTRACTS NOT CLEARED BY A CCP

Article 12

(Article 11(14)(a) of Regulation (EU) No 648/2012)

Timely confirmation

1. An OTC derivative contract concluded between financial counterparties or non-financial counterparties referred to in Article 10 of Regulation (EU) No 648/2012 and which is not cleared by a CCP shall be confirmed, where available via electronic means, as soon as possible and at the latest:

- (a) for credit default swaps and interest rate swaps that are concluded up to and including 28 February 2014, by the end of the second business day following the date of execution of the OTC derivative contract;
- (b) for credit default swaps and interest rate swaps that are concluded after 28 February 2014, by the end of the business day following the date of execution of the OTC derivative contract;
- (c) for equity swaps, foreign exchange swaps, commodity swaps and all other derivatives not provided for in point (a) that are concluded up to and including 31 August 2013, by the end of the third business day following the date of execution of the derivative contract;
- (d) for equity swaps, foreign exchange swaps, commodity swaps and all other derivatives not provided for in point (a) that are concluded after 31 August 2013 up to and including 31 August 2014, by the end of the second business day following the date of execution of the derivative contract;

⁽¹⁾ OJ L 243, 11.9.2002, p. 1.

(e) for equity swaps, foreign exchange swaps, commodity swaps and all other derivatives not provided for in point (a) that are concluded after 31 August 2014, by the end of the business day following the date of execution of the derivative contract.

2. An OTC derivative contract concluded with a non-financial counterparty not referred to in Article 10 of Regulation (EU) No 648/2012, shall be confirmed as soon as possible, where available via electronic means, and at the latest:

(a) for credit default swaps and interest rate swaps that are concluded up to and including 31 August 2013, by the end of the fifth business day following the date of execution of the OTC derivative contract;

(b) for credit default swaps and interest rate swaps that are concluded after 31 August 2013 up to and including 31 August 2014, by the end of the third business day following the date of execution of the OTC derivative contract;

(c) for credit default swaps and interest rate swaps that are concluded after 31 August 2014, by the end of the second business day following the date of execution of the OTC derivative contract;

(d) for equity swaps, foreign exchange swaps, commodity swaps and all other derivatives not provided for in point (a) that are concluded up to and including 31 August 2013, by the end of the seventh business day following the date of execution of the derivative contract;

(e) for equity swaps, foreign exchange swaps, commodity swaps and all other derivatives not provided for in point (a) that are concluded after 31 August 2013 up to and including 31 August 2014, by the end of the fourth business day following the date of execution of the derivative contract;

(f) for equity swaps, foreign exchange swaps, commodity swaps and all other derivatives not provided for in point (a) that are concluded after 31 August 2014, by the end of the second business day following the date of execution.

3. Where a transaction referred to in paragraph 1 or 2 is concluded after 16.00 local time, or with a counterparty located in a different time zone which does not allow confirmation by the set deadline, the confirmation shall take place as soon as

possible and, at the latest, one business day following the deadline set in paragraph 1 or 2 as relevant.

4. Financial counterparties shall have the necessary procedure to report on a monthly basis to the competent authority designated in accordance with Article 48 of Directive 2004/39/EC of the European Parliament and of the Council ⁽¹⁾ the number of unconfirmed OTC derivative transactions referred to in paragraphs 1 and 2 that have been outstanding for more than five business days.

Article 13

(Article 11(14)(a) of Regulation (EU) No 648/2012)

Portfolio reconciliation

1. Financial and non-financial counterparties to an OTC derivative contract shall agree in writing or other equivalent electronic means with each of their counterparties on the arrangements under which portfolios shall be reconciled. Such agreement shall be reached before entering into the OTC derivative contract.

2. Portfolio reconciliation shall be performed by the counterparties to the OTC derivative contracts with each other or by a qualified third party duly mandated to this effect by a counterparty. The portfolio reconciliation shall cover key trade terms that identify each particular OTC derivative contract and shall include at least the valuation attributed to each contract in accordance with Article 11(2) of Regulation (EU) No 648/2012.

3. In order to identify at an early stage any discrepancy in a material term of the OTC derivative contract, including its valuation, the portfolio reconciliation shall be performed:

(a) for a financial counterparty or a non-financial counterparty referred to in Article 10 of Regulation (EU) No 648/2012:

(i) each business day when the counterparties have 500 or more OTC derivative contracts outstanding with each other;

(ii) once per week when the counterparties have between 51 and 499 OTC derivative contracts outstanding with each other at any time during the week;

(iii) once per quarter when the counterparties have 50 or less OTC derivative contracts outstanding with each other at any time during the quarter;

⁽¹⁾ OJ L 145, 30.4.2004, p. 1.

(b) for a non-financial counterparty not referred to in Article 10 of Regulation (EU) No 648/2012:

- (i) once per quarter when the counterparties have more than 100 OTC derivative contracts outstanding with each other at any time during the quarter;
- (ii) once per year when the counterparties have 100 or less OTC derivative contracts outstanding with each other.

Article 14

(Article 11(14)(a) of Regulation (EU) No 648/2012)

Portfolio compression

Financial counterparties and non-financial counterparties with 500 or more OTC derivative contracts outstanding with a counterparty which are not centrally cleared shall have in place procedures to regularly, and at least twice a year, analyse the possibility to conduct a portfolio compression exercise in order to reduce their counterparty credit risk and engage in such a portfolio compression exercise.

Financial counterparties and non-financial counterparties shall ensure that they are able to provide a reasonable and valid explanation to the relevant competent authority for concluding that a portfolio compression exercise is not appropriate.

Article 15

(Article 11(14)(a) of Regulation (EU) No 648/2012)

Dispute resolution

1. When concluding OTC derivative contracts with each other, financial counterparties and non-financial counterparties shall have agreed detailed procedures and processes in relation to:

- (a) the identification, recording, and monitoring of disputes relating to the recognition or valuation of the contract and to the exchange of collateral between counterparties. Those procedures shall at least record the length of time for which the dispute remains outstanding, the counterparty and the amount which is disputed;
- (b) the resolution of disputes in a timely manner with a specific process for those disputes that are not resolved within five business days.

2. Financial counterparties shall report to the competent authority designated in accordance with Article 48 of Directive 2004/39/EC any disputes between counterparties

relating to an OTC derivative contract, its valuation or the exchange of collateral for an amount or a value higher than EUR 15 million and outstanding for at least 15 business days.

Article 16

(Article 11(14)(b) of Regulation (EU) No 648/2012)

Market conditions that prevent marking-to-market

1. Market conditions that prevent marking-to-market of an OTC derivative contract shall be considered to occur in either of the following situations:

- (a) when the market is inactive;
 - (b) where the range of reasonable fair values estimates is significant and the probabilities of the various estimates cannot reasonably be assessed.
2. A market for an OTC derivative contract shall be considered inactive when quoted prices are not readily and regularly available and those prices available do not represent actual and regularly occurring market transactions on an arm's length basis.

Article 17

(Article 11(14)(b) of Regulation (EU) No 648/2012)

Criteria for using marking-to-model

For using marking-to-model, financial and non-financial counterparties shall have a model that:

- (a) incorporates all factors that counterparties would consider in setting a price, including using as much as possible marking-to-market information;
- (b) is consistent with accepted economic methodologies for pricing financial instruments;
- (c) is calibrated and tested for validity using prices from any observable current market transactions in the same financial instrument or based on any available observable market data;
- (d) is validated and monitored independently, by another division than the division taking the risk;
- (e) is duly documented and approved by the board of directors as frequently as necessary, following any material change and at least annually. This approval may be delegated to a committee.

Article 18

(Article 11(14)(c) of Regulation (EU) No 648/2012)

Details of the intragroup transaction notification to the competent authority

1. The application or notification to the competent authority of the details of the intragroup transaction shall be in writing and shall include:

- (a) the legal counterparties to the transactions including their identifiers in accordance with Article 3 of Implementing Regulation (EU) No 1247/2012;
- (b) the corporate relationship between the counterparties;
- (c) details of the supporting contractual relationships between the parties;
- (d) the category of intragroup transaction as specified under paragraph 1 and points (a) to (d) of paragraph 2 of Article 3 of Regulation (EU) No 648/2012;
- (e) details of the transactions for which the counterparty is seeking the exemption, including:
 - (i) the asset class of OTC derivative contracts;
 - (ii) the type of OTC derivative contracts;
 - (iii) the type of underlyings;
 - (iv) the notional and settlement currencies;
 - (v) the range of contract tenors;
 - (vi) the settlement type;
 - (vii) the anticipated size, volumes and frequency of OTC derivative contracts per annum.

2. As part of its application or notification to the relevant competent authority, a counterparty shall also submit supporting information evidencing that the conditions of Article 11(6) to (10) of Regulation (EU) No 648/2012 are fulfilled. The supporting documents shall include copies of documented risk management procedures, historical transaction information, copies of the relevant contracts between the parties and may include a legal opinion upon request from the competent authority.

Article 19

(Article 11(14)(d) of Regulation (EU) No 648/2012)

Details of the intragroup transaction notification to ESMA

1. The notification by a competent authority of the details of the intragroup transaction shall be submitted to ESMA in writing:

(a) within one month of the receipt of the notification with respect to a notification under Article 11(7) or (9) of Regulation (EU) No 648/2012;

(b) within one month from the decision being submitted to the counterparty with respect to a decision of the competent authority under Article 11(6), (8) or (10) of Regulation (EU) No 648/2012.

2. The notification to ESMA shall include:

- (a) the information listed in Article 18;
- (b) whether there is a positive or a negative decision;
- (c) in the case of a positive decision:
 - (i) a summary of the reason for considering that the conditions set in Article 11(6), (7), (8), (9) or (10) of Regulation (EU) No 648/2012 as applicable are fulfilled;
 - (ii) whether the exemption is a full exemption or a partial exemption with respect to of a notification related to Article 11(6), (8) or (10) of Regulation (EU) No 648/2012;
- (d) in the case of a negative decision:
 - (i) the identification of the conditions of Article 11(6), (7), (8), (9) or (10) of Regulation (EU) No 648/2012 as applicable that are not fulfilled;
 - (ii) a summary of the reason for considering that such conditions are not fulfilled.

Article 20

(Article 11(14)(d) of Regulation (EU) No 648/2012)

Information on the intragroup exemption to be publicly disclosed

The information on an intragroup exemption to be disclosed publicly shall include:

- (a) the legal counterparties to the transactions including their identifiers in accordance with Article 3 of Implementing Regulation (EU) No 1247/2012;
- (b) the relationship between the counterparties;
- (c) whether the exemption is a full exemption or a partial exemption;
- (d) the notional aggregate amount of the OTC derivative contracts for which the intragroup exemption applies.

*Article 21***Entry into force and application**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Articles 13, 14 and 15 shall apply six months after the date of entry into force of this Regulation.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 19 December 2012.

For the Commission

The President

José Manuel BARROSO

COMMISSION DELEGATED REGULATION (EU) No 150/2013

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 specifying the details of the application for registration as a trade repository

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the opinion of the European Central Bank ⁽¹⁾,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 repositories ⁽²⁾, and in particular Article 56(3) thereof,

Whereas:

- (1) Rules should be laid down specifying the information to be provided to the European Securities and Markets Authority (ESMA) as part of an application for registration as a trade repository.
- (2) Any person applying for registration as a trade repository should provide information on the structure of its internal controls and the independence of its governing bodies, in order to enable ESMA to assess whether the corporate governance structure ensures the independence of the trade repository and whether that structure and its reporting routines are adequate.
- (3) ESMA, as established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority) ⁽³⁾, is responsible for the registration and supervision of trade repositories under Title VI of Regulation (EU) No 648/2012. For the purpose of enabling ESMA to assess the good repute, as well as the experience and skills of the prospective trade repository senior management, an applicant trade repository should provide the relevant information to perform such an assessment.
- (4) The applicant trade repository should provide information to ESMA to demonstrate that it has the necessary financial resources at its disposal for the performance of its functions on an on-going basis and adequate business continuity arrangements.
- (5) Although when a trade repository operates through branches, these are not separate legal persons, separate information on branches should be provided in order to enable ESMA to clearly identify the position of the branches in the organisational structure of the trade repository, assess the fitness for duty and appropriateness of the senior management of the branches, and evaluate whether the control mechanisms, compliance and other functions in place are considered to be robust and enough to identify, evaluate and manage the branches' risks in an appropriate manner.
- (6) It is important for an applicant to provide ESMA with information on ancillary services, or other business lines that the trade repository offers outside its core activity of derivatives reporting, particularly as regards its central core activity of regulatory reporting.
- (7) In order for ESMA to assess the continuity and orderly function of an applicant trade repository's technological systems, that applicant should provide ESMA with descriptions of those relevant technological systems and how they are managed. The applicant should also describe any outsourcing arrangements that are relevant for its services.
- (8) The fees associated with the services provided by trade repositories are important information for enabling market participants to make an informed choice and should therefore form part of the application for registration as trade repository.
- (9) Given that market participants and regulators rely on the data maintained by trade repositories, strict operational and record-keeping requirements should be clearly distinguishable in a trade repository's application for registration.
- (10) The risk management models associated with the services provided by a trade repository are a necessary item in its application for registration so as to enable market participants to make an informed choice.
- (11) In order to secure full access to the trade repository, third party service providers are granted non-discriminatory access to information maintained by the trade repository, on the condition that the entity providing the data and the relevant counterparties have provided their consent. An applicant trade repository should therefore provide ESMA with information about its access policies and procedures.

⁽¹⁾ Not yet published in the Official Journal.⁽²⁾ OJ L 201, 27.7.2012, p. 1.⁽³⁾ OJ L 331, 15.12.2010, p. 84.

- (12) In order to carry out its authorisation duties effectively, ESMA should receive all information from trade repositories, related third parties and third parties to whom the trade repositories have outsourced operational functions and activities. Such information is necessary to assess or complete the assessment of the application for registration and the documentation therein.
- (13) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the Commission.
- (14) In accordance with Article 10 of Regulation (EU) No 1095/2010, ESMA has conducted open public consultations on the draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the ESMA Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation,
- (f) the name and contact details of the person(s) responsible for compliance, or any other staff involved in compliance assessments for the applicant;
- (g) the programme of operations, including indications of the location of the main business activities;
- (h) the identification of any subsidiaries and, where relevant, the group structure;
- (i) any service, other than the trade repository function, that the applicant intends to provide;
- (j) any information on any pending judicial, administrative, arbitration or any other litigation proceedings irrespective of their type, that the applicant may be party to, particularly as regards tax and insolvency matters and where significant financial or reputational costs may be incurred, or any non-pending proceedings, that may still have any material impact on trade repository costs.

HAS ADOPTED THIS REGULATION:

CHAPTER 1 REGISTRATION

SECTION 1

General

Article 1

Identification, legal status and class of derivatives

1. An application for registration as a trade repository shall identify the applicant and the activities it intends to carry out which require it to be registered as a trade repository.
2. The application for registration as a trade repository shall in particular contain the following information:
 - (a) the corporate name of the applicant and legal address within the Union;
 - (b) an excerpt from the relevant commercial or court register, or other forms of certified evidence of the place of incorporation and scope of business activity of the applicant, valid at the application date;
 - (c) information on the classes of derivatives for which the applicant wishes to be registered;
 - (d) the articles of incorporation and, where relevant, other statutory documentation stating that the applicant is to conduct trade repository services;
 - (e) the minutes from the meeting where the board approved the application;

3. Upon request by ESMA, the applicants shall also send to it additional information during the examination of the application for registration where such information is needed for the assessment of the applicants' capacity to comply with the requirements set out in Articles 56 to 59 of Regulation (EU) No 648/2012 and for ESMA to duly interpret and analyse the documentation to be submitted or already submitted.

4. Where an applicant considers that a requirement of this Regulation is not applicable to it, it shall clearly indicate that requirement in its application and also provide an explanation why such requirement does not apply.

Article 2

Policies and procedures

Where information regarding policies or procedures is to be provided, an applicant shall ensure that the policies or procedures contain or are accompanied by each of the following items:

- (a) an indication of the person responsible for the approval and maintenance of the policies and procedures;
- (b) a description of how compliance with the policies and procedures will be ensured and monitored, and the person responsible for compliance in that regard;
- (c) a description of the measures to adopt in the event of a breach of policies and procedures;
- (d) an indication of the procedure for reporting to ESMA any material breach of policies or procedures which may result in a breach of the conditions for initial registration.

SECTION 2

Ownership

Article 3

Ownership of the trade repository

1. An application for registration as a trade repository shall contain:

- (a) a list containing the name of each person or entity who directly or indirectly holds 5 % or more of the applicants capital or of its voting rights or whose holding makes it possible to exercise a significant influence over the applicants management;
- (b) a list of any undertakings in which a person referred to in point (a) holds 5 % or more of the capital or voting rights or over whose management they exercise a significant influence.

2. Where the applicant has a parent undertaking, it shall:

- (a) identify the legal address;
- (b) indicate whether the parent undertaking is authorised or registered and subject to supervision, and when this is the case, state any reference number and the name of the responsible supervisory authority.

Article 4

Ownership chart

1. An application for registration as a trade repository shall contain a chart showing the ownership links between the parent undertaking, subsidiaries and any other associated entities or branches.

2. The undertakings shown in the chart referred to in paragraph 1 shall be identified by their full name, legal status and legal address.

SECTION 3

Organisational structure, governance and compliance

Article 5

Organisational chart

1. An application for registration as a trade repository shall contain the organisational chart detailing the organisational structure of the applicant, including that of any ancillary services.

2. That chart shall include information about the identity of the person responsible for each significant role, including senior management and persons who direct the activities of any branches.

Article 6

Corporate governance

1. An application for registration as a trade repository shall contain information regarding the applicant's internal corporate governance policies and the procedures and terms of reference which govern its senior management, including the board, its non-executive members and, where established, committees.

2. That information shall include a description of the selection process, appointment, performance evaluation and removal of senior management and members of the board.

3. Where the applicant adheres to a recognised corporate governance code of conduct, the application for registration as a trade repository shall identify the code and provide an explanation for any situations where the applicant deviates from the code.

Article 7

Internal controls

1. An application for registration as a trade repository shall contain an overview of the internal controls of the applicant. This shall include information regarding its compliance function, review function, risk assessment, internal control mechanisms and arrangements of its internal audit function.

2. The overview shall include information on the following matters:

- (a) the applicants' internal control policies and procedures;
- (b) the monitoring and evaluation of the adequacy and effectiveness of the applicant's systems;
- (c) the control and safeguard for the applicant's information processing systems;
- (d) the internal bodies in charge of the evaluation of the findings.

3. An application for registration as a trade repository shall contain the following information with respect to the applicant's internal audit function:

- (a) an explanation of how its internal audit methodology is developed and applied taking into account the nature of the applicant's activities, complexities and risks;
- (b) a work plan for three years following the date of application.

*Article 8***Regulatory compliance**

An application for registration as a trade repository shall contain the following information regarding an applicant's policies and procedures for ensuring compliance with Regulation (EU) No 648/2012:

- (a) a description of the roles of the persons responsible for compliance and of any other staff involved in the compliance assessments, including how the independence of the compliance function from the rest of the business will be ensured;
- (b) the internal policies and procedures designed to ensure that the applicant, including its managers and employees, comply with all the provisions of Regulation (EU) No 648/2012, including a description of the role of the board and senior management;
- (c) where available, the most recent internal report prepared by the persons responsible for compliance or any other staff involved in compliance assessments within the applicant.

*Article 9***Senior management and members of the board**

1. An application for registration as a trade repository shall contain the following information in respect of each member of the senior management and each member of the board:

- (a) a copy of the curriculum vitae in order to enable the assessment on the adequate experience and knowledge to adequately perform their responsibilities;
- (b) details regarding any criminal convictions in connection with the provision of financial or data services or in relation to acts of fraud or embezzlement, notably via an official certificate if available within the relevant Member State;
- (c) a self-declaration of good repute in relation to the provision of a financial or data service, where each member of the senior management and the board states whether they:

- (i) have been convicted of any criminal offence in connection with the provision of financial or data services or in relation to acts of fraud or embezzlement;
- (ii) have been subject to an adverse decision in any proceedings of a disciplinary nature brought by a regulatory authority or government bodies or agencies or are the subject of any such proceedings which are not concluded;

- (iii) have been subject to an adverse judicial finding in civil proceedings before a court in connection with the provision of financial or data services, or for impropriety or fraud in the management of a business;
 - (iv) have been part of the board or senior management of an undertaking whose registration or authorisation was withdrawn by a regulatory body;
 - (v) have been refused the right to carry on activities which require registration or authorisation by a regulatory body;
 - (vi) have been part of the board or senior management of an undertaking which has gone into insolvency or liquidation while this person was connected to the undertaking or within a year of the person ceasing to be connected to the undertaking;
 - (vii) have been part of the board or senior management of an undertaking which was subject to an adverse decision or penalty by a regulatory body;
 - (viii) have been otherwise fined, suspended, disqualified, or been subject to any other sanction in relation to fraud, embezzlement or in connection with the provision of financial or data services, by a government, regulatory or professional body;
 - (ix) have been disqualified from acting as a director, disqualified from acting in any managerial capacity, dismissed from employment or other appointment in an undertaking as a consequence of misconduct or malpractice;
- (d) a declaration of any potential conflicts of interests that the senior management and the members of the board may have in performing their duties and how these conflicts are managed.

2. Any information received by ESMA under paragraph 1 shall only be used for the purpose of registration and compliance at all times with the conditions for registration of the applicant trade repository.

*SECTION 4***Staffing and remuneration***Article 10***Staffing policies and procedures**

An application for registration as a trade repository shall contain the following policies and procedures:

- (a) a copy of the remuneration policy for the senior management, board members and the staff employed in risk and control functions of the applicant;

- (b) a description of the measures put in place by the applicant to mitigate the risk of over-reliance on any individual employees.

Article 11

Fitness and properness

An application for registration as a trade repository shall contain the following information about the applicant's staff:

- (a) a general list of the staff employed including their role and qualifications per role;
- (b) a specific description of the information technology staff employed for providing the trade repository services including their role and qualifications of each individual;
- (c) a description of the roles and qualifications of each individual who is responsible for internal audit, internal controls, compliance, risk assessment and internal review;
- (d) the identification of the dedicated staff members and those members of the staff that are operating under an outsourcing arrangement;
- (e) details regarding the training and development relevant to the trade repository business, including any examination or other type of formal assessment required for staff regarding the conduct of trade repository activities.

SECTION 5

Financial resources for the performance of the trade repository

Article 12

Financial reports and business plans

1. An application for registration as a trade repository shall contain the following financial and business information about the applicant:

- (a) a complete set of financial statements, prepared in conformity with international standards adopted in accordance with Article 3 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards ⁽¹⁾;
- (b) where the financial statements of the applicant are subject to statutory audit within the meaning given in Article 2(1) of the Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts ⁽²⁾, the financial reports shall include the audit report on the annual and consolidated financial statements;

⁽¹⁾ OJ L 243, 11.9.2002, p. 1.

⁽²⁾ OJ L 157, 9.6.2006, p. 87.

- (c) if the applicant is audited, the name and the national registration number of the external auditor;

- (d) a financial business plan contemplating different business scenarios for the trade repository services, over a minimum three years reference period.

2. Where historical financial information referred to in paragraph 1 is not available, an application for registration as a trade repository shall contain the following information about the applicant:

- (a) the pro-forma statement demonstrating proper resources and expected business status in six months after registration is granted;
- (b) an interim financial report where the financial statements are not yet available for the requested period of time;
- (c) a statement of financial position, such as a balance sheet, income statement, changes in equity and of cash flows and notes comprising a summary of accounting policies and other explanatory notes.

3. An application for registration as a trade repository shall contain the audited annual financial statements of any parent undertaking for the three financial years preceding the date of the application.

4. An application for registration as a trade repository shall also contain the following financial information about the applicant:

- (a) an indication of future plans for the establishment of subsidiaries and their location;
- (b) a description of the business activities which the applicant plans to carry out, specifying the activities of any subsidiaries or branches.

SECTION 6

Conflicts of interest

Article 13

Management of conflicts of interest

An application for registration as a trade repository shall contain the following information on the policies and procedures to manage conflicts of interest put in place by the applicant:

- (a) policies and procedures with respect to the identification, management and disclosure of conflicts of interest and a description of the process used to ensure that the relevant persons are aware of the policies and procedures;

- (b) any other measures and controls put in place to ensure the requirements referred to in point (a) on conflicts of interest management are met.

Article 14

Confidentiality

1. An application for registration as a trade repository shall contain the internal policies and mechanisms preventing any use of information stored in the prospective trade repository:

- (a) for illegitimate purposes;
- (b) for disclosure of confidential information;
- (c) not permitted for commercial use.

2. The latter shall include a description of the internal procedures on the staff permissions for using passwords to access the data, specifying the staff purpose, the scope of data being viewed and any restrictions on the use of data.

3. Applicants shall provide ESMA with information on the processes to keep a log identifying each staff member accessing the data, the time of access, the nature of data accessed and the purpose.

Article 15

Inventory and mitigation of conflicts of interest

1. An application for registration as a trade repository shall contain an up-to-date inventory, at the time of the application, of existing material conflicts of interest in relation to any ancillary or other related services provided by the applicant and a description of how these are being managed.

2. Where an applicant is part of a group, the inventory shall include any material conflicts of interest arising from other undertakings within the group and how these conflicts are being managed.

SECTION 7

Resources and procedures

Article 16

Information Technology resources and outsourcing

An application for registration as a trade repository shall contain a description of the following matters:

- (a) the systems and user facilities developed by the applicant in order to provide services to the clients, including a copy of any user manual and internal procedures;

- (b) the investment and renewal policies on information technology resources of the applicant;

- (c) outsourcing arrangements entered into by the applicant, together with the methods employed to monitor the service level of the outsourced functions and a copy of the contracts governing such arrangements.

Article 17

Ancillary services

Where an applicant, an undertaking within its group, or an undertaking with which the applicant has a material agreement relating to trading or post-trading service offers, or plans to offer any ancillary services, its application for registration as a trade repository shall contain a description of:

- (a) the ancillary services that the applicant, or its parent group, performs and a description of any agreement that the trade repository may have with companies offering trading, post-trading, or other related services, as well as copies of such agreements;
- (b) the procedures and policies that will ensure the operational separation between the applicant's trade repository services and other business lines, including in the case that a separate business line is run by the trade repository, a company belonging to its holding company, or any other company within which it has a material agreement in the context of the trading or post-trading chain or business line.

SECTION 8

Access rules

Article 18

Transparency about access rules

An application for registration as a trade repository shall contain:

- (a) the access policies and procedures pursuant to which users access data in a trade repository including any process by which users may need to amend or modify registered contracts;
- (b) a copy of the terms and conditions which determine the user's rights and obligations;
- (c) a description of the different categories of access available to users if more than one;
- (d) the access policies and procedures pursuant to which other services providers may have non-discriminatory access to information maintained by the trade repository where the relevant counterparties have provided their consent.

*Article 19***Transparency about compliance arrangements and accuracy of data**

An application for registration as a trade repository shall contain the procedures put in place by the applicant in order to verify:

- (a) the compliance of the reporting counterparty or submitting entity with the reporting requirements;
- (b) the correctness of the information reported;
- (c) that data can be reconciled between trade repositories if counterparties report to different trade repositories.

*Article 20***Pricing policy transparency**

An application for registration as a trade repository shall contain a description of the applicant's:

- (a) pricing policy, including any existing discounts and rebates and conditions to benefit from such reductions;
- (b) fee structure for providing any ancillary services including the estimated cost of the trade repository services and ancillary services, along with the details of the methods used to account the separate cost that the applicant may incur when providing trade repository services and ancillary services;
- (c) methods used in order to make the information available for clients, notably reporting entities, and prospective clients, including a copy of the fee structure where trade repository services and ancillary services shall be unbundled.

*SECTION 9***Operational reliability***Article 21***Operational risk**

An application for registration as a trade repository shall contain:

- (a) a detailed description of the resources available and procedures designed to identify and mitigate operational risk and any other material risk to which the applicant is exposed to, including a copy of any relevant manuals and internal procedures;

(b) a description of the liquid net assets funded by equity to cover potential general business losses in order to continue providing services as a going concern, and an assessment of the sufficiency of its financial resources with the aim of covering the operational costs of a wind-down or reorganisation of the critical operations and services over at least a six month period;

(c) the applicant's business continuity plan and an indication of the policy for updating the plan. In particular, the plan shall include:

(i) all business processes, escalation procedures and related systems which are critical to ensuring the services of the trade repository applicant, including any relevant outsourced service and including the trade repository strategy, policy and objectives towards the continuity of these processes;

(ii) the arrangements in place with other financial market infrastructure providers including other trade repositories;

(iii) the arrangements to ensure a minimum service level of the critical functions and the expected timing of the completion of the full recovery of those processes;

(iv) the maximum acceptable recovery time for business processes and systems, having in mind the deadline for reporting to trade repositories as provided for in Article 9 of Regulation (EU) No 648/2012 and the volume of data that the trade repository needs to process within that daily period;

(v) the procedures to deal with incident logging and reviews;

(vi) testing programme and the results of any tests;

(vii) the number of alternative technical and operational sites available, their location, the resources when compared with the main site and the business continuity procedures in place in the event that alternate sites need to be used;

(viii) information on access to a secondary business site to allow staff to ensure continuity of the service if a main office location is not available;

(d) a description of the arrangements for ensuring the applicant's trade repository activities in case of disruption and the involvement of trade repository users and other third parties in them.

SECTION 10

Recordkeeping

Article 22

Recordkeeping policy

1. An application for registration as a trade repository shall contain information about the receipt and administration of data, including any policies and procedures put in place by the applicant to ensure:

- (a) a timely and accurate registration of the information reported;
- (b) that the data is maintained both online and offline;
- (c) that the data is adequately copied for business continuity purposes.

2. An application for registration as a trade repository shall contain a description of the recordkeeping systems, policies and procedures that are used in order to ensure that information is modified appropriately and that positions are calculated correctly in accordance with relevant legislative or regulatory requirements.

SECTION 11

Data availability

Article 23

Data availability mechanisms

An application for registration as a trade repository shall contain a description of the resources, methods and channels that the applicant will use to facilitate access to the information in accordance with Article 81(1), (3) and (5) of Regulation (EU) No 648/2012 on transparency and data availability, together with:

- (a) a description of the resources, methods and channels that the trade repository will employ in order to facilitate the access to the data contained therein to the public

in accordance with Article 81(1) of Regulation (EU) No 648/2012, and the frequency of updates, along with a copy of the specific manuals and internal policies;

- (b) a description of the resources, methods and facilities that the trade repository will employ in order to facilitate the access to its information to the relevant authorities in accordance with Article 81(3) of Regulation (EU) No 648/2012, the frequency of the update and the controls and verifications that the trade repository may establish for the access filtering process, along with a copy of the specific manuals and internal procedures;
- (c) a description of the resources, methods and channels that the trade repository will employ in order to facilitate the access to its information to counterparties to contracts in accordance with Article 80(5) of Regulation (EU) No 648/2012 and the frequency of updates, along with a copy of the specific manuals and internal policies.

Article 24

Verification of the accuracy and completeness of the application

1. Any information submitted to ESMA during the registration process shall be accompanied by a letter signed by a member of the board of the trade repository and of the senior management, attesting that the submitted information is accurate and complete to the best of their knowledge, as of the date of that submission.

2. The information shall also be accompanied, where relevant, with the relevant corporate legal documentation certifying the accuracy of the data.

Article 25

Entry into force

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, 19 December 2012.

For the Commission

The President

José Manuel BARROSO

COMMISSION DELEGATED REGULATION (EU) No 151/2013

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 specifying the data to be published and made available by trade repositories and operational standards for aggregating, comparing and accessing the data

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the opinion of the European Central Bank ⁽¹⁾,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 repositories ⁽²⁾, and in particular Article 81(5) thereof,

Whereas:

- (1) It is essential to clearly identify relevant contracts and their respective counterparties. Following a functional approach, entities accessing data held by trade repositories should be considered according to the competences they have and the functions they perform.
- (2) The European Securities and Markets Authority (ESMA) should have access to all the transaction level data held by trade repositories, for the purpose of trade repository supervision, to be able to make information requests, take appropriate supervisory measures and also monitor whether registration as a trade repository should be kept or withdrawn.
- (3) Given its responsibilities under Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority) ⁽³⁾ and Regulation (EU) No 648/2012, ESMA should be given access on different mandates. The access to data by individual staff members of ESMA should be in line with each of those specific mandates.
- (4) The European Systemic Risk Board (ESRB), ESMA and the relevant members of the European System of Central Banks (ESCB), including some national central banks and relevant Union securities and markets authorities, have a mandate for monitoring and preserving financial

stability in the Union, and should therefore have access to transaction data for all counterparties for the purpose of their respective tasks in that regard.

- (5) Supervisors and overseers of central counterparties (CCPs) need access to enable the effective exercise of their duties over of such entities, and should therefore have access to all the information necessary for such mandate.
- (6) Access by the relevant ESCB members serves to fulfil their basic tasks, most notably the functions of a central bank of issue, their financial stability mandate, and in some cases prudential supervision over some counterparties. Since certain ESCB members have different mandates under national legislation, they should be granted access to data in accordance to the different mandates listed in Article 81(3) of Regulation (EU) No 648/2012.
- (7) The relevant Union securities and market authorities have as a main duty investor protection in their respective jurisdictions and should be granted access to transaction data on markets, participants, products and underlyings covered under by their surveillance and enforcement mandates.
- (8) The authorities appointed under Article 4 of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids ⁽⁴⁾ should be granted access to the transactions in equity derivatives where the underlying is either admitted to trading on a regulated market in their jurisdiction, has their legal address within their jurisdiction or is an offeror for a company for such an undertaking and the consideration it offers includes securities.
- (9) The Agency for the Cooperation of Energy Regulators (ACER) should be granted access for the purpose of monitoring wholesale energy markets in order to detect and deter market abuse in cooperation with national regulatory authorities, and the monitoring of wholesale energy markets to detect and deter market abuse under Regulation (EU) No 1227/2011 the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (REMIT) ⁽⁵⁾. ACER should therefore have access to all data held by a trade repository as regards energy derivatives.

⁽¹⁾ Not yet published in the Official Journal.

⁽²⁾ OJ L 201, 27.7.2012, p. 1.

⁽³⁾ OJ L 331, 15.12.2010, p. 84.

⁽⁴⁾ OJ L 142, 30.4.2004, p. 12.

⁽⁵⁾ OJ L 326, 8.12.2011, p. 1.

- (10) Regulation (EU) No 648/2012 only covers trade data and not pre-trade data such as orders to trade as required under Regulation (EU) No 1227/2011. Therefore, trade repositories should not be regarded as the appropriate source of information to ACER in that regard.
- (11) Under a functional approach for accessing data held by trade repositories, prudential supervision is an essential component. Similarly, different authorities might have a prudential supervisory mandate. Therefore, access to the transaction data on the relevant entities should be ensured to all authorities listed under Article 81(3) of Regulation (EU) No 648/2012.
- (12) Entities accessing trade repository data under Article 81(3) of Regulation (EU) No 648/2012 should ensure that they keep and enforce policies in order to ensure that only the relevant persons access the information for a well-defined and legally founded purpose, also being clear on the possible other persons authorised to access such data.
- (13) The access to data should be considered within three aggregation levels. Transaction data should include individual trade details; position data should regard aggregate position data by underlying/product for individual counterparties; and aggregate notional data should correspond to overall positions by underlying/product with no counterparty details. Access to transaction data would also grant access to position level and aggregate data. Access to position data would also grant access to aggregate data, but not transaction level data. Conversely, access to aggregate notional data should be the less granular category and should not enable access to position or transaction level data.
- (14) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority to the Commission.
- (15) In accordance with Article 10 of Regulation (EU) No 1095/2010, ESMA has consulted the relevant authorities and the members of the European System of Central Banks (ESCB) before submitting the draft regulatory technical standards on which this Regulation is based. ESMA has also conducted open public consultations on these draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the ESMA Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation,
- (a) a breakdown of the aggregate open positions per derivative class as follows:
- (i) commodities;
 - (ii) credit;
 - (iii) foreign exchange;
 - (iv) equity;
 - (v) interest rate;
 - (vi) other;
- (b) a breakdown of aggregate transaction volumes per derivative class as follows:
- (i) commodities;
 - (ii) credit;
 - (iii) foreign exchange;
 - (iv) equity;
 - (v) interest rate;
 - (vi) other;
- (c) a breakdown of aggregate values per derivative class, as follows:
- (i) commodities;
 - (ii) credit;
 - (iii) foreign exchange;
 - (iv) equity;
 - (v) interest rate;
 - (vi) other.

HAS ADOPTED THIS REGULATION:

Article 1

Publication of aggregate data

1. Trade repositories shall publish data provided for in Article 81(1) of Regulation (EU) No 648/2012, including at least:

Article 2

Data access by relevant authorities

1. A trade repository shall provide access to all transaction data to the European Securities and Markets Authority (ESMA) for the purpose of fulfilling its supervisory competences.

2. The data shall be published on a website or an online portal which is easily accessible by the public and updated at least weekly.

2. ESMA shall enact internal procedures in order to ensure the appropriate staff access and any relevant limitations of access as regards non-supervisory activities under ESMA's mandate.

3. A trade repository shall provide the Authority for the Cooperation of Energy Regulators (ACER) with access to all transaction data regarding derivatives where the underlying is energy or emission allowances.

4. A trade repository shall provide a competent authority supervising a CCP and the relevant member of the European System of Central Banks (ESCB) overseeing the CCP, where applicable, with access to all the transaction data cleared or reported by the CCP.

5. A trade repository shall provide a competent authority supervising the venues of execution of the reported contracts with access to all the transaction data on contracts executed on those venues.

6. A trade repository shall provide a supervisory authority appointed under Article 4 of Directive 2004/25/EC with access to all the transaction data on derivatives where the underlying is a security issued by a company which meets one of the following conditions:

- (a) it is admitted to trading on a regulated market within their jurisdiction;
- (b) it has its registered office or, where it has no registered office, its head office, in their jurisdiction;
- (c) it is an offeror for the entities provided for in points (a) or (b) and the consideration it offers includes securities.

7. The data to be provided in accordance with paragraph 6 shall include information on:

- (a) the underlying securities;
- (b) the derivative class;
- (c) the sign of the position;
- (d) the number of reference securities;
- (e) the counterparties to the derivative.

8. A trade repository shall provide the relevant Union securities and markets authorities referred to in Article 81(3)(h)

of Regulation (EU) No 648/2012 with access to all transaction data on markets, participants, contracts and underlyings that fall within the scope of that authority according to its respective supervisory responsibilities and mandates.

9. A trade repository shall provide the European Systemic Risk Board, ESMA and the relevant members of the ESCB with transaction level data:

- (a) for all counterparties within their respective jurisdictions;
- (b) for derivatives contracts where the reference entity of the derivative contract is located within their respective jurisdiction or where the reference obligation is sovereign debt of the respective jurisdiction.

10. A trade repository shall provide a relevant ESCB member with access to position data for derivatives contracts in the currency issued by that member.

11. A trade repository shall provide, for the prudential supervision of counterparties subject to the reporting obligation, the relevant entities listed in Article 81(3) of Regulation (EU) No 648/2012 with access to all transaction data of such counterparties.

Article 3

Third country authorities

1. In relation to a relevant authority of a third country that has entered into an international agreement with the Union as referred to in Article 75 of Regulation (EU) No 648/2012, a trade repository shall provide access to the data, taking account of the third country authority's mandate and responsibilities and in line with the provisions of the relevant international agreement.

2. In relation to a relevant authority of a third country that has entered into a cooperation arrangement with ESMA as referred to in Article 76 of Regulation (EU) No 648/2012, a trade repository shall provide access to the data, taking account of the third country authority's mandate and responsibilities and in line with the provisions of the relevant cooperation arrangement.

Article 4

Operational standards for aggregation and comparison of data

1. A trade repository shall provide access to the entities listed in Article 81(3) of Regulation (EU) No 648/2012 in accordance with communication procedures, standards for messaging and reference data that are commonly used at international level.

2. The counterparties to a trade shall generate a unique trade identifier for each derivative contract to enable trade repositories to aggregate and compare data across different trade repositories.

*Article 5***Operational standards for access to data**

1. A trade repository shall record information regarding the access to data given to the entities listed in Article 81(3) of Regulation (EU) No 648/2012.

2. The information referred to in paragraph 1 shall include:

(a) the scope of data accessed;

(b) a reference to the legal provisions granting access to such data under Regulation (EU) No 648/2012 and this Regulation.

*Article 6***Entry into force**

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, 19 December 2012.

For the Commission

The President

José Manuel BARROSO

COMMISSION DELEGATED REGULATION (EU) No 152/2013

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 capital requirements for central counterparties

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the opinion of the European Central Bank ⁽¹⁾,Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on over the counter (OTC) derivatives transactions, central counterparties and trade repositories ⁽²⁾, and in particular Article 16(3) thereof,

Whereas:

- (1) Regulation (EU) No 648/2012 establishes, among other matters, prudential requirements for central counterparties (CCPs) to ensure that they are safe and sound and comply at all times with the capital requirements. Given that to a great extent risks stemming from clearing activities are covered by specific financial resources, such capital requirements should ensure that a CCP is at all times adequately capitalised against credit risks, counterparty risks, market risks, operational risks, legal and business risks which are not already covered by those specific financial resources and that it is able to conduct an orderly winding down or restructuring of its operations if necessary.
- (2) The capital treatment of credit institutions and investment firms should be specifically taken into account in respect of technical standards because CCPs are exposed, while performing non-covered activities, to risks that are similar to the risks incurred by credit institutions and investment firms. Relevant parts of the Principles for Financial Market Infrastructure issued by the Committee on Payment and Settlement Systems and the International Organization of Securities Commissions ("CPSS-IOSCO Principles") should also be taken into account. In order to ensure that they are able to organise an orderly winding down or restructuring of their activities, CCPs should hold sufficient financial resources to withstand operational expenses over an appropriate period of time. A CCP should be able during such a period of time to set up any kind of arrangement in order to reorganise its critical operations, including recapitalising, replacing management, revising its business strategies, cost or fee structures, restructuring the services it provides, liquidating its clearing portfolio

or merging with — or transferring its clearing activities to — another CCP. During the winding down or restructuring a CCP still needs to continue its operations. While in this case some costs, such as marketing ones, may decrease, other costs, such as legal expenses, may increase. Therefore, using the gross annual operating expenses is deemed to be an appropriate approximation of the actual expenses during the winding down or restructuring of a CCP's operations. In order to take into account the diversity of accounting practices among CCPs, the operational expenses should be considered in accordance with International Financial Reporting Standards (IFRS) adopted pursuant to Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards ⁽³⁾ or in accordance with a number of limited other rules applicable in the field, as indicated by Union law.

- (3) As the capital shall be at all times sufficient to ensure an orderly winding down and an adequate protection against the relevant risks as required by Article 16(2) of Regulation (EU) No 648/2012, it is necessary to establish an early warning tool to enable the competent authorities to gain knowledge sufficiently in advance of the situation in which the capital of the CCP is close to the capital requirement, by introducing a notification threshold set at 110 % of the capital requirement.
- (4) Notwithstanding the difficulties in quantifying the exposure to operational risk, Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions ⁽⁴⁾ is the relevant benchmark for the purpose of establishing the capital requirement for CCPs. Consistently with Directive 2006/48/EC, the definition of operational risk should include legal risk in respect of technical standards on capital requirements for central counterparties.
- (5) Directive 2006/48/EC and Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions ⁽⁵⁾ are an appropriate benchmark for the purpose of establishing capital requirements to cover credit, counterparty and market risks non covered by specific financial resources, since they are similar to those carried out by credit institutions or investment firms.

⁽¹⁾ Not yet published in the Official Journal.

⁽²⁾ OJ L 201, 27.7.2012, p. 1.

⁽³⁾ OJ L 243, 11.9.2002, p. 1.

⁽⁴⁾ OJ L 177, 30.6.2006, p. 1.

⁽⁵⁾ OJ L 177, 30.6.2006, p. 201.

- (6) A CCP does not have to hold capital for trade exposures and default fund contributions which arise under an interoperability arrangement where the requirements of Articles 52 and 53 of Regulation (EU) No 648/2012 are fulfilled. However, where these requirements are not fulfilled, links between CCPs might expose them to additional risk if the collateral posted by them is not fully protected and bankruptcy remote or if the default fund contributions are at risk in case a clearing member of the receiving CCP defaults. Therefore, in such cases capital charges should apply to default fund contributions and to trade exposures with other CCPs. In order to avoid contagion effects, the treatment regarding default fund contributions to other CCPs should in general be more conservative than the treatment of credit institution exposures to CCPs. The own resources of a CCP used to contribute to the default fund of another CCP should not be taken into account for the purposes of Article 16(2) of Regulation (EU) No 648/2012 as they are not invested in accordance with its investment policy. They should also not be double-counted for the purpose of calculating risk weighted exposures stemming from these contributions.
- (7) The time necessary for an orderly winding down is strictly dependent on the clearing services provided by the single CCP and on the market environment in which it operates, especially in the case where another CCP can take on its services. Therefore, the number of months required for winding down should be based on the CCP's own estimate, subject to the approval of the competent authority. A minimum number of six months needs to be introduced in order to ensure a prudent level of the capital requirements.
- (8) Business risk refers to the risk a CCP assumes due to its efficiency and potential changes in general business conditions which are likely to impair its financial position as a consequence of decline in its revenues or an increase in its expenses resulting in a loss that must be charged against its capital. Since the level of business risk is highly dependent on the individual situation of each CCP and can be caused by various factors such as inefficient procedures, adverse market environment, ineffective response to technological progress, or poor execution of business strategies, the capital requirement should be based on a CCP's own estimate subject to the approval of the competent authority. A floor needs to be introduced in order to ensure a prudent level of the capital requirements.
- (9) The European Banking Authority (EBA) has worked in close cooperation with the European System of Central Banks (ESCB) and has consulted the European Securities and Markets Authority (ESMA) before submitting the draft technical standards on which this Regulation is based. It has also conducted open public consultations on the draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established

in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council ⁽¹⁾.

- (10) This Regulation is based on the draft regulatory technical standards submitted by the European Supervisory Authority (European Banking Authority) to the European Commission,

HAS ADOPTED THIS REGULATION:

Article 1

Capital requirements

1. A CCP shall hold capital, including retained earnings and reserves, which shall be at all times more than or equal to the sum of:
 - (a) the CCP's capital requirements for winding down or restructuring its activities calculated in accordance with Article 2;
 - (b) the CCP's capital requirements for operational and legal risks calculated in accordance with Article 3;
 - (c) the CCP's capital requirements for credit, counterparty and market risks calculated in accordance with Article 4;
 - (d) the CCP's capital requirements for business risk calculated in accordance with Article 5.
2. A CCP shall have procedures in place to identify all sources of risks that may impact its on-going functions and shall consider the likelihood of potential adverse effects on its revenues or expenses and its level of capital.
3. If the amount of capital held by a CCP according to paragraph 1 is lower than 110 % of the capital requirements or lower than 110 % of EUR 7,5 million ('notification threshold'), the CCP shall immediately notify the competent authority and keep it updated at least weekly, until the amount of capital held by the CCP returns above the notification threshold.
4. That notification shall be made in writing and shall contain the following elements:
 - (a) the reasons for the CCP's capital being below the notification threshold and a description of the short-term perspective of the CCP's financial situation;

⁽¹⁾ OJ L 331, 15.12.2010, p. 12.

- (b) a comprehensive description of the measures the CCP intends to adopt to ensure the on-going compliance with the capital requirements.

Article 2

Capital requirements for winding down or restructuring

1. A CCP shall divide its annual gross operational expenses by twelve in order to determine its monthly gross operational expenses, and multiply the resulting number by its time span for winding down or restructuring its activities determined according to paragraph 2. The result of this calculation is the capital required to ensure an orderly winding down or restructuring of the activities of the CCP.

2. In order to determine the time span for winding down or restructuring its activities referred to in paragraph 1, a CCP shall submit to the competent authority for approval in accordance with that competent authority's powers under Title III of Regulation (EU) No 648/2012 its own estimate of the appropriate time span for winding down or restructuring its activities. The estimated time span shall be sufficient to ensure, including in stressed market conditions, an orderly winding down or restructuring of its activities, reorganising its operations, liquidating its clearing portfolio or transferring its clearing activities to another CCP. The estimate shall take into account the liquidity, size, maturity structure and potential cross-border obstacles of the positions of the CCP and the type of products cleared. The time span for winding down or restructuring its activities used for the calculation of the capital requirement is subject to a minimum number of six months.

3. A CCP shall update its estimate of the appropriate time span for winding down or restructuring its activities whenever there is a significant change in the assumptions underlying the estimation and submit this updated estimate to the competent authority for approval.

4. For the purposes of this Article, operational expenses shall be considered in accordance with International Financial Reporting Standards (IFRS) adopted pursuant to Regulation (EC) No 1606/2002 or, in accordance with Council Directives 78/660/EEC⁽¹⁾, 83/349/EEC⁽²⁾ and 86/635/EEC⁽³⁾ or, in accordance with generally accepted accounting principles of a third country determined to be equivalent to IFRS in accordance with Commission Regulation (EC) No 1569/2007⁽⁴⁾ or accounting standards of a third country the use of which is permitted in accordance with Article 4 of that Regulation, as applicable. CCPs shall use the most recent audited information from their annual financial statement.

Article 3

Capital requirements for operational and legal risks

1. A CCP shall calculate its capital requirements for operational — including legal — risk referred to in Article 1

⁽¹⁾ OJ L 222, 14.8.1978, p. 11.

⁽²⁾ OJ L 193, 18.7.1983, p. 1.

⁽³⁾ OJ L 372, 31.12.1986, p. 1.

⁽⁴⁾ OJ L 340, 22.12.2007, p. 66.

using either the Basic Indicator Approach or Advanced Measurement Approaches as provided in Directive 2006/48/EC subject to the restrictions provided in paragraphs 2 to 7.

2. A CCP may use the basic indicator approach in order to calculate its capital requirements for operational risk in accordance with Article 103 of Directive 2006/48/EC.

3. A CCP shall have in place a well-documented assessment and management system for operational risk with clear responsibilities assigned for this system. It shall identify its exposures to operational risk and track relevant operational risk data, including material loss data. This system shall be subject to regular review carried out by an independent party possessing the necessary knowledge to carry out such review.

4. A CCP operational risk assessment system shall be closely integrated into the risk management processes of the CCP. Its output shall be an integral part of the process of monitoring and controlling the CCP's operational risk profile.

5. A CCP shall implement a system of reporting to senior management that provides operational risk reports to relevant functions within the institutions. A CCP shall have in place procedures for taking appropriate action according to the information within the reports to management.

6. A CCP may also apply to its competent authority for permission to use Advanced Measurement Approaches. The competent authority may grant the CCP the permission to use Advanced Measurement Approaches based on its own operational risk measurement systems in accordance with Article 105 of Directive 2006/48/EC.

7. CCPs using the Advanced Measurement Approaches as specified in paragraph 6 for the calculation of their capital requirements for operational risk shall hold capital which is at all times more than or equal to 80 % of the capital required using the basic indicator approach according to paragraph 2.

Article 4

Capital requirements for credit risk, counterparty credit risk and market risk which are not already covered by specific financial resources as referred to in Articles 41 to 44 of Regulation (EU) No 648/2012

1. A CCP shall calculate its capital requirements referred to in Article 1 as the sum of 8 % of its risk-weighted exposure amounts for credit and counterparty credit risk and its capital requirements for market risk calculated in accordance with Directives 2006/48/EC and 2006/49/EC, subject to the restrictions provided in paragraphs 2 to 5.

2. For the calculation of capital requirements for market risk which is not already covered by specific financial resources as referred to in Articles 41 to 44 of Regulation (EU) No 648/2012, a CCP shall use the methods provided for in Annexes I to IV to Directive 2006/49/EC.

3. For the calculation of the risk-weighted exposure amounts for credit risk which is not already covered by specific financial resources as referred to in Articles 41 to 44 of Regulation (EU) No 648/2012, a CCP shall apply the Standardised Approach for credit risk provided for in Articles 78 to 83 of Directive 2006/48/EC.

4. For the calculation of the risk-weighted exposure amounts for counterparty credit risk which is not already covered by specific financial resources as referred to in Articles 41 to 44 of Regulation (EU) No 648/2012, a CCP shall use the Mark-to-market Method provided for in Annex III, part 3 to Directive 2006/48/EC and the Financial Collateral Comprehensive Method applying supervisory volatility adjustments provided for in Annex VIII, Part 3 to Directive 2006/48/EC.

5. Where all the conditions referred to in Articles 52 and 53 of Regulation (EU) No 648/2012 are not fulfilled and where a CCP does not use its own resources, the CCP shall apply a risk

weight of 1 250 % to its exposure stemming from contributions to the default fund of another CCP and a risk weight of 2 % to its trade exposures with another CCP.

Article 5

Capital requirements for business risk

1. The CCP shall submit to the competent authority for approval in accordance with that competent authority's powers under Title III of Regulation (EU) No 648/2012 its own estimate of the capital necessary to cover losses resulting from business risk based on reasonably foreseeable adverse scenarios relevant to its business model.

2. The capital requirement for business risk shall be equal to the approved estimate and shall be subject to a minimum amount of 25 % of its annual gross operational expenses. For the purposes of this Article, gross operational expenses shall be considered in accordance with Article 2(4).

Article 6

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, 19 December 2012.

For the Commission

The President

José Manuel BARROSO

COMMISSION DELEGATED REGULATION (EU) No 153/2013**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 requirements for central counterparties****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the opinion of the European Central Bank ⁽¹⁾,

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 repositories ⁽²⁾, and in particular Article 25(8), Article 26(9), Article 29(4), Article 34(3), Article 41(5), Article 42(5), Article 44(2), Article 45(5), Article 46(3), Article 47(8) and Article 49(4) thereof,

Whereas:

- (1) The provisions in this Regulation are closely linked, since they deal with organisational requirements, including record keeping and business continuity, and prudential requirements, including in relation to margins, the default fund, liquidity risk controls, the default waterfall, collateral, investment policy, review of models, stress testing and back testing. To ensure coherence between those provisions, which should enter into force at the same time, and to facilitate a comprehensive view and compact access to them by persons subject to those obligations it is desirable to include all the regulatory technical standards required under Title III and Title IV of Regulation (EU) No 648/2012 in a single Regulation.
- (2) In view of the global nature of financial markets, this Regulation should take into account the Principles for Financial Market Infrastructures issued by the Committee on Payment and Settlement Systems and the International Organization of Securities Commissions (CPSS-IOSCO Principles) which serve as a global benchmark for regulatory requirements for central counterparties (CCPs).
- (3) To ensure that they are safe and sound in all market conditions, it is important that CCPs adopt prudent risk management procedures which duly cover all the risks they are or may be exposed to. In this respect, the risk management standards actually implemented

by CCPs should be more stringent than those set forth in this Regulation if for risk management purposes it is deemed appropriate.

- (4) In order to clearly identify a limited number of concepts stemming from Regulation (EU) No 648/2012, as well as to specify the technical terms necessary for developing this technical standard, a number of terms should be defined.
- (5) It is important to ensure that recognised third country CCPs do not disrupt the orderly functioning of Union markets. For this reason, it is essential to ensure that recognised CCPs are not in a position to lower their risk management requirements below Union standards, which could lead to regulatory arbitrage. The information to be provided to ESMA concerning the recognition of a third country CCP should enable ESMA to assess whether that CCP is in full compliance with the prudential requirements applicable in that third country. In addition, the equivalence determination by the Commission should ensure that the laws and regulations of the third country are equivalent to every provision under Title IV of Regulation (EU) No 648/2012 and of this Regulation.
- (6) To ensure an adequate level of investor protection, in the recognition of third country CCPs the European Securities and Markets Authority (ESMA) may require additional information to the one strictly necessary to assess that conditions established in Regulation (EU) No 648/2012 are fulfilled.
- (7) The ongoing assessment of the full compliance of a third country CCP with the prudential requirements of such third country is the duty of the third country competent authority. The information to be provided to ESMA by the applicant third country CCP should not have the objective of replicating the assessment of the third country competent authority, but ensuring that the CCP is subject to effective supervision and enforcement in that third country, thus guaranteeing a high degree of investor protection.
- (8) To allow ESMA to perform a complete assessment, the information provided by the applicant third country CCP should be complemented by that information necessary to assess the effectiveness of the ongoing supervision, enforcement powers and actions taken by the third country competent authority. Such information should be provided under the cooperation arrangement established in accordance with Regulation (EU) No 648/2012. Such a cooperation arrangement should ensure that

⁽¹⁾ Not yet published in the Official Journal.

⁽²⁾ OJ L 201, 27.7.2012, p. 1.

ESMA is informed in a timely manner of any supervisory or enforcement action against the CCP applying for recognition and any change of the conditions under which authorisation was granted to the relevant CCP and on any relevant update of the information originally provided by the CCP under the recognition process.

- (9) The requirements of Regulation (EU) No 648/2012 relating to internal risk reporting lines need further specification to implement a risk-management framework, which includes the structure, rights and responsibilities of the internal risk management process. Governance arrangements should take into account different regimes on corporate law in the Union, in order to ensure that CCPs operate within a sound legal framework.
- (10) To ensure that a CCP implements the appropriate procedures to comply with this Regulation, Regulation (EU) No 648/2012 and Commission Implementing Regulation (EU) No 1249/2012 ⁽¹⁾, the role and responsibilities of a compliance function of a CCP should be specified.
- (11) It is necessary to clearly define the responsibilities of the board and the senior management as well as to specify minimum requirements for the functioning of the board in order to ensure that the organisational structure of a CCP enables it to perform its services and activities in a continuous and orderly manner. It is also necessary to set up clear and direct reporting lines to ensure accountability.
- (12) In order to ensure the sound and prudent management of a CCP, it is important that its remuneration policy discourages excessive risk taking. For the remuneration policy to produce the intended effects, it should be adequately monitored and reviewed by the board that should set-up a specific committee to appropriately oversee the fulfilment of remuneration policy.
- (13) To ensure that CCPs operate with the necessary level of human resources to meet all of their obligations, they are accountable for the performance of their activities and competent authorities have the relevant contact points within the CCPs they supervise, CCPs should have at least a chief risk officer, a chief compliance officer and chief technology officer.
- (14) CCPs should adequately assess and monitor the extent to which board members that sit on the boards of different entities have conflicts of interest, whether within or outside the group of the CCP. Board members should not be prevented from sitting on different boards unless this gives rise to conflicts of interest.
- (15) In order to have an effective audit function, a CCP should define the responsibilities and reporting lines of its internal auditors, to ensure that relevant matters are brought before the board of the CCP and the competent authorities in a timely manner. When establishing and maintaining an internal audit function, its mission, independence and objectivity, scope and responsibility, authority, accountability and standards of operation should be clearly defined.
- (16) To carry out its duties effectively, the relevant competent authority should be provided with access to all necessary information to determine whether the CCP is in compliance with its conditions of authorisation. Such information should be made available by the CCP without undue delay.
- (17) Records kept by CCPs should facilitate a thorough knowledge of CCPs' credit exposure towards clearing members and allow monitoring of the implied systemic risk. They should also enable competent authorities, ESMA and the relevant members of the European System of Central Banks (ESCB) to adequately reconstruct the clearing process, in order to assess compliance with regulatory requirements including reporting requirements. Once recorded, that data is also useful for CCPs in meeting regulatory requirements and obligations towards clearing members and in disputes.
- (18) Data reported by CCPs to trade repositories should be recorded so as to empower competent authorities to verify the compliance of CCPs with the reporting obligation set out in Regulation (EU) No 648/2012 and to easily access information in cases where this cannot be found in trade repositories.
- (19) The record-keeping requirements in relation to trades should make use of the same concepts used in the reporting obligation set out in Article 9 of Regulation (EU) No 648/2012, in order to ensure appropriate reporting by CCPs.
- (20) To ensure business continuity in times of disruption, the secondary processing site of the CCP should be located sufficiently distant and in a sufficiently geographically distinct location from the primary site so that it would not be subject to the same disaster which may cause the unavailability of the primary site. Scenarios should be created to analyse the impact of crisis events on critical services, including scenarios which envisage the unavailability of systems caused by a natural disaster. Those analyses should be reviewed periodically.
- (21) CCPs are systemically relevant financial market infrastructures and they should recover critical functions within two hours, with backup systems ideally starting processing immediately after an incident. CCPs should also ensure with very high probability that no data will be lost.

⁽¹⁾ OJ L 352, 21.12.2012, p. 32.

- (22) It is important that the default of a clearing member does not cause significant losses to other market participants. Therefore, CCPs are required to cover through margins posted by the defaulter, at least, a relevant proportion of the possible loss that during the close out process the CCP might have. Rules should determine the minimum percentage the margins should cover for different classes of financial instruments. Furthermore, CCPs should follow principles to adequately tailor their margin levels to the characteristics of each financial instrument or portfolio they clear.
- (23) CCPs should not reduce their margins to a level that compromises their safety as a result of the existence of a highly competitive environment. For this reason, margin calculations should follow specific requirements in their basic components. In this sense, margins should take into account a full range of market conditions including periods of stress.
- (24) Rules should be established to specify the appropriate percentage and time horizons for the liquidation period and the calculation of historical volatility. However, in order to ensure that CCPs duly manage the risk they face, it is desirable not to specify the approach which the CCP should take to calculating margin requirements from these parameters. For the same reasons, CCPs should not be prevented to rely on various reliable methodological approaches for the development of portfolio margining, they should be allowed to rely on methods based on correlations between price risk of the financial instrument or set of financial instruments they clear, as well as any appropriate methods based on equivalent statistical parameters of dependence.
- (25) To determine the period of time during which a CCP is exposed to market risk related to the management of a defaulter's position, the CCP should consider the relevant characteristics of the financial instruments or portfolio cleared, such as their level of liquidity and the size of the position or its concentration. CCPs should prudently evaluate the time required for the complete closure of a defaulter's position since the latest collection of margins, the size of the position and its concentration.
- (26) In order to avoid causing or exacerbating financial instability, CCPs should, to the maximum extent practical, adopt forward-looking margin methodologies that limit the likelihood of procyclical changes in margin requirements, without undermining the resilience of the CCP.
- (27) A higher confidence interval for OTC derivatives is typically justified because those products can suffer from less reliable pricing and shorter runs of historical data on which to base exposure estimations. CCPs might clear OTC derivatives that do not suffer from such phenomena and have the same risk characteristics as listed derivatives and they should be able to clear those products consistently irrespective of the execution method.
- (28) A suitable definition of extreme but plausible market conditions is a core component of CCP risk management. For the purposes of keeping the CCP risk management framework up to date, extreme but plausible market conditions should not be considered as a static concept, but rather as conditions that evolve over time and vary across markets. One market scenario can be extreme but plausible for one CCP while not having great importance for another. A CCP should establish a robust internal policy framework for identifying the markets to which it is exposed and employ a common minimum set of standards for defining extreme but plausible conditions in each identified market. It should also consider objectively the potential for simultaneous pressures in multiple markets.
- (29) To ensure appropriate and robust governance arrangements are in place, the framework used by a CCP to identify extreme but plausible market conditions should be discussed by the risk committee and approved by the board. It should be reviewed at least annually, with results discussed by the risk committee and then shared with the board. The review should ensure that changes to the scale and concentration of the CCP's exposures as well as developments in the markets in which it operates are reflected in the definition of extreme but plausible market conditions. That review should not, however, be a substitute for continuous judgment by the CCP on the adequacy of its default fund in light of evolving market conditions.
- (30) To ensure efficient management of their liquidity risk, CCPs should be required to establish a liquidity risk management framework. That framework should depend on the nature of its obligations and address the tools a CCP has available for assessing the liquidity risk it is facing, determining the liquidity pressures likely to occur and ensuring the adequacy of its liquid resources.
- (31) In assessing the adequacy of its liquid resources, a CCP should be required to consider the size and liquidity of the resources it holds, as well as the possible concentration risk of those assets. It is important that CCPs are able to identify all major kinds of liquidity risk concentrations within their resources so that the CCP's liquidity resources are immediately available when necessary. CCPs should also consider additional risks stemming from multiple relationships, interdependencies and concentrations.

- (32) As liquidity has to be readily available for same day transactions or even intraday transactions, a CCP might employ cash at the central bank, of issue, cash at creditworthy commercial banks, committed lines of credit, committed repos, highly marketable collateral held in custody and investments that are readily available and convertible into cash with prearranged and highly reliable funding arrangements, even in stressed market conditions. Such cash and collateral should only be counted as part of prearranged liquid financial resources under certain conditions.
- (33) In order to provide the necessary incentive to the CCP to set prudent requirements and to keep that amount to an adequate level while avoiding regulatory arbitrage, it is important to establish a common methodology for the calculation and the maintenance of a specific amount of the dedicated own resources that a CCP should maintain to be used in the default waterfall. It is essential to keep those resources covering default losses separate and with a distinct function from the CCP's minimum capital requirements which cover different risks to which a CCP might be exposed.
- (34) It is important that CCPs apply a consistent methodology for the calculation of the own resources to be used in the default waterfall, in order to ensure equivalent conditions field between CCPs. Allowing CCPs discretion to implement a methodology that is insufficiently clear would lead to very different results among CCPs, thus providing incentives for regulatory arbitrage. It is therefore essential that the methodology does not allow for discretion to CCPs. For this purpose, it would be appropriate to have a simple percentage based on a clearly identifiable measure and a clear methodology for ensuring a consistent calculation of CCPs' own resources to be used in a default waterfall.
- (35) A minimum set of criteria should be laid down to ensure that acceptable collateral is highly liquid and can be converted into cash rapidly and with minimal price impact. Those criteria should refer to the issuer of the collateral, the extent to which it can be liquidated in the market and whether its value is correlated with the credit standing of the member posting the collateral to cater for possible wrong-way risk. A CCP should have the option to apply additional criteria where necessary to achieve the desired level of robustness.
- (36) CCPs should only accept highly liquid collateral with minimal credit and market risk. In order to ensure that the collateral held by CCPs remains highly liquid at all times, it is necessary that CCPs establish transparent and predictable policies and procedures to assess and continuously monitor the liquidity of assets accepted as collateral, implement adequate valuation methodologies.
- To that purpose, CCPs should also implement concentration limits aimed at maintaining a sufficient diversification of the collateral to ensure that it can be liquidated promptly without significant market risk affecting its value. In determining their policies on eligible collateral and concentration limits they should take in account the global availability of such collateral in view of the potential macroeconomic effects of their policies.
- (37) To avoid wrong-way risk, clearing members should not, in general, be permitted to use as collateral their own securities or securities issued by an entity from their same group. However, a CCP should be able to allow clearing members to post covered bonds that are insulated from the insolvency of the issuer. The underlying collateral should nevertheless be appropriately segregated from the issuer and satisfy the minimum criteria for acceptability of collateral. A clearing member should not issue financial instruments for the primary purpose of using them as collateral by another clearing member.
- (38) To ensure the safety of CCPs, a CCP should accept as collateral a commercial bank guarantee only after a thorough assessment of the issuer and of the legal, contractual and operational framework of the guarantee. Unsecured exposures of CCPs to commercial banks should be avoided. Therefore, commercial bank guarantees may be accepted only under strict conditions. Those conditions are generally met in markets characterised by a high concentration of commercial banks willing to provide credit to non-financial clearing members. For this reason a higher concentration limit should be permitted in these cases.
- (39) To limit its market risk, a CCP should be required to value its collateral at least daily. It should apply prudent haircuts that reflect the potential decrease of value of the collateral over the interval between its last revaluation and the time by which the collateral can reasonably be assumed to be liquidated under stressed market conditions. The level of collateral should also take account of potential wrong-way risk exposures.
- (40) The implementation of haircuts should enable the CCP to avoid large and unexpected adjustments to the amount of collateral required, thus avoiding procyclical effects to the extent possible.
- (41) A CCP should not concentrate collateral on a limited number of issuers or in a limited number of assets, so as to avoid potential significant adverse price effects in case of liquidation of the collateral in a short period of time. Concentrated collateral positions should not be considered highly liquid for this reason.

- (42) Liquidity, credit and market risk should be considered at portfolio level as well as at the level of an individual financial instrument. A concentrated portfolio can have a significant negative effect on the liquidity of the collateral or of the financial instruments in which the CCP can invest its financial resources, since selling large positions in stressed market conditions is unlikely to be feasible without depressing the market price. For the same reason, collateral maintained by the CCP should be monitored and valued on a continuous basis to ensure that it remains liquid.
- (43) Energy derivative markets show a particularly strong interlink with spot commodity markets and in these derivative markets the proportion of non-financial clearing members is high. On those markets, a significant number of market participants are also producers of the underlying commodity. Access to sufficient collateral to back commercial bank guarantees in full could require substantial divesting by those non-financial clearing members of their current positions or could impede them from continuing to clear their positions as a direct clearing member of a CCP. That process could cause market disruptions in energy markets, in terms of liquidity and diversity of market participants. Therefore, its application should be postponed according to a well established time-frame.
- (44) In order to ensure a consistent application of the framework established in Regulation (EU) No 648/2012, all sectors should face similar requirements in the final form of the rules applicable to them. Energy firms currently operate under a well-established framework that will require time to adapt to the new requirements established to avoid detrimental effects to the real economy. Therefore, it is considered desirable to establish an application date for such types of markets that allows an appropriate transition from the current market practice without affecting unduly market structure and liquidity.
- (45) The investment policy of a CCP should assign the highest priority to the principles of capital preservation and liquidity maximisation. The investment policy should also ensure that no conflicts of interest arise with the commercial interests of the CCP.
- (46) The criteria that financial instruments should meet to be considered eligible investments for the CCP, should take into account Principle 16 of the CPSS-IOSCO Principles — in order to ensure international consistency. In particular, a CCP should be required to apply restrictive standards concerning the issuer of the financial instrument, the transferability of the financial instrument and the credit, market, volatility and foreign exchange risk of the financial instrument. A CCP should ensure that it does not undermine measures taken to limit the risk exposure of its investments by having excessive exposures to any individual financial instrument, type of financial instrument, individual issuer, type of issuer or individual custodian.
- (47) The use of derivatives by a CCP exposes it to additional credit and market risks and it is therefore necessary to define a restrictive set of circumstances in which a CCP can invest its financial resources in derivatives. Given that a CCP's aim should be to have a flat position with regards to market risk, the only risks that a CCP should need to hedge are those concerning the collateral that it accepts or the risks arising from the default of a clearing member. Risks concerning the collateral that a CCP accepts can be sufficiently managed through haircuts and it is not considered necessary for a CCP to use derivatives in this regard. Derivatives should only be used by a CCP for managing liquidity risk arising for exposures to different currencies and for the purposes of hedging the portfolio of a defaulted clearing member and only where the CCP's default management procedures envisage such use.
- (48) To ensure the safety of CCPs, they should only be allowed to maintain cash in unsecured deposits in minimal proportions. In securing its cash, CCPs should always ensure that they are always adequately protected against liquidity risk.
- (49) It is necessary to set out rigorous stress and back testing requirements to ensure that a CCP's models, their methodologies and the liquidity risk management framework work properly, taking into account all risks the CCP is exposed to, so that the CCP has at all times adequate resources to cover those risks.
- (50) To ensure consistent application of requirements for CCPs, it is necessary to set out detailed provisions with respect to the types of tests to be undertaken, including both stress and back testing. In order to cater for the wide range of security and derivative contracts which may be cleared in the future, reflect differences in CCP's business and risk management approaches, allow for future developments and new risks to be dealt with and allow for sufficient flexibility, a criteria based approach is necessary.
- (51) In validating a CCP's models, their methodologies and the liquidity risk management framework it is important to use an appropriate independent party so that any necessary corrective measures can be found and implemented before implementation and to avoid any material conflicts of interest. The independent party should be sufficiently separate from the part of the CCP's business that develops, implements and will operate the model or policies being reviewed and should not hold a material conflict of interest. Those conditions could be met either by an internal party that has separate reporting lines or an external party.

- (52) Various aspects of a CCP's financial resources, notably margin coverage, default funds and other financial resources, are designed to cover different scenarios and objectives. It is therefore necessary to provide specific requirements to reflect these objectives and to ensure consistent application across CCPs. In assessing the necessary coverage the CCP should not net off any exposures between defaulting clearing members, in order to avoid reducing the potential impacts that these exposures might have.
- (53) The different types of financial instruments which a CCP may clear are subject to a variety of specific risks. A CCP should therefore be required to consider all the risks relevant to the markets it provides clearing services for in its models, their methodologies and the liquidity risk management framework to ensure it adequately measures its potential future exposure. In order for such risks to be properly considered, stress testing requirements should include instrument-specific risks relevant to different types of financial instruments.
- (54) For a CCP to ensure that its model for calculating initial margins adequately reflects its potential exposures, in addition to the daily back testing of its margin coverage which looks at the adequacy of the margin being called, it should also back test key parameters and assumptions of the model. This is essential to ensure that CCPs' models calculate initial margin accurately.
- (55) Rigorous sensitivity analysis of margin requirements may take on increased importance when markets are illiquid or volatile and should be used to determine the impact of varying important model parameters. Sensitivity analysis is an effective tool to explore hidden shortcomings that cannot be discovered through back testing.
- (56) Failure to conduct stress and back tests regularly could lead to a CCP's financial and liquid resources being inadequate to cover the actual risks it is exposed to. Appropriate tests will also allow a CCP's models, their methodologies and the liquidity risk management framework to deal with changing markets and new risks promptly. Test results should therefore be used promptly by CCPs to review their models, methodologies and liquidity risk management framework.
- (57) Modelling extreme market conditions can help a CCP determining the limits of its current models, the liquidity risk management framework and the financial and liquid resources. However, it requires the CCP to exercise judgment when modelling different markets and products. Reverse stress testing should be considered a helpful management tool, whilst not the main one, to determine the appropriate level of financial resources.
- (58) The involvement of clearing members, clients and other relevant stakeholders in the testing of a CCP's default management procedures, through simulation exercises, is essential to ensure that they have the understanding and operational capability to successfully participate in a default management situation. Simulation exercises should replicate a default scenario to demonstrate the roles and responsibilities of clearing members, clients and other relevant stakeholders. Additionally it is important that a CCP has appropriate mechanisms that enable it to ascertain whether corrective action is required and to identify any lack of clarity in, or discretion allowed by, the rules and procedures. The testing of a CCP's default management procedures is particularly important where it relies on non-defaulting clearing members or third parties to assist in the close-out process and where the default procedures have never been tested by an actual default.
- (59) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.
- (60) ESMA has consulted, where relevant, the European Banking Authority (EBA), the European Systemic Risk Board and the members of the ESCB before submitting the draft technical standards on which this Regulation is based. In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority) ⁽¹⁾, ESMA has conducted open public consultations on such draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010,
- HAS ADOPTED THIS REGULATION:
- CHAPTER I**
GENERAL
Article 1
Definitions
- For the purposes of this Regulation, the following definitions apply:
- (1) 'basis risk' means the risk arising from less than perfectly correlated movements between two or more assets or contracts cleared by the central counterparty (CCP);
- ⁽¹⁾ OJ L 331, 15.12.2010, p. 84.

- (2) 'confidence interval' means the percentage of exposures movements for each financial instrument cleared with reference to a specific lookback period that a CCP is required to cover over a certain liquidation period;
- (3) 'convenience yield' means the benefits from direct ownership of the physical commodity and is affected both by market conditions and by factors such as physical storage costs;
- (4) 'margins' means margins as referred to in Article 41 of Regulation (EU) No 648/2012 which may include initial margins and variation margins;
- (5) 'initial margin' means margins collected by the CCP to cover potential future exposure to clearing members providing the margin and, where relevant, interoperable CCPs in the interval between the last margin collection and the liquidation of positions following a default of a clearing member or of an interoperable CCP default;
- (6) 'variation margin' means margins collected or paid out to reflect current exposures resulting from actual changes in market price;
- (7) 'jump to default risk' means the risk that a counterparty or issuer defaults suddenly before the market has had time to factor in its increased default risk;
- (8) 'liquidation period' means the time period used for the calculation of the margins that the CCP estimates necessary to manage its exposure to a defaulting member and during which the CCP is exposed to market risk related to the management of the defaulter's positions;
- (9) 'lookback period' means the time horizon for the calculation of historical volatility;
- (10) 'testing exception' means the result of a test which shows that a CCP's model or liquidity risk management framework did not result in the intended level of coverage;
- (11) 'wrong-way risk' means the risk arising from exposure to a counterparty or issuer when the collateral provided by that counterparty or issued by that issuer is highly correlated with its credit risk.

CHAPTER II

RECOGNITION OF THIRD COUNTRY CCPs

(Article 25 of Regulation (EU) No 648/2012)

*Article 2***Information to be provided to ESMA for the recognition of a CCP**

An application for recognition submitted by a CCP established in a third country shall contain at least the following information:

- (a) full name of the legal entity;
- (b) identities of the shareholders or members with qualifying holdings;
- (c) a list of the Member States in which it intends to provide services;
- (d) classes of financial instruments cleared;
- (e) details to be included in the ESMA website in accordance with Article 88(1)(e) of Regulation (EU) No 648/2012;
- (f) details of its financial resources, the form and methods in which they are maintained and the arrangements to secure them including default management procedures;
- (g) details on the margin methodology and for the calculation of the default fund;
- (h) a list of the eligible collateral;
- (i) a breakdown of values, in prospective form if needed, cleared by the applying CCP by each Union currency cleared;
- (j) results of the stress tests and back tests performed during the year preceding the date of application;
- (k) its rules and internal procedures with evidences of full compliance with the requirements applicable in that third country;
- (l) details of any outsourcing arrangements;
- (m) details on segregation arrangements and respective legal soundness and enforceability;

- (n) details on the CCP's access requirements and terms for suspension and termination of membership;
- (o) details of any interoperability arrangement, including the information provided to the third country competent authority for the purpose of assessing the arrangement.

CHAPTER III

ORGANISATIONAL REQUIREMENTS

(Article 26 of Regulation (EU) No 648/2012)

Article 3

Governance arrangements

1. The key components of the governance arrangements of the CCP that define its organisational structure as well as clearly specified and well-documented policies, procedures and processes by which its board and senior management operate shall include the following:

- (a) the composition, role and responsibilities of the board and any board committees;
- (b) the roles and responsibilities of the management;
- (c) the senior management structure;
- (d) the reporting lines between the senior management and the board;
- (e) the procedures for the appointment of board members and senior management;
- (f) the design of the risk management, compliance and internal control functions;
- (g) the processes for ensuring accountability to stakeholders.

2. A CCP shall have adequate staff to meet all obligations arising from this Regulation and from Regulation (EU) No 648/2012. 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 Regulation (EU) No 648/2012.

3. A CCP shall establish lines of responsibility which are clear, consistent and well-documented. A CCP shall ensure that the functions of the chief risk officer, chief compliance officer and chief technology officer are carried out by

different individuals, who shall be employees of the CCP entrusted with the exclusive responsibility of performing these functions.

4. A CCP that is part of a group shall take into account any implications of the group for its own governance arrangements including whether it has the necessary level of independence to meet its regulatory obligations as a distinct legal person and whether its independence could be compromised by the group structure or by any board member also being a member of the board of other entities of the same group. In particular, such a CCP shall consider specific procedures for preventing and managing conflicts of interest including with respect to outsourcing arrangements.

5. Where a CCP maintains a two-tiered board system, the role and responsibilities of the board as established in this Regulation and in Regulation (EU) No 648/2012 shall be allocated to the supervisory board and the management board as appropriate.

6. The risk management policies, procedures, systems and controls shall be part of a coherent and consistent governance framework that is reviewed and updated regularly.

Article 4

Risk management and internal control mechanisms

1. A CCP shall have a sound framework for the comprehensive management of all material risks to which it is or may be exposed. A CCP shall establish documented policies, procedures and systems that identify, measure, monitor and manage such risks. In establishing risk-management policies, procedures and systems, a CCP shall structure them in a way as to ensure that clearing members properly manage and contain the risks they pose to the CCP.

2. A CCP shall take an integrated and comprehensive view of all relevant risks. These shall include the risks it bears from and poses to its clearing members and, to the extent practicable, clients as well as the risks it bears from and poses to other entities such as, but not limited to interoperable CCPs, securities settlement and payment systems, settlement banks, liquidity providers, central securities depositories, trading venues served by the CCP and other critical service providers.

3. A CCP shall develop appropriate risk management tools to be in a position to manage and report on all relevant risks. These shall include the identification and management of system, market or other interdependencies. If a CCP provides services linked to clearing that present a distinct risk profile from its functions and potentially pose significant additional risks to it, the CCP shall manage those additional risks adequately. This may include separating legally the additional services that the CCP provides from its core functions.

4. The governance arrangements shall ensure that the board of a CCP assumes final responsibility and accountability for managing the CCP's risks. The board shall define, determine and document an appropriate level of risk tolerance and risk bearing capacity for the CCP. The board and senior management shall ensure that the CCP's policies, procedures and controls are consistent with the CCP's risk tolerance and risk bearing capacity and that they address how the CCP identifies, reports, monitors and manages risks.

5. A CCP shall employ robust information and risk-control systems to provide the CCP and, where appropriate, its clearing members and, where possible, clients with the capacity to obtain timely information and to apply risk management policies and procedures appropriately. These systems shall ensure, at least that credit and liquidity exposures are monitored continuously at the CCP level as well as at the clearing member level and, to the extent practicable, at the client level.

6. A CCP shall ensure that the risk management function has the necessary authority, resources, expertise and access to all relevant information and that it is sufficiently independent from the other functions of the CCP. The CCP chief risk officer shall implement the risk management framework including the policies and procedures established by the board.

7. A CCP shall have adequate internal control mechanisms to assist the board in monitoring and assessing the adequacy and effectiveness of its risk management policies, procedures and systems. Such mechanisms shall include sound administrative and accounting procedures, a robust compliance function and an independent internal audit and validation or review function.

8. A CCP's financial statement shall be prepared on an annual basis and be audited by statutory auditors or audit firms within the meaning of Directive 2006/43/EC of the European Parliament and of the Council ⁽¹⁾.

Article 5

Compliance policy and procedures

1. A CCP shall establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the CCP and its employees to comply with its obligations under this Regulation, Regulation (EU) No 648/2012 and Implementing Regulation (EU) No 1249/2012, as well as the associated risks, and put in place adequate measures and procedures designed to minimise such risk and to enable the competent authorities to exercise their powers effectively under these Regulations.

⁽¹⁾ OJ L 157, 9.6.2006, p. 87.

2. A CCP shall ensure that its rules, procedures and contractual arrangements are clear and comprehensive and they ensure compliance with this Regulation, Regulation (EU) No 648/2012 and Implementing Regulation (EU) No 1249/2012 as well as all other applicable regulatory and supervisory requirements.

The rules, procedures and contractual arrangements of the CCP shall be recorded in writing or another durable medium. These rules, procedures, and contractual arrangements and any accompanying material shall be accurate, up-to-date and readily available to the competent authority, clearing members and, where appropriate, clients.

A CCP shall identify and analyse the soundness of the rules, procedures and contractual arrangements of the CCP. If necessary, independent legal opinions shall be sought for the purpose of this analysis. The CCP shall have a process for proposing and implementing changes to its rules and procedures and prior to implementing any material changes to consult with all affected clearing members and submit the proposed changes to the competent authority.

3. In developing its rules, procedures and contractual arrangements a CCP shall consider relevant regulatory principles and industry standards and market protocols and clearly indicate where such practices have been incorporated into the documentation governing the rights and obligations of the CCP, its clearing members and other relevant third parties.

4. A CCP shall identify and analyse potential conflicts of law issues and develop rules and procedures to mitigate legal risk resulting from such issues. If necessary, independent legal opinions shall be sought by the CCP for the purpose of this analysis.

A CCP's rules and procedures shall clearly indicate the law that is intended to apply to each aspect of the CCP's activities and operations.

Article 6

Compliance function

1. A CCP shall establish and maintain a permanent and effective compliance function which operates independently from the other functions of the CCP. It shall ensure that the compliance function has the necessary authority, resources, expertise and access to all relevant information.

When establishing its compliance function, the CCP shall take into account the nature, scale and complexity of its business, and the nature and range of the services and activities undertaken in the course of that business.

2. The chief compliance officer shall at least have the following responsibilities:

- (a) monitor and, on a regular basis, assess the adequacy and effectiveness of the measures put in place in accordance with Article 5(4) and the actions taken to address any deficiencies in the CCP's compliance with its obligations;
- (b) administer the compliance policies and procedures established by senior management and the board;
- (c) advise and assist the persons responsible for carrying out the CCP services and activities to comply with the CCP's obligations under this Regulation, Regulation (EU) No 648/2012 and Implementing Regulation (EU) No 1249/2012 and other regulatory requirements, where applicable;
- (d) report regularly to the board on compliance by the CCP and its employees with this Regulation, Regulation (EU) No 648/2012 and Implementing Regulation (EU) No 1249/2012;
- (e) establish procedures for the effective remediation of instances of non-compliance;
- (f) ensure that the relevant persons involved in the compliance function are not involved in the performance of the services or activities they monitor and that any conflicts of interest of such persons are properly identified and eliminated.

Article 7

Organisational structure and separation of the reporting lines

1. A CCP shall define the composition, role and responsibilities of the board and senior management and any board committees. These arrangements shall be clearly specified and well-documented. The board shall establish, at a minimum an audit committee and a remuneration committee. The risk committee established in accordance with Article 28 of Regulation (EU) No 648/2012 shall be an advisory committee to the board.

2. The board shall assume at least the following responsibilities:

- (a) the establishment of clear objectives and strategies for the CCP;
- (b) the effective monitoring of senior management;
- (c) the establishment of appropriate remuneration policies;
- (d) the establishment and oversight of the risk management function;
- (e) the oversight of the compliance function and internal control function;

(f) the oversight of outsourcing arrangements;

(g) the oversight of compliance with all provisions of this Regulation, Regulation (EU) No 648/2012, Implementing Regulation (EU) No 1249/2012 and all other regulatory and supervisory requirements;

(h) the provision of accountability to the shareholders or owners and employees, clearing members and their customers and other relevant stakeholders.

3. Senior management shall have at least the following responsibilities:

(a) ensuring consistency of the CCP's activities with the objectives and strategy of the CCP as determined by the board;

(b) designing and establishing compliance and internal control procedures that promote the CCP's objectives;

(c) subjecting the internal control procedures to regular review and testing;

(d) ensuring that sufficient resources are devoted to risk management and compliance;

(e) be actively involved in the risk control process;

(f) ensuring that risks posed to the CCP by its clearing and activities linked to clearing are duly addressed.

4. Where the board delegates tasks to committees or sub-committees, it shall retain the approval of decisions that could have a significant impact on the risk profile of the CCP.

5. The arrangements by which the board and senior management operate shall include processes to identify, address and manage potential conflicts of interest of members of the board and senior management.

6. A CCP shall have clear and direct reporting lines between its board and senior management in order to ensure that the senior management is accountable for its performance. The reporting lines for risk management, compliance and internal audit shall be clear and separate from those for the other operations of the CCP. The chief risk officer shall report to the board either directly or through the chair of the risk committee. The chief compliance officer and the internal audit function shall report directly to the board.

*Article 8***Remuneration policy**

1. The remuneration committee shall design and further develop the remuneration policy, oversee its implementation by senior management and review its practical operation on a regular basis. The policy itself shall be documented and reviewed at least on an annual basis.

2. The remuneration policy shall be designed to align the level and structure of remuneration with prudent risk management. The policy shall account for prospective risks as well as existing risks and risk outcomes. Pay out schedules shall be sensitive to the time horizon of risks. In particular in the case of variable remuneration the policy shall take due account of possible mismatches of performance and risk periods and shall ensure that payments are deferred as appropriate. The fixed and variable components of total remuneration shall be balanced and shall be consistent with risk alignment.

3. The remuneration policy shall provide that staff engaged in risk management, compliance and internal audit functions are remunerated in a manner that is independent of the business performance of the CCP. The level of remuneration shall be adequate in terms of responsibility as well as in comparison to the level of remuneration in the business areas.

4. The remuneration policy shall be subject to independent audit, on an annual basis. The results of these audits shall be made available to the competent authority.

*Article 9***Information technology systems**

1. A CCP shall design and ensure its information technology systems are reliable and secure as well as capable of processing the information necessary for the CCP to perform its activities and operations in a safe and efficient manner.

The information technology architecture shall be well-documented. The systems shall be designed to deal with the CCP's operational needs and the risks the CCP faces, be resilient, including in stressed market conditions, and be scalable, if necessary, to process additional information. The CCP shall provide for procedures and capacity planning as well as for sufficient redundant capacity to allow the system to process all remaining transactions before the end of the day in circumstances where a major disruption occurs. The CCP shall provide for procedures for the introduction of new technology including clear reversion plans.

2. In order to ensure a high degree of security in information processing and to enable connectivity with its clearing members and clients as well as with its service providers, a CCP shall base its information technology systems on internationally

recognised technical standards and industry best practices. The CCP shall subject its systems to stringent testing, simulating stressed conditions, before initial use, after making significant changes and after a major disruption has occurred. Clearing members and clients, interoperable CCPs and other interested parties shall be involved as appropriate in the design and conduct of these tests.

3. A CCP shall maintain a robust information security framework that appropriately manages its information security risk. The framework shall include appropriate mechanisms, policies and procedures to protect information from unauthorised disclosure, to ensure data accuracy and integrity and to guarantee the availability of the CCP's services.

4. The information security framework shall include at least the following features:

- (a) access controls to the system;
- (b) adequate safeguards against intrusions and data misuse;
- (c) specific devices to preserve data authenticity and integrity, including cryptographic techniques;
- (d) reliable networks and procedures for accurate and prompt data transmission without major disruptions;
- (e) audit trails.

5. The information technology systems and the information security framework shall be reviewed at least on an annual basis. They shall be subject to independent audit assessments. The results of these assessments shall be reported to the board and shall be made available to the competent authority.

*Article 10***Disclosure**

1. A CCP shall make the following information available to the public free of charge:

- (a) information regarding its governance arrangements, including the following:
 - (i) its organisational structure as well as key objectives and strategies;
 - (ii) key elements of the remuneration policy;
 - (iii) key financial information including its most recent audited financial statements;
- (b) information regarding its rules, including the following:
 - (i) default management procedures, procedures and supplementary texts;

- (ii) relevant business continuity information;
- (iii) information on the CCP's risk management systems, techniques and performance in accordance with Chapter XII;
- (iv) all relevant information on its design and operations as well as on the rights and obligations of clearing members and clients, necessary to enable them to identify clearly and understand fully the risks and costs associated with using the CCP's services;
- (v) the CCP's current clearing services, including detailed information on what it provides under each service;
- (vi) the CCP's risk management systems, techniques and performance, including information on financial resources, investment policy, price data sources and models used in margin calculations;
- (vii) the law and the rules governing:
 - (1) the access to the CCP;
 - (2) the contracts concluded by the CCP with clearing members and, where practicable, clients;
 - (3) the contracts that the CCP accepts for clearing;
 - (4) any interoperability arrangements;
 - (5) the use of collateral and default fund contributions, including the liquidation of positions and collateral and the extent to which collateral is protected against third party claims;
- (c) information regarding eligible collateral and applicable haircuts;
- (d) a list of all current clearing members, including admission, suspension and exit criteria for clearing membership.

Where the competent authority agrees with the CCP that any of the information under point (b) or (c) of this paragraph may put at risk business secrets or the safety and soundness of the CCP, the CCP may decide to disclose that information in a manner that prevents or reduces those risks, or not to disclose such information.

2. A CCP shall disclose to the public, free of charge, information regarding any material changes in its governance arrangements, objectives, strategies and key policies as well as in its applicable rules and procedures.

3. Information to be disclosed to the public by the CCP shall be accessible on its website. Information shall be available in at least a language customary in the sphere of international finance.

Article 11

Internal auditing

1. A CCP shall establish and maintain an internal audit function which is separate and independent from the other functions and activities of the CCP and which has the following tasks:

- (a) to establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the CCP's systems, internal control mechanisms and governance arrangements;
- (b) to issue recommendations based on the result of work carried out in accordance with point (a);
- (c) to verify compliance with those recommendations;
- (d) to report internal audit matters to the board.

2. The internal audit function shall have the necessary authority, resources, expertise, and access to all relevant documents for the performance of its functions. It shall be sufficiently independent from the management and shall report directly to the board.

3. Internal audit shall assess the effectiveness of the CCP's risk management processes and control mechanisms in a manner that is proportionate to the risks faced by the different business lines and independent of the business areas assessed. The internal audit function shall have the necessary access to information in order to review all of the CCP's activities and operations, processes and systems, including outsourced activities.

4. Internal audit assessments shall be based on a comprehensive audit plan that shall be reviewed and reported to the competent authority at least on an annual basis. The CCP shall ensure that special audits may be performed on an event-driven basis at short notice. Audit planning and review shall be approved by the board.

5. A CCP's clearing operations, risk management processes, internal control mechanisms and accounts shall be subject to independent audit. Independent audits shall be performed, at a least, on an annual basis.

CHAPTER IV

RECORD KEEPING

(Article 29 of Regulation (EU) No 648/2012)

*Article 12***General requirements**

1. A CCP shall keep records in a durable medium that allows information to be provided to the competent authorities, ESMA and relevant European System of Central Banks (ESCB) members, and in such a form and manner that the following conditions are met:

- (a) each key stage of the processing by the CCP may be reconstituted;
- (b) the original content of a record before any corrections or other amendments may be recorded, traced and retrieved;
- (c) measures to prevent unauthorised alteration of records are in place;
- (d) security and confidentiality of the data recorded are ensured through appropriate measures;
- (e) a mechanism for identifying and correcting errors is incorporated in the record keeping system;
- (f) the timely recovery of the records in the case of a system failure is ensured within the record keeping system.

2. Where records or information are less than six months old, they shall be provided to the authorities listed in paragraph 1 as soon as possible and at the latest by the end of the following business day following a request from the relevant authority.

3. Where records or information are older than six months, shall be provided to the authorities listed in paragraph 1 as soon as possible and within five business days following a request from the relevant authority.

4. Where the records processed by the CCP contain personal data CCPs shall have regard to their obligations under Directive 95/46/EC of the European Parliament and of the Council ⁽¹⁾ and Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽²⁾.

5. Where a CCP maintains records outside the Union, it shall ensure that the competent authority, ESMA and the relevant members of the ESCB are able to access the records to the same extent and within the same periods as if they were maintained within the Union.

6. Each CCP shall name the relevant persons who can, within the delay established in paragraphs 2 and 3 for the provision of the relevant records, explain the content of its records to the competent authorities.

7. All records required to be kept by a CCP under this Regulation shall be open to inspection by the competent authority. A CCP shall provide the competent authority with a direct data feed to the records required under Articles 13 and 14, when requested.

*Article 13***Transaction records**

1. A CCP shall maintain records of all transactions in all contracts it clears and shall ensure that its records include all information necessary to conduct a comprehensive and accurate reconstruction of the clearing process for each contract and that each record on each transaction is uniquely identifiable and searchable at least by all fields concerning the CCP, inter-operable CCP, clearing member, client, if known to the CCP, and financial instrument.

2. In relation to every transaction received for clearing, a CCP shall, immediately upon receiving the relevant information, make and keep updated a record of the following details:

- (a) the price, rate or spread and quantity;
- (b) the clearing capacity, which identifies whether the transaction was a buy or sale from the perspective of the CCP recording;
- (c) the instrument identification;
- (d) the identification of the clearing member;
- (e) the identification of the venue where the contract was concluded;
- (f) the date and time of interposition of the CCP;
- (g) the date and time of termination of the contract;
- (h) the terms and modality of settlement;
- (i) the date and time of settlement or of buy-in of the transaction and to the extent they are applicable of the following details:
 - (i) the day and the time at which the contract was originally concluded;
 - (ii) the original terms and parties of the contract;

⁽¹⁾ OJ L 281, 23.11.1995, p. 31.

⁽²⁾ OJ L 8, 12.1.2001, p. 1.

(iii) the identification of the interoperable CCP clearing one leg of the transaction, where applicable;

(iv) the identity of the client, including any indirect client, where known to the CCP, and in case of a give-up, the identification of the party that transferred the contract.

Article 14

Position records

1. A CCP shall maintain records of positions held by each clearing member. Separate records shall be held for each account kept in accordance with Article 39 of Regulation (EU) No 648/2012 and the CCP shall ensure that its records include all information necessary to conduct a comprehensive and accurate reconstruction of the transactions that established the position and that each record is identifiable and searchable at least by all fields concerning the CCP, interoperable CCP, clearing member, client, if known to the CCP, and financial instrument.

2. At the end of each business day a CCP shall make a record in relation to each position including the following details, to the extent they are linked to the position in question:

(a) the identification of the clearing member, of the client, if known to the CCP, and of any interoperable CCP maintaining such position, where applicable;

(b) the sign of the position;

(c) the daily calculation of the value of the position with records of the prices at which the contracts are valued, and of any other relevant information.

3. A CCP shall make, and keep updated, a record of the amounts of margins, default fund contributions and other financial resources referred to in Article 43 of Regulation (EU) No 648/2012, called by the CCP and the corresponding amount actually posted by the clearing member at the end of day and changes to that amount that may occur intraday, with respect to each single clearing member and client account if known to the CCP.

Article 15

Business records

1. A CCP shall maintain adequate and orderly records of activities related to its business and internal organisation.

2. The records referred to in paragraph 1 shall be made each time a material change in the relevant documents occurs and shall include at least:

(a) the organisational charts for the board and relevant committees, clearing unit, risk management unit, and all other relevant units or divisions;

(b) the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and the amounts of those holdings;

(c) the documents attesting the policies, procedures and processes required under Chapter III and Article 29;

(d) the minutes of board meetings and, if applicable, of meetings of sub-committees of the board and of senior management committees;

(e) the minutes of meetings of the risk committee;

(f) the minutes of consultation groups with clearing members and clients, if any;

(g) internal and external audit reports, risk management reports, compliance reports, and reports by consultant companies, including management responses;

(h) the business continuity policy and disaster recovery plan, required under Article 17;

(i) the liquidity plan and the daily liquidity reports, required under Article 32;

(j) records reflecting all assets and liabilities and capital accounts as required under Article 16 of Regulation (EU) No 648/2012;

(k) complaints received, with information on the complainant's name, address, and account number; the date the complaint was received; the name of all persons identified in the complaint; a description of the nature of the complaint; the disposition of the complaint, and the date the complaint was resolved;

(l) records of any interruption of services or dysfunction, including a detailed report on the timing, effects and remedial actions;

(m) records of the results of the back and stress tests performed;

(n) written communications with competent authorities, ESMA and the relevant members of the ESCB;

(o) legal opinions received in accordance with Chapter III;

(p) where applicable, documentation regarding interoperability arrangements with other CCPs;

(q) the information under Article 10(1)(b)(vii) and (1)(d);

(r) the relevant documents describing the development of new business initiatives.

*Article 16***Records of data reported to a trade repository**

A CCP shall identify and retain all information and data required to be reported in accordance with Article 9 of Regulation (EU) No 648/2012, along with a record of the date and time the transaction is reported.

CHAPTER V

BUSINESS CONTINUITY

(Article 34 of Regulation (EU) No 648/2012)

*Article 17***Strategy and policy**

1. A CCP shall have a business continuity policy and a disaster recovery plan which are approved by the board. The business continuity policy and the disaster recovery plan shall be subject to independent reviews which are reported to the board.

2. The business continuity policy shall identify all critical business functions and related systems, and include the CCP's strategy, policy, and objectives to ensure the continuity of these functions and systems.

3. The business continuity policy shall take into account external links and interdependencies within the financial infrastructure including trading venues cleared by the CCP, securities settlement and payment systems and credit institutions used by the CCP or a linked CCP. It shall also take into account critical functions or services which have been outsourced to third-party providers.

4. The business continuity policy and disaster recovery plan shall contain clearly defined and documented arrangements for use in the event of a business continuity emergency, disaster or crisis which are designed to ensure a minimum service level of critical functions.

5. The disaster recovery plan shall identify and include recovery point objectives and recovery time objectives for critical functions and determine the most suitable recovery strategy for each of these functions. Such arrangements shall be designed to ensure that in extreme scenarios critical functions are completed on time and that agreed service levels are met.

6. A CCP's business continuity policy shall identify the maximum acceptable time for which critical functions and systems may be unusable. The maximum recovery time for the CCP's critical functions to be included in the business continuity policy shall not be higher than two hours. End of day procedures and payments shall be completed on the required time and day in all circumstances.

7. A CCP shall take into account the potential overall impact on market efficiency in determining the recovery times for each function.

*Article 18***Business impact analysis**

1. A CCP shall conduct a business impact analysis which is designed to identify the business functions which are critical to ensure the services of the CCP. The criticality of these functions to other institutions and functions in the financial infrastructure shall be part of the analysis.

2. A CCP shall use scenario based risk analysis which is designed to identify how various scenarios affect the risks to its critical business functions.

3. In assessing risks, a CCP shall take into account dependencies on external providers, including utilities services. A CCP shall take action to manage such dependencies through appropriate contractual and organisational arrangements.

4. Business impact analysis and scenario analysis shall be kept up to date, shall be reviewed at least on an annual basis and following an incident or significant organisational changes. The analyses shall take into account all relevant developments, including market and technology developments.

*Article 19***Disaster recovery**

1. A CCP shall have in place arrangements to ensure continuity of its critical functions based on disaster scenarios. These arrangements shall at least address the availability of adequate human resources, the maximum downtime of critical functions, and fail over and recovery to a secondary site.

2. A CCP shall maintain a secondary processing site capable of ensuring continuity of all critical functions of the CCP identical to the primary site. The secondary site shall have a geographical risk profile which is distinct from that of the primary site.

3. A CCP shall maintain or have an immediate access to a secondary business site, at least, to allow staff to ensure continuity of the service if the primary location of business is not available.

4. The need for additional processing sites shall be considered by the CCP, in particular if the diversity of the risk profiles of the primary and secondary sites does not provide sufficient confidence that the CCP's business continuity objectives will be met in all scenarios.

*Article 20***Testing and monitoring**

1. A CCP shall test and monitor its business continuity policy and disaster recovery plan at regular intervals and after significant modifications or changes to the systems or related functions to ensure the business continuity policy achieves the stated objectives including the two hour maximum recovery time objective. Tests shall be planned and documented.
2. Testing of the business continuity policy and disaster recovery plan shall fulfil the following conditions:
 - (a) involve scenarios of large scale disasters and switchovers between primary and secondary sites;
 - (b) include involvement of clearing members, external providers and relevant institutions in the financial infrastructure with which interdependencies have been identified in the business continuity policy.

*Article 21***Maintenance**

1. A CCP shall regularly review and update its business continuity policy to include all critical functions and the most suitable recovery strategy for them.
2. A CCP shall regularly review and update its disaster recovery plan to include the most suitable recovery strategy for all critical functions.
3. Updates to the business continuity policy and disaster recovery plan shall take into consideration the outcome of the tests and recommendations of independent reviews and other reviews and of competent authorities. CCPs shall review their business continuity policy and disaster recovery plan after every significant disruption, to identify the causes and any required improvements to the CCP's operations, business continuity policy and disaster recovery plan.

*Article 22***Crisis management**

1. A CCP shall have a crisis management function to act in case of an emergency. The crisis management procedure shall be clear and documented in writing. The board shall monitor the crisis management function and regularly receive and review reports on it.
2. The crisis management function shall contain well-structured and clear procedures to manage internal and external crisis communications during a crisis event.
3. Following a crisis event, the CCP shall undertake a review of its handling of the crisis. The review shall, where relevant, incorporate contributions from clearing members and other external stakeholders.

*Article 23***Communication**

1. A CCP shall have a communication plan which documents the way in which the senior management, the board and relevant external stakeholders, including competent authorities, clearing members, clients, settlement agents, securities settlement and payment systems and trading venues, will be kept adequately informed during a crisis.
2. Scenario analysis, risk analysis, reviews and results of monitoring and tests shall be reported to the board.

CHAPTER VI

MARGINS

(Article 41 of Regulation (EU) No 648/2012)

*Article 24***Percentage**

1. A CCP shall calculate the initial margins to cover the exposures arising from market movements for each financial instrument that is collateralised on a product basis, over the time period defined in Article 25 and assuming a time horizon for the liquidation of the position as defined in Article 26. For the calculation of initial margins the CCP shall at least respect the following confidence intervals:
 - (a) for OTC derivatives, 99,5 %;
 - (b) for financial instruments other than OTC derivatives, 99 %.
2. For the determination of the adequate confidence interval for each class of financial instruments it clears, a CCP shall in addition consider at least the following factors:
 - (a) the complexities and level of pricing uncertainties of the class of financial instruments which may limit the validation of the calculation of initial and variation margin;
 - (b) the risk characteristics of the class of financial instruments, which can include, but are not limited to, volatility, duration, liquidity, non-linear price characteristics, jump to default risk and wrong way risk;
 - (c) the degree to which other risk controls do not adequately limit credit exposures;
 - (d) the inherent leverage of the class of financial instruments, including whether the class of financial instrument is significantly volatile, is highly concentrated among a few market players or may be difficult to close out.

3. The CCP shall inform its competent authority and its clearing members on the criteria considered to determine the percentage applied to the calculation of the margins for each class of financial instruments.

4. Where a CCP clears OTC derivatives that have the same risk characteristics as derivatives executed on regulated markets or an equivalent third country market, on the basis of an assessment of the risk factors set out in paragraph 2, the CCP may use an alternative confidence interval of at least 99 % for those contracts if the risks of OTC derivatives contracts it clears are appropriately mitigated using such confidence interval and the conditions in paragraph 2 are respected.

Article 25

Time horizon for the calculation of historical volatility

1. A CCP shall ensure that according to its model methodology and its validation process established in accordance with Chapter XII, initial margins cover at least with the confidence interval defined in Article 24 and for the liquidation period defined in Article 26 the exposures resulting from historical volatility calculated based on data covering at least the latest 12 months.

A CCP shall ensure that the data used for calculating historical volatility capture a full range of market conditions, including periods of stress.

2. A CCP may use any other time horizon for the calculation of historical volatility provided that the use of such time horizon results in margin requirements at least as high as those obtained with the time period defined in paragraph 1.

3. Margin parameters for financial instruments without a historical observation period shall be based on conservative assumptions. A CCP shall promptly adapt the calculation of the required margins based on the analysis of the price history of the new financial instruments.

Article 26

Time horizons for the liquidation period

1. A CCP shall define the time horizons for the liquidation period taking into account the characteristics of the financial instrument cleared, the market where it is traded, and the period for the calculation and collection of the margins. These liquidation periods shall be at least:

- (a) five business days for OTC derivatives;
- (b) two business days for financial instruments other than OTC derivatives.

2. In all cases, for the determination of the adequate liquidation period, the CCP shall evaluate and sum at least the following:

- (a) the longest possible period that may elapse from the last collection of margins up to the declaration of default by the CCP or activation of the default management process by the CCP;
- (b) the estimated period needed to design and execute the strategy for the management of the default of a clearing member according to the particularities of each class of financial instrument, including its level of liquidity and the size and concentration of the positions, and the markets the CCP will use to close-out or hedge completely a clearing member position;
- (c) where relevant, the period needed to cover the counterparty risk to which the CCP is exposed.

3. In evaluating the periods defined in paragraph 2, the CCP shall consider at least the factors indicated in Article 24(2) and the time period for the calculation of the historical volatility as defined in Article 25.

4. Where a CCP clears OTC derivatives that have the same risk characteristics as derivatives executed on regulated markets or an equivalent third country market, it may use a time horizon for the liquidation period different from the one specified in paragraph 1, provided that it can demonstrate to its competent authority that:

- (a) such time horizon would be more appropriate than that specified in paragraph 1 in view of the specific features of the relevant OTC derivatives;
- (b) such time horizon is at least two business days.

Article 27

Portfolio margining

1. A CCP may allow offsets or reductions in the required margin across the financial instruments that it clears if the price risk of one financial instrument or a set of financial instruments is significantly and reliably correlated, or based on equivalent statistical parameter of dependence, with the price risk of other financial instruments.

2. The CCP shall document its approach on portfolio margining and it shall at least provide that the correlation, or an equivalent statistical parameter of dependence, between two or more financial instruments cleared is shown to be reliable over the lookback period calculated in accordance with Article 25 and demonstrates resilience during stressed historical or hypothetical scenarios. The CCP shall demonstrate the existence of an economic rationale for the price relation.

3. All financial instruments to which portfolio margining is applied shall be covered by the same default fund. By way of derogation, if a CCP can demonstrate in advance to its competent authority and to its clearing members how potential losses would be allocated among different default funds and has set out the necessary provisions in its rules, portfolio margining may be applied to financial instruments covered by different default funds.

4. Where portfolio margining covers multiple instruments, the amount of margin reductions shall be no greater than 80 % of the difference between the sum of the margins for each product calculated on an individual basis and the margin calculated based on a combined estimation of the exposure for the combined portfolio. Where the CCP is not exposed to any potential risk from the margin reduction, it may apply a reduction of up to 100 % of that difference.

5. The margin reductions related to portfolio margining shall be subject to a sound stress test programme in accordance with Chapter XII.

Article 28

Procyclicality

1. A CCP shall ensure that its policy for selecting and revising the confidence interval, the liquidation period and the lookback period deliver forward looking, stable and prudent margin requirements that limit procyclicality to the extent that the soundness and financial security of the CCP is not negatively affected. This shall include avoiding when possible disruptive or big step changes in margin requirements and establishing transparent and predictable procedures for adjusting margin requirements in response to changing market conditions. In doing so, the CCP shall employ at least one of the following options:

- (a) applying a margin buffer at least equal to 25 % of the calculated margins which it allows to be temporarily exhausted in periods where calculated margin requirements are rising significantly;
- (b) assigning at least 25 % weight to stressed observations in the lookback period calculated in accordance with Article 26;
- (c) ensuring that its margin requirements are not lower than those that would be calculated using volatility estimated over a 10 year historical lookback period.

2. When a CCP revises the parameters of the margin model in order to better reflect current market conditions, it shall take into account any potential procyclical effects of such revision.

CHAPTER VII

DEFAULT FUND

(Article 42 of Regulation (EU) No 648/2012)

Article 29

Framework and governance

1. To determine the minimum size of default fund and amount of other financial resources necessary to satisfy the requirements of Articles 42 and 43 of Regulation (EU) No 648/2012, taking into account group dependencies, a CCP shall implement an internal policy framework for defining the types of extreme but plausible market conditions that could expose it to greatest risk.

2. The framework shall include a statement describing how the CCP defines extreme but plausible market conditions. It shall be fully documented and retained in accordance with Article 12.

3. The framework shall be discussed by the risk committee and approved by the board. The robustness of the framework and its ability to reflect market movements shall be subject to at least an annual review. The review shall be discussed by the risk committee and reported to the board.

Article 30

Identifying extreme but plausible market conditions

1. The framework described in Article 29 shall reflect the risk profile of the CCP, taking account of cross-border and cross-currency exposures where relevant. It shall identify all the market risks to which a CCP would be exposed following the default of one or more clearing member, including unfavourable movements in the market prices of cleared instruments, reduced market liquidity for these instruments, and declines in the liquidation value of collateral. The framework shall also reflect additional risks to the CCP arising from the simultaneous failure of entities in the group of the defaulting clearing member.

2. The framework shall individually identify all the markets to which a CCP is exposed in a clearing member default scenario. For each identified market the CCP shall specify extreme but plausible conditions based at least on:

- (a) a range of historical scenarios, including periods of extreme market movements observed over the past 30 years, or as long as reliable data have been available, that would have exposed the CCP to greatest financial risk. If a CCP decides that recurrence of a historical instance of large price movements is not plausible, it shall justify its omission from the framework to the competent authority;

(b) a range of potential future scenarios, founded on consistent assumptions regarding market volatility and price correlation across markets and financial instruments, drawing on both quantitative and qualitative assessments of potential market conditions.

3. The framework shall also consider, quantitatively and qualitatively, the extent to which extreme price movements could occur in multiple identified markets simultaneously. The framework shall recognise that historical price correlations may breakdown in extreme but plausible market conditions.

Article 31

Reviewing extreme but plausible scenarios

The procedures described in Article 30 shall be reviewed by the CCP on a regular basis, taking into account all relevant market developments and the scale and concentration of clearing member exposures. The set of historical and hypothetical scenarios used by a CCP to identify extreme but plausible market conditions shall be reviewed by the CCP, in consultation with the risk committee, at least annually and more frequently when market developments or material changes to the set of contracts cleared by the CCP affect the assumptions underlying the scenarios and so require an adjustment to the scenarios. Material changes to the framework shall be reported to the board.

CHAPTER VIII

LIQUIDITY RISK CONTROLS

(Article 44 of Regulation (EU) No 648/2012)

Article 32

Assessment of liquidity risk

1. A CCP shall establish a robust liquidity risk management framework which shall include effective operational and analytical tools to identify, measure and monitor its settlement and funding flows on an ongoing and timely basis, including its use of intraday liquidity. CCPs shall regularly assess the design and operation of their liquidity management framework, including considering the results of the stress tests.

2. A CCP's liquidity risk management framework shall be adequately robust to ensure that the CCP is able to effect payment and settlement obligations in all relevant currencies as they fall due, including where appropriate intraday. A CCP's liquidity risk management framework shall also include the assessment of its potential future liquidity needs under a wide range of potential stress scenarios. Stress scenario shall include the default of clearing members according to Article 44 of Regulation (EU) No 648/2012 from the date of a default until the end of a liquidation period and the liquidity risk generated by the CCP's investment policy and procedures in extreme but plausible market conditions.

3. The liquidity risk management framework shall include a liquidity plan which is documented and retained in accordance

with Article 12. The minimum content of the liquidity plan shall include the CCP's procedures for:

- (a) managing and monitoring, at least on a daily basis, its liquidity needs across a range of market scenarios;
- (b) maintaining sufficient liquid financial resources to cover its liquidity needs and distinguish among the use of the different types of liquid resources;
- (c) the daily assessment and valuation of the liquid assets available to the CCP and its liquidity needs;
- (d) identifying sources of liquidity risk;
- (e) assessing timescales over which the CCP's liquid financial resources should be available;
- (f) considering potential liquidity needs stemming from clearing members ability to swap cash for non-cash collateral;
- (g) the processes in the event of liquidity shortfalls;
- (h) the replenishment of any liquid financial resources it may employ during a stress event.

The board of the CCP shall approve the plan after consulting the risk committee.

4. A CCP shall assess the liquidity risk it faces including where the CCP or its clearing members cannot settle their payment obligations when due as part of the clearing or settlement process, taking also into account the investment activity of the CCP. The risk management framework shall address the liquidity needs stemming from the CCP's relationships with any entity towards which the CCP has a liquidity exposure including:

- (a) settlement banks;
- (b) payments systems;
- (c) securities settlement systems;
- (d) nostro agents;
- (e) custodian banks;
- (f) liquidity providers;
- (g) interoperable CCPs;
- (h) service providers.

5. A CCP shall take into account any interdependencies across the entities listed in paragraph 4 and multiple relationships that an entity listed in paragraph 4 may have with a CCP in its liquidity risk management framework.

6. A CCP shall establish a daily report on the needs and resources under points (a), (b) and (c) of paragraph 3 and a quarterly report on its liquidity plan under points (d) to (h) of paragraph 3. The reports shall be documented and retained in accordance with Chapter IV.

Article 33

Access to liquidity

1. A CCP shall maintain, in each relevant currency, liquid resources commensurate with its liquidity requirements, defined in accordance with Article 44 of Regulation (EU) No 648/2012 and Article 32 of this Regulation. These liquid resources shall be limited to:

- (a) cash deposited at a central bank of issue;
- (b) cash deposited at authorised credit institutions in accordance with Article 47;
- (c) committed lines of credit or equivalent arrangements with non-defaulting clearing members;
- (d) committed repurchase agreements;
- (e) highly marketable financial instruments that satisfy the requirements of Article 45 and Article 46 and that the CCP can demonstrate are readily available and convertible into cash on a same-day basis using prearranged and highly reliable funding arrangements, including in stressed market conditions.

2. A CCP shall have regard to the currencies in which its liabilities are denominated and shall take into account the potential effect of stressed conditions on its ability to access foreign exchange markets in a manner consistent with the securities settlement cycles of foreign exchange and securities settlement systems.

3. Committed lines of credit against collateral provided by clearing members shall not be double-counted as liquid resources. A CCP shall take action to monitor and control the concentration of liquidity risk exposures to individual liquidity providers.

4. A CCP shall conduct rigorous due diligence that its liquidity providers have enough capacity to perform according to the liquidity arrangements.

5. A CCP shall periodically test its procedures to access pre-arranged funding arrangements. This may include drawing down test amounts of the commercial lines of credit, to check the speed of access to the resources and reliability of procedures.

6. A CCP shall have detailed procedures within its liquidity plan for using its liquid financial resources to fulfil its payment obligations during a liquidity shortfall. The liquidity procedures shall clearly state when certain resources should be used. The procedures shall also describe how to access cash deposits or overnight investments of cash deposits, how to execute same-day market transactions, or how to draw on prearranged liquidity lines. These procedures shall be regularly tested. A CCP shall also establish an adequate plan for the renewal of funding arrangements in advance of their expiration.

Article 34

Concentration risk

1. A CCP shall closely monitor and control the concentration of its liquidity risk exposure, including its exposures to the entities listed in Article 32(4) and to entities in the same group.

2. A CCP's liquidity risk management framework shall include the application of exposure and concentration limits.

3. A CCP shall define processes and procedures for breaches of concentration limits.

CHAPTER IX

DEFAULT WATERFALL

(Article 45 of Regulation (EU) No 648/2012)

Article 35

Calculation of the amount of the CCP's own resources to be used in the default waterfall

1. A CCP shall keep, and indicate separately in its balance sheet, an amount of dedicated own resources for the purpose set out in Article 45(4) of Regulation (EU) No 648/2012.

2. A CCP shall calculate the minimum amount referred to in paragraph 1 by multiplying the minimum capital, including retained earnings and reserves, held in accordance with Article 16 of Regulation (EU) No 648/2012 and Commission Delegated Regulation (EU) No 152/2013 ⁽¹⁾ by 25 %.

The CCP shall revise that minimum amount on a yearly basis.

⁽¹⁾ See page 37 of this Official Journal.

3. Where the CCP has established more than one default fund for the different classes of financial instruments it clears, the total dedicated own resources calculated under paragraph 1 shall be allocated to each of the default funds in proportion to the size of each default fund, to be separately indicated in its balance sheet and used for defaults arising in the different market segments to which the default funds refer to.

4. No resources other than capital, including retained earnings and reserves, as referred to in Article 16 of Regulation (EU) No 648/2012 shall be used to comply with the requirement under paragraph 1.

Article 36

Maintenance of the amount of the CCP's own resources to be used in the default waterfall

1. A CCP shall immediately inform the competent authority if the amount of dedicated own resources held falls below the amount required in Article 35, together with the reasons for the breach and a comprehensive description in writing of the measures and the timetable for the replenishment of such amount.

2. Where a subsequent default of one or more clearing members occurs before the CCP has reinstated the dedicated own resources, only the residual amount of the allocated dedicated own resources shall be used for the purpose of Article 45 of Regulation (EU) No 648/2012.

3. A CCP shall reinstate the dedicated own resource at the least within one month from the notification under paragraph 1.

CHAPTER X

COLLATERAL

(Article 46 of Regulation (EU) No 648/2012)

Article 37

General requirements

A CCP shall establish and implement transparent and predictable policies and procedures to assess and continuously monitor the liquidity of assets accepted as collateral and take remedial action where appropriate.

A CCP shall review its eligible asset policies and procedures at least annually. Such a review shall also be carried out whenever a material change occurs that affects the CCP's risk exposure.

Article 38

Cash collateral

For the purposes of Article 46(1) of Regulation (EU) No 648/2012, highly liquid collateral in the form of cash shall be denominated in one of the following:

- (a) a currency for which the CCP can demonstrate to the competent authorities that it is able to adequately manage the risk;
- (b) a currency in which the CCP clears transactions, in the limit of the collateral required to cover the CCP's exposures in that currency.

Article 39

Financial instruments

For the purposes of Article 46(1) of Regulation (EU) No 648/2012, financial instruments, bank guarantees and gold that meet the conditions set out in Annex I shall be considered as, highly liquid collateral.

Article 40

Valuing collateral

1. For the purposes of valuing highly liquid collateral as defined in Article 37, a CCP shall establish and implement policies and procedures to monitor on a near to real time basis the credit quality, market liquidity and price volatility of each asset accepted as collateral. A CCP shall monitor on a regular basis, and at least annually, the adequacy of its valuation policies and procedures. Such review shall also be carried out whenever a material change occurs that affects the CCP's risk exposure.

2. A CCP shall mark-to-market its collateral on a near to real time basis and, where not possible, a CCP shall be able to demonstrate to the competent authorities that it is able to manage the risks.

Article 41

Haircuts

1. A CCP shall establish and implement policies and procedures to determine prudent haircuts to apply to collateral value.

2. Haircuts shall recognise that collateral may need to be liquidated in stressed market conditions and take into account the time required to liquidate it. The CCP shall demonstrate to the competent authority that haircuts are calculated in a conservative manner to limit as far as possible procyclical effects. For each collateral asset, the haircut shall be determined taking in consideration the relevant criteria, including:

- (a) the type of asset and level of credit risk associated with the financial instrument based upon internal assessment by the CCP. In performing such assessment the CCP shall employ a defined and objective methodology that shall not fully rely on external opinions and that takes into consideration the risk arising from the establishment of the issuer in a particular country;

- (b) the maturity of the asset;
- (c) the historical and hypothetical future price volatility of the asset in stressed market conditions;
- (d) the liquidity of the underlying market, including bid/ask spreads;
- (e) the foreign exchange risk, if any;
- (f) wrong-way risk.

3. A CCP shall monitor on a regular basis the adequacy of the haircuts. A CCP shall review the haircut policies and procedures at least annually and whenever a material change occurs that affects the CCP risk exposure, but should avoid as far as possible disruptive or big step changes in haircuts that could introduce procyclicality. The haircut policies and procedures shall be independently validated at least annually.

Article 42

Concentration limits

1. A CCP shall establish and implement policies and procedures to ensure that the collateral remains sufficiently diversified to allow its liquidation within a defined holding period without a significant market impact. The policies and the procedures shall determine the risk mitigation measures to be applied when the concentration limits specified in paragraph 2 are exceeded.

2. A CCP shall determine concentration limits at the level of:

- (a) individual issuers;
- (b) type of issuer;
- (c) type of asset;
- (d) each clearing member;
- (e) all clearing members.

3. Concentration limits shall be determined in a conservative manner taking into account all relevant criteria, including:

- (a) financial instruments issued by issuers of the same type in terms of economic sector, activity, geographic region;
- (b) the level of credit risk of the financial instrument or of the issuer based upon an internal assessment by the CCP. In performing such assessment the CCP shall employ a defined and objective methodology that shall not fully rely on external opinions and that takes into consideration the risk arising from the establishment of the issuer in a particular country;

- (c) the liquidity and the price volatility of the financial instruments.

4. A CCP shall ensure that no more than 10 % of its collateral is guaranteed by a single credit institution, or equivalent third country financial institution, or by an entity that is part of the same group as the credit institution or third country financial institution. Where the collateral received by the CCP in the form of commercial bank guarantees is higher than 50 % of the total collateral, this limit may be set up to 25 %.

5. In calculating the limits provided for in paragraph 2, a CCP shall include the total exposure of a CCP to an issuer, including the amount of the cumulative credit lines, certificates of deposit, time deposits, savings accounts, deposit accounts, current accounts, money-market instruments, and reverse repurchase facilities utilised by the CCP. These limits shall not apply to collateral held by the CCP in excess of the minimum requirements for margins, default fund or other financial resources.

6. When determining the concentration limit for a CCP's exposure to an individual issuer, a CCP shall aggregate and treat as a single risk its exposure to all financial instruments issued by the issuer or by a group entity, explicitly guaranteed by the issuer or by a group entity, and to financial instruments issued by undertakings whose exclusive purpose is to own means of production that are essential for the issuer's business.

7. A CCP shall monitor on a regular basis the adequacy of its concentration limit policies and procedures. A CCP shall review its concentration limit policy and procedure at least annually and whenever a material change occurs that affects the risk exposure of the CCP.

8. A CCP shall inform the competent authority and the clearing members of the applicable concentration limits and of any amendment to these limits.

9. If the CCP materially breaches a concentration limit set out in its policies and procedures, it shall inform the competent authority immediately. The CCP shall rectify the breach as soon as possible.

CHAPTER XI

INVESTMENT POLICY

(Article 47 of Regulation (EU) No 648/2012)

Article 43

Highly liquid financial instruments

For the purposes of Article 47(1) of Regulation (EU) No 648/2012, debt instruments can be considered highly liquid, bearing minimal credit and market risk if they are debt instruments meeting each of the conditions set out in Annex II.

*Article 44***Highly secured arrangements for the deposit of financial instruments**

1. If a CCP is unable to deposit the financial instruments referred to in Article 45 or those posted to it as margins, default fund contributions or contributions to other financial resources, both by way of title transfer and security interest, with the operator of a securities settlement system that ensures the full protection of those instruments then such financial instruments shall be deposited with any of the following:

- (a) a central bank that ensures the full protection of those instruments and that enables the CCP prompt access to the financial instruments when required;
- (b) an authorised credit institution as defined under Directive 2006/48/EC of the European Parliament and of the Council ⁽¹⁾ that ensures the full segregation and protection of those instruments, enables the CCP prompt access to the financial instruments when required and that the CCP can demonstrate has low credit risk based upon an internal assessment by the CCP. In performing such an assessment, the CCP shall employ a defined and objective methodology that shall not fully rely on external opinions and that takes into consideration the risk arising from the establishment of the issuer in a particular country;
- (c) a third country financial institution that is subject to and complies with prudential rules considered by the relevant competent authorities to be at least as stringent as those laid down in Directive 2006/48/EC and which has robust accounting practices, safekeeping procedures, and internal controls and that ensures the full segregation and protection of those instruments, enables the CCP prompt access to the financial instruments when required and that the CCP can demonstrate to have low credit risk based upon an internal assessment by the CCP. In performing such an assessment, the CCP shall employ a defined and objective methodology that shall not fully rely on external opinions and that takes into consideration the risk arising from the establishment of the issuer in a particular country.

2. Where financial instruments are deposited in accordance with letter (b) or (c) of paragraph 1, they shall be held under arrangements that prevent any losses to the CCP due to the default or insolvency of the authorised financial institution.

3. Highly secured arrangements for the deposit of financial instruments posted as margins, default fund contributions or contributions to other financial resources shall only allow the CCP to re-use these financial instruments where the conditions in Article 39(8) of Regulation (EU) No 648/2012 are met and

where the purpose of the reuse is for making payments, managing the default of a clearing member or in the execution of an interoperable arrangement.

*Article 45***Highly secured arrangements maintaining cash**

1. For the purposes of Article 47(4) of Regulation (EU) No 648/2012, where cash is deposited other than with a central bank then such deposit shall meet each of the following conditions:

- (a) the deposit is in one of the following currencies:
 - (i) a currency the risks of which the CCP can demonstrate with a high level of confidence that it is able to manage;
 - (ii) a currency in which the CCP clears transactions, in the limit of the collateral received in that currency;
- (b) the deposit shall be placed with one of the following entities:
 - (i) an authorised credit institution as defined under Directive 2006/48/EC that the CCP can demonstrate to have low credit risk based upon an internal assessment by the CCP. In performing such assessment the CCP shall employ a defined and objective methodology that shall not fully rely on external opinions and that takes into consideration the risk arising from the establishment of the issuer in a particular country;
 - (ii) a third country financial institution that is subject to and complies with prudential rules considered by the competent authorities to be at least as stringent as those laid down in Directive 2006/48/EC and which has robust accounting practices, safekeeping procedures, and internal controls and that the CCP can demonstrate to have low credit risk based upon an internal based upon an internal assessment by the CCP. In performing such assessment the CCP shall employ a defined and objective methodology that shall not fully rely on external opinions and that takes into consideration the risk arising from the establishment of the issuer in a particular country.

2. Where cash is maintained overnight in accordance with paragraph 1 then not less than 95 % of such cash, calculated over an average period of one calendar month, shall be deposited through arrangements that ensure the collateralisation of the cash with highly liquid financial instruments meeting the requirements under Article 45, except the requirement at paragraph 1(c) of that Article.

⁽¹⁾ OJ L 177, 30.6.2006, p. 1.

*Article 45***Concentration limits**

1. A CCP shall establish and implement policies and procedures to ensure that the financial instruments in which its financial resources are invested remain sufficiently diversified.

2. A CCP shall determine concentration limits and monitor the concentration of its financial resources at the level of:

- (a) individual financial instruments;
- (b) types of financial instruments;
- (c) individual issuers;
- (d) types of issuers;
- (e) counterparties with which arrangements as provided for in points (b) and (c) of Article 44(1) or in Article 45(2) are established.

3. When considering types of issuers a CCP shall take into account the following:

- (a) geographic distribution;
- (b) interdependencies and multiple relationships that an entity may have with a CCP;
- (c) the level of credit risk;
- (d) exposures the CCP have to the issuer through products cleared by the CCP.

4. The policies and the procedures shall determine the risk mitigation measures to be applied when the concentration limits are exceeded.

5. When determining the concentration limit for a CCP's exposure to an individual issuer or custodian, a CCP shall aggregate and treat as a single risk, the exposure to all financial instruments issued by, or explicitly guaranteed by, the issuer and all financial resources deposited with the custodian.

6. A CCP shall monitor on a regular basis the adequacy of its concentration limit policies and procedures. In addition, a CCP shall review its concentration limit policy and procedure at least annually and whenever a material change occurs that affects the risk exposure of the CCP.

7. If the CCP breaches a concentration limit set out in its policies and procedures, it shall inform the competent authority immediately. The CCP shall rectify the breach as soon as possible.

*Article 46***Non-cash collateral**

Where collateral is received in the form of financial instruments in accordance with the provisions of Chapter X, only Articles 44 and 45 shall apply.

CHAPTER XII

REVIEW OF MODELS, STRESS TESTING AND BACK TESTING

(Article 49 Regulation (EU) No 648/2012)

SECTION 1

Models and programmes*Article 47***Model Validation**

1. A CCP shall conduct a comprehensive validation of its models, their methodologies and the liquidity risk management framework used to quantify, aggregate, and manage its risks. Any material revisions or adjustments to its models, their methodologies and the liquidity risk management framework shall be subject to appropriate governance, including seeking advice from the risk committee, and validated by a qualified and independent party prior to application.

2. A CCP's validation process shall be documented and at least shall specify the policies used to test the CCP's margin, default fund and other financial resources methodologies and framework for calculating liquid financial resources. Any material revisions or adjustments to such policies shall be subject to appropriate governance, including seeking advice from the risk committee, and validated by a qualified and independent party prior to application.

3. A comprehensive validation shall, at least, include the following:

- (a) an evaluation of the conceptual soundness of the models and framework, including developmental supporting evidence;
- (b) a review of the ongoing monitoring procedures, including verification of processes and benchmarking;
- (c) a review of the parameters and assumptions made in the development of its models, their methodologies and the framework;
- (d) a review of the adequacy and appropriateness of the models, their methodologies and framework adopted in respect of the type of contracts they apply to;

(e) a review of the appropriateness of its stress testing scenarios in accordance with Chapter VII and Article 52;

(f) an analysis of the outcomes of testing results.

4. A CCP shall establish the criteria against which it assesses whether its models, their methodologies and liquidity risk management framework can be successfully validated. The criteria shall include successful testing results.

5. Where pricing data is not readily available or reliable, a CCP shall address such pricing limitations and, at least, adopt conservative assumptions based on observed correlated or related markets and current behaviours of the market.

6. Where pricing data is not readily available or reliable, the systems and valuation models used for this purpose shall be subject to appropriate governance, including seeking advice from the risk committee, and validation and testing. A CCP shall have its valuation models validated under a variety of market scenarios by a qualified and independent party to ensure that its models accurately produces appropriate prices, and where appropriate, it shall adjust its calculation of initial margins to reflect any identified model risk.

7. A CCP shall regularly conduct an assessment of the theoretical and empirical properties of its margin model for all the financial instruments that it clears.

Article 48

Testing programmes

1. A CCP shall have in place policies and procedures that detail the stress and back testing programmes it undertakes to assess the appropriateness, accuracy, reliability and resilience of the models and their methodologies used to calculate its risk control mechanisms including margin, default fund contributions, and other financial resources in a wide range of market conditions.

2. A CCP's policies and procedures shall also detail the stress testing programme it undertakes to assess the appropriateness, accuracy, reliability and resilience of the liquidity risk management framework.

3. The policies and procedures shall include at least methodologies for the inclusion of the selection and development of appropriate testing, including portfolio and market data selection, the regularity of the tests, the specific risk characteristics of the financial instruments cleared, the analysis of testing results and exceptions and the relevant corrective measures needed.

4. A CCP shall include any client positions when performing all tests.

SECTION 2

Back testing

Article 49

Back testing procedure

1. A CCP shall assess its margin coverage by performing an *ex-post* comparison of observed outcomes with expected outcomes derived from the use of margin models. Such back testing analysis shall be performed each day in order to evaluate whether there are any testing exceptions to margin coverage. Coverage shall be evaluated on current positions for financial instruments, clearing members and take into account possible effects from portfolio margining and, where appropriate, interoperable CCPs.

2. A CCP shall consider the appropriate historical time horizons for its back testing programme to ensure that the observation window used is sufficient enough to mitigate any detrimental effect on the statistical significance.

3. A CCP shall consider in its back testing programme, at least, clear statistical tests, and performance criteria to be defined by CCPs for the assessment of back testing results.

4. A CCP shall periodically report its back testing results and analysis in a form that does not breach confidentiality to the risk committee in order to seek their advice in the review of its margin model.

5. Back testing results and analysis shall be made available to all clearing members and, where known to the CCP, clients. For all other clients back testing results and analysis shall be made available by the relevant clearing members on request. Such information shall be aggregated in a form that does not breach confidentiality and clearing members and clients shall only have access to detailed back testing results and analysis for their own portfolios.

6. A CCP shall define the procedures to detail the actions it could take given the results of back testing analysis.

SECTION 3

Sensitivity testing and analysis

Article 50

Sensitivity testing and analysis procedure

1. A CCP shall conduct sensitivity tests and analysis to assess the coverage of its margin model under various market conditions using historical data from realised stressed market conditions and hypothetical data for unrealised stressed market conditions.

2. A CCP shall use a wide range of parameters and assumptions to capture a variety of historical and hypothetical conditions, including the most-volatile periods that have been experienced by the markets it serves and extreme changes in the correlations between prices of contracts cleared by the CCP, in order to understand how the level of margin coverage might be affected by highly stressed market conditions and changes in important model parameters.

3. Sensitivity analysis shall be performed on a number of actual and representative clearing member portfolios. The representative portfolios shall be chosen based on their sensitivity to the material risk factors and correlations to which the CCP is exposed. Such sensitivity testing and analysis shall be designed to test the key parameters and assumptions of the initial margin model at a number of confidence intervals to determine the sensitivity of the system to errors in the calibration of such parameters and assumptions. Appropriate consideration shall be given to the term structure of the risk factors, and the assumed correlation between risk factors.

4. A CCP shall evaluate the potential losses in clearing member positions.

5. A CCP shall, where applicable, consider parameters reflective of the simultaneous default of clearing members that issue financial instruments cleared by the CCP or the underlying of derivatives cleared by the CCP. Where applicable, the effects of a client's default that issues financial instruments cleared by the CCP or the underlying of derivatives cleared by the CCP shall also be considered.

6. A CCP shall periodically report its sensitivity testing results and analysis in a form that does not breach confidentiality to the risk committee in order to seek its advice in the review of its margin model.

7. A CCP shall define the procedures to detail the actions it could take given the results of sensitivity testing analysis.

3. A CCP's stress testing programme shall prescribe that stress tests are performed, using defined stress testing scenarios, on both past and hypothetical extreme but plausible market conditions in accordance with Chapter VII. Past conditions to be used shall be reviewed and adjusted, where appropriate. A CCP shall also consider other forms of appropriate stress testing scenarios including, but not limited to, the technical or financial failure of its settlement banks, nostro agents, custodian banks, liquidity providers, or interoperable CCPs.

4. A CCP shall have the capacity to adapt its stress tests quickly to incorporate new or emerging risks.

5. A CCP shall consider the potential losses arising from the default of a client, where known, which clears through multiple clearing members.

6. A CCP shall periodically report its stress testing results and analysis in a form that does not breach confidentiality to the risk committee in order to seek its advice in the review of its models, its methodologies and its liquidity risk management framework.

7. Stress testing results and analysis shall be made available to all clearing members and, where known to the CCP, clients. For all other clients, back testing results and analysis shall be made available by the relevant clearing members on request. Such information shall be aggregated in a form that does not breach confidentiality and clearing members and clients shall only have access to detailed stress testing results and analysis for their own portfolios.

8. A CCP shall define the procedures to detail the actions it could take given the results of stress testing analysis.

Article 52

Risk factors to stress test

1. A CCP shall identify, and have an appropriate method for measuring, relevant risk factors specific to the contracts it clears that could affect its losses. A CCP's stress tests shall, at least, take into account risk factors specified for the following type of financial instruments, where applicable:

- (a) interest rate related contracts: risk factors corresponding to interest rates in each currency in which the CCP clears financial instruments. The yield curve modelling shall be divided into various maturity segments in order to capture variation in the volatility of rates along the yield curve. The number of related risk factors shall depend on the complexity of the interest rate contracts cleared by the CCP. Basis risk, arising from less than perfectly correlated movements between government and other fixed-income interest rates, shall be captured separately;

SECTION 4

Stress testing

Article 51

Stress testing procedure

1. A CCP's stress tests shall apply stressed parameters, assumptions, and scenarios to the models used for the estimation of risk exposures to make sure its financial resources are sufficient to cover those exposures under extreme but plausible market conditions.

2. A CCP's stress testing programme shall require the CCP to conduct a range of stress tests on a regular basis that shall consider the CCP's product mix and all elements of its models and their methodologies and its liquidity risk management framework.

- (b) exchange rate related contracts: risk factors corresponding to each foreign currency in which the CCP clears financial instruments and to the exchange rate between the currency in which margin calls are made and the currency in which the CCP clears financial instruments;
- (c) equity related contracts: risk factors corresponding to the volatility of individual equity issues for each of the markets cleared by the CCP and to the volatility of various sectors of the overall equity market. The sophistication and nature of the modelling technique for a given market shall correspond to the CCP's exposure to the overall market as well as its concentration in individual equity issues in that market;
- (d) commodity contracts: risk factors that take into account the different categories and sub-categories of commodity contracts and related derivatives cleared by the CCP, including, where appropriate, variations in the convenience yield between derivatives positions and cash positions in the commodity;
- (e) credit related contracts: risk factors that consider jump to default risk, including the cumulative risk arising from multiple defaults, basis risk and recovery rate volatility.

2. In its stress tests, a CCP shall also give appropriate consideration at least to the following:

- (a) correlations, including those between identified risk factors and similar contracts cleared by the CCP;
- (b) factors corresponding to the implied and historical volatility of the contract being cleared;
- (c) specific characteristics of any new contracts to be cleared by the CCP;
- (d) concentration risk, including to a clearing member, and group entities of clearing members;
- (e) interdependencies and multiple relationships;
- (f) relevant risks including foreign exchange risk;
- (g) set exposure limits;
- (h) wrong-way risk.

Article 53

Stress testing total financial resources

1. A CCP's stress-testing programme shall ensure that its combination of margin, default fund contributions and other financial resources are sufficient to cover the default of at least the two clearing members to which it has the largest exposures under extreme but plausible market conditions. The stress testing programme shall also examine potential losses resulting from the default of entities in the same group as the two clearing members to which it has the largest exposures under extreme but plausible market conditions.

2. A CCP's stress-testing programme shall ensure that its margins and default fund are sufficient to cover at least the default of the clearing member to which it has the largest exposures or of the second and third largest clearing members, if the sum of their exposures is larger in accordance with Article 42 of Regulation (EU) No 648/2012.

3. The CCP shall conduct a thorough analysis of the potential losses it could suffer and shall evaluate the potential losses in clearing member positions, including the risk that liquidating such positions could have an impact on the market and the CCP's level of margin coverage.

4. A CCP shall, where applicable, consider in its stress tests, the effects of the default of a clearing member that issues financial instruments cleared by the CCP or the underlying of derivatives cleared by the CCP. Where applicable, the effects of a client's default that issues financial instruments cleared by the CCP or the underlying of derivatives cleared by the CCP shall also be considered.

5. A CCP's stress tests shall consider the liquidation period as provided for in Article 26.

Article 54

Stress testing liquid financial resources

1. A CCP's stress-testing programme of its liquid financial resources shall ensure that they are sufficient in accordance with the requirements laid down in Chapter VIII.

2. A CCP shall have clear and transparent rules and procedures to address insufficient liquid financial resources highlighted by its stress tests to ensure settlement of payments obligations.

A CCP shall also have clear procedures for using the results and analysis of its stress tests to evaluate and adjust the adequacy of its liquidity risk management framework and liquidity providers.

3. The stress testing scenarios used in the stress testing of liquid financial resources shall consider the design and operation of the CCP, and include all entities that might pose material liquidity risk to it. Such stress tests shall also consider any strong linkages or similar exposures between its clearing members, including other entities that are part of the same group, and assess the probability of multiple defaults and the contagion effect among its clearing members that such defaults may cause.

SECTION 5

Coverage and use of test results

Article 55

Maintaining sufficient coverage

1. A CCP shall establish and maintain procedures to recognise changes in market conditions, including increases in volatility or reductions in the liquidity of the financial instruments it clears, so as to promptly adapt calculation of its margin requirement to appropriately account for new market conditions.

2. A CCP shall conduct tests on its haircuts in order to ensure collateral can be liquidated at least at its haircutted value in observed and extreme but plausible market conditions.

3. If a CCP collects margin at a portfolio, as opposed to product level, it shall continuously review and test offsets among products. A CCP shall base such offsets on prudent and economically meaningful methodology that reflects the degree of price dependence between the products. In particular, a CCP shall test how correlations perform during periods of actual and hypothetical severe market conditions.

Article 56

Review of models using test results

1. A CCP shall have clear procedures to determine the amount of additional margin it may need to collect, including on an intraday basis, and to recalibrate its margin model where back testing indicates that the model did not perform as expected with the result that it does not identify the appropriate amount of initial margin necessary to achieve the intended level of confidence. Where a CCP has determined that it is necessary to call additional margin it shall do so by the next margin call.

2. A CCP shall evaluate the source of testing exceptions highlighted by its back tests. Depending on the source of exceptions, the CCP shall determine whether a fundamental change to the margin model, or to the models that input into it, is required and whether the recalibration of current parameters is necessary.

3. A CCP shall evaluate the sources of testing exceptions highlighted by its stress tests. The CCP shall determine whether a fundamental change to its models, their methodologies or its liquidity risk management framework is required or if the recalibration of current parameters or assumptions is necessary, on the basis of the sources of exceptions.

4. Where the results of the tests show an insufficient coverage of margin, default fund or other financial resources, a CCP shall increase overall coverage of its financial resources to an acceptable level by the next margin call. Where the results of the tests show insufficient liquid financial resources, the CCP shall increase its liquid financial resources to an acceptable level as soon as is practicable.

5. A CCP shall, in reviewing its models, their methodologies and the liquidity risk management framework, monitor the frequency of reoccurring testing exceptions to identify and resolve issues appropriately and without undue delay.

SECTION 6

Reverse stress tests

Article 57

Reverse stress tests

1. A CCP shall conduct reverse stress tests which are designed to identify under which market conditions the combination of its margin, default fund and other financial resources may provide insufficient coverage of credit exposures and for which its liquid financial resources may be insufficient. When conducting such tests, a CCP shall model extreme market conditions that go beyond what are considered plausible market conditions, in order to help determine the limits of its models, its liquidity risk management framework, its financial resources and its liquid financial resources.

2. A CCP shall develop reverse stress tests tailored to the specific risks of the markets and of the contracts that it provides clearing services for.

3. A CCP shall use the conditions identified in paragraph 1 and the results and analysis of its reverse stress tests to help in identifying extreme but plausible scenarios in accordance with Chapter VII.

4. A CCP shall periodically report its reverse stress testing results and analysis in a form that does not breach confidentiality to the risk committee in order to seek their advice in its review.

SECTION 7

Default procedures

Article 58

Testing default procedures

1. A CCP shall test and review its default procedures to ensure they are both practical and effective. A CCP shall perform simulation exercises as part of the testing of its default procedures.
2. A CCP shall, following testing of its default procedures, identify any uncertainties and appropriately adapt its procedures to mitigate such uncertainty.
3. A CCP shall, through conducting simulation exercises, verify that all clearing members, where appropriate, clients and other relevant parties including interoperable CCP's and any related service providers, are duly informed and know the procedures involved in a default scenario.

SECTION 8

Validation and testing frequency

Article 59

Frequency

1. A CCP shall conduct a comprehensive validation of its models and their methodologies at least annually.
2. A CCP shall conduct a comprehensive validation of its liquidity risk management framework at least annually.
3. A CCP shall conduct a full validation of its valuation models at least annually.
4. A CCP shall review the appropriateness of the policies specified in Article 51 at least annually.
5. A CCP shall analyse and monitor its model performance and financial resources coverage in the event of defaults by back testing margin coverage at least daily and conducting at least daily stress testing using standard and predetermined parameters and assumptions.
6. A CCP shall analyse and monitor its liquidity risk management framework by conducting at least daily stress tests of its liquid financial resources.
7. A CCP shall conduct a detailed thorough analysis of testing results at least on a monthly basis in order to ensure its stress testing scenarios, models and liquidity risk management framework, underlying parameters and

assumptions are correct. Such analysis shall be conducted more frequently in stressed market conditions, including when the financial instruments cleared or markets served in general display high volatility, become less liquid, or when the size or concentrations of positions held by its clearing members increase significantly or when it is anticipated that a CCP will encounter stressed market conditions.

8. Sensitivity analysis shall be conducted at least monthly, using the results of sensitivity tests. This analysis should be conducted more frequently when markets are unusually volatile or less liquid or when the size or concentrations of positions held by its clearing members increase significantly.

9. A CCP shall test offsets among financial instruments and how correlations perform during periods of actual and hypothetical severe market conditions at least annually.

10. A CCP's haircuts shall be tested at least monthly.

11. A CCP shall conduct reverse stress tests at least quarterly.

12. A CCP shall test and review its default procedures at least quarterly and perform simulation exercises at least annually, in accordance with Article 61. A CCP shall also perform simulation exercises following any material change to its default procedures.

SECTION 9

Time horizons used when performing tests

Article 60

The time horizons

1. The time horizons used for stress tests shall be defined in accordance with Chapter VII and shall include forward-looking extreme but plausible market conditions.
2. The historical time horizons used for back tests shall include data from at minimum the most recent year or as long as a CCP has been clearing the relevant financial instrument if that is less than a year.

SECTION 10

Public disclosure

Article 61

Information to be publicly disclosed

1. A CCP shall publicly disclose the general principles underlying its models and their methodologies, the nature of tests performed, with a high level summary of the test results and any corrective actions undertaken.

2. A CCP shall make available to the public key aspects of its default procedures, including:

- (a) the circumstances in which action may be taken;
- (b) who may take those actions;
- (c) the scope of the actions which may be taken, including the treatment of both proprietary and client positions, funds and assets;
- (d) the mechanisms to address a CCP's obligations to non-defaulting clearing members;

(e) the mechanisms to help address the defaulting clearing member's obligations to its clients.

Article 62

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Point (h) Section 2 of Annex I shall apply from three years after the date of entry into force of this Regulation in respect of transactions on derivatives, as referred to in points (b) and (d) of Article 2(4) of Regulation (EU) No 1227/2011 of the European Parliament and of the Council ⁽¹⁾.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 19 December 2012.

For the Commission
The President
José Manuel BARROSO

⁽¹⁾ OJ L 326, 8.12.2011, p. 1.

ANNEX I

Conditions applicable to financial instruments, bank guarantees and gold considered as highly liquid collateral

SECTION 1

Financial instruments

For the purposes of Article 46(1) of Regulation (EU) No 648/2012, highly liquid collateral in the form of financial instruments shall be financial instruments meeting the conditions provided for in point 1 of Annex II to this Regulation or transferable securities and money-market instruments which meet each of the following conditions:

- (a) the CCP can demonstrate to the competent authority that the financial instruments have been issued by an issuer that has low credit risk based upon an adequate internal assessment by the CCP. In performing such an assessment, the CCP shall employ a defined and objective methodology that shall not fully rely on external opinions and that takes into consideration the risk arising from the establishment of the issuer in a particular country;
- (b) the CCP can demonstrate to the competent authority that the financial instruments have a low market risk based upon an adequate internal assessment by the CCP. In performing such an assessment, the CCP shall employ a defined and objective methodology that shall not fully rely on external opinions;
- (c) they are denominated in one of the following currencies:
 - (i) a currency the risk of which the CCP can demonstrate to the competent authorities that it is able to manage;
 - (ii) a currency in which the CCP clears contracts, in the limit of the collateral required to cover the CCP's exposures in that currency;
- (d) they are freely transferable and without any regulatory or legal constraint or third party claims that impair liquidation;
- (e) they have an active outright sale or repurchase agreement market, with a diverse group of buyers and sellers, to which the CCP can demonstrate reliable access, including in stressed conditions;
- (f) they have reliable price data published on a regular basis;
- (g) they are not issued by:
 - (i) the clearing member providing the collateral, or an entity that is part of the same group as the clearing member, except in the case of a covered bond and only where the assets backing that bond are appropriately segregated within a robust legal framework and satisfy the requirements set out in this section;
 - (ii) a CCP or an entity that is part of the same group as a CCP;
 - (iii) an entity whose business involves providing services critical to the functioning of the CCP, unless that entity is an EEA central bank or a central bank of issue of a currency in which the CCP has exposures;
- (h) they are not otherwise subject to significant wrong-way risk.

SECTION 2

Bank guarantees

1. A commercial bank guarantee, subject to limits agreed with the competent authority, shall meet the following conditions to be accepted as collateral under Article 46(1) of Regulation (EU) No 648/2012:

- (a) it is issued to guarantee a non-financial clearing member;
- (b) it has been issued by an issuer that the CCP can demonstrate to the competent authority that it has low credit risk based upon an adequate internal assessment by the CCP. In performing such assessment the CCP shall employ a defined and objective methodology that shall not fully rely on external opinions and that takes into consideration the risk arising from the establishment of the issuer in a particular country;

- (c) it is denominated in one of the following currencies:
 - (i) a currency the risk of which the CCP can demonstrate to the competent authorities that it is able to adequately manage;
 - (ii) a currency in which the CCP clears contracts, in the limit of the collateral required to cover the CCP's exposures in that currency;
 - (d) it is irrevocable, unconditional and the issuer cannot rely on any legal or contractual exemption or defence to oppose the payment of the guarantee;
 - (e) it can be honoured, on demand, within the period of liquidation of the portfolio of the defaulting clearing member providing it without any regulatory, legal or operational constraint;
 - (f) it is not issued by:
 - (i) an entity that is part of the same group as the non-financial clearing member covered by the guarantee;
 - (ii) an entity whose business involves providing services critical to functioning of the CCP, unless that entity is an EEA central bank or a central bank of issue of a currency in which the CCP has exposures;
 - (g) it is not otherwise subject to significant wrong-way risk;
 - (h) it is fully backed by collateral that meets the following conditions:
 - (i) it is not subject to wrong way risk based on a correlation with the credit standing of the guarantor or the non-financial clearing member, unless that wrong way risk has been adequately mitigated by haircutting of the collateral;
 - (ii) the CCP has prompt access to it and it is bankruptcy remote in case of the simultaneous default of the clearing member and the guarantor.
 - (i) the suitability of the guarantor has been ratified by the board of the CCP after a full assessment of the issuer and of the legal, contractual and operational framework of the guarantee in order to have a high level of comfort on the effectiveness of the guarantee, and notified to the competent authority.
2. A bank guarantee issued by a central bank shall meet the following conditions to be accepted as collateral under Article 46(1) of Regulation (EU) No 648/2012:
- (a) it is issued by an EEA central bank or a central bank of issue of a currency in which the CCP has exposures;
 - (b) it is denominated in one of the following a currencies:
 - (i) a currency the risk of which the CCP can demonstrate to the competent authorities that it is able to adequately manage;
 - (ii) a currency in which the CCP clears transactions, in the limit of the collateral required to cover the CCP's exposures in that currency;
 - (c) it is irrevocable, unconditional and the issuing central bank cannot rely on any legal or contractual exemption or defence to oppose the payment of the guarantee;
 - (d) it can be honoured within the period of liquidation of the portfolio of the defaulting clearing member providing it without any regulatory, legal or operational constraint or any third party claim on it.

SECTION 3

Gold

Gold shall be allocated pure gold bullion of recognised good delivery and meet the following conditions to be accepted as collateral under Article 46(1) of Regulation (EU) No 648/2012:

- (a) it is directly held by the CCP;

- (b) it is deposited with an EEA central bank or a central bank of issue of a currency in which the CCP has exposures that has adequate arrangements so as to safeguard clearing member or clients' ownership rights to the gold and enables the CCP prompt access to the gold when required;
 - (c) it is deposited with an authorised credit institution as defined under Directive 2006/48/EC that has adequate arrangements so as to safeguard clearing member or clients' ownership rights to the gold, enables the CCP prompt access to the gold when required and the CCP can demonstrate to the competent authority that it has low credit risk based upon an adequate internal assessment by the CCP. In performing such an assessment, the CCP shall employ a defined and objective methodology that shall not fully rely on external opinions and that takes into consideration the risk arising from the establishment of the credit institution in a particular country;
 - (d) it is deposited with a third country credit institution that is subject to and complies with prudential rules considered by the competent authorities to be at least as stringent as those laid down in Directive 2006/48/EC and which has robust accounting practices, safekeeping procedures and internal controls and that has adequate arrangements so as to safeguard clearing member or clients' ownership rights to the gold, enables the CCP prompt access to the gold when required and CCP can demonstrate to the competent authority that it has low credit risk based upon an internal assessment by the CCP. In performing such an assessment, the CCP shall employ a defined and objective methodology that shall not fully rely on external opinions and that takes into consideration the risk arising from the establishment of the credit institution in a particular country.
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ANNEX II

Conditions applicable to highly liquid financial instruments

1. For the purposes of Article 47(1) of Regulation (EU) No 648/2012, financial instruments can be considered highly liquid financial instruments, bearing minimal credit and market risk if they are debt instruments meeting each of the following conditions:

- (a) they are issued or explicitly guaranteed by:
 - (i) a government;
 - (ii) a central bank;
 - (iii) a multilateral development bank as listed under Section 4.2 of Part 1 of Annex VI to Directive 2006/48/EC;
 - (iv) the European Financial Stability Facility or the European Stability Mechanism where applicable;
- (b) the CCP can demonstrate that they have low credit and market risk based upon an internal assessment by the CCP. In performing such assessment the CCP shall employ a defined and objective methodology that shall not fully rely on external opinions and that takes into consideration the risk arising from the establishment of the issuer in a particular country;
- (c) the average time-to-maturity of the CCP's portfolio does not exceed two years;
- (d) they are denominated in one of the following currencies:
 - (i) a currency the risks of which the CCP can demonstrate that it is able to manage; or
 - (ii) a currency in which the CCP clears transactions, in the limit of the collateral received in that currency;
- (e) they are freely transferable and without any regulatory constraint or third party claims that impair liquidation;
- (f) they have an active outright sale or repurchase agreement market, with a diverse group of buyers and sellers, including in stressed conditions and to which the CCP has reliable access;
- (g) reliable price data on these instruments are published on a regular basis.

2. For the purposes of Article 47(1) of Regulation (EU) No 648/2012, derivative contracts can also be considered highly liquid financial investments, bearing minimal credit and market risk if they are entered into for the purpose of:

- (a) hedging the portfolio of a defaulted clearing member as part of the CCP's default management procedure; or
- (b) hedging currency risk arising from its liquidity management framework established in accordance with Chapter VIII.

Where derivative contracts are used in such circumstances, their use shall be limited to derivative contracts in respect of which reliable price data is published on a regular basis and to the period of time necessary to reduce the credit and market risk to which the CCP is exposed.

The CCP's policy for the use of derivative contracts shall be approved by the board after having consulted the risk committee.

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