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From:	General Secretariat of the Council
To:	Delegations
Subject:	Proposal for a REGULATION OF TEH EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives 2009/65/EU, 2013/36/EU and (EU) 2019/2034 as regards teh treatment of concentration risk towards central counterparties and the counterparty risk on centrally cleared derivate transactions - Letter to the Chair of the European Parliament Committee on Economic and Monetary Affairs

Following the Permanent Representatives' Committee meeting of 14 February 2024 which endorsed the final compromise text with a view to agreement, delegations are informed that the Presidency has sent the attached letter, together with its Annex, to the Chair of the European Parliament Committee on Economic and Monetary Affairs.

Council of the European Union
General Secretariat

SGS 24 / 000876

Ms Irene TINAGLI
Chair of the Committee on Economic and Monetary Affairs
European Parliament
Rue Wiertz 60
B-1047 Brussels

Brussels, 14. 02. 2024

Subject: Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets
Proposal for a Directive of the European Parliament and of the Council amending Directives 2009/65/EU, 2013/36/EU and (EU) 2019/2034 as regards teh treatment of concentration risk towards central counterparties and the counterparty risk on centrally cleared derivate transactions

Dear Ms TINAGLI,

Following the informal negotiations between the representatives of the three institutions, a draft overall compromise package was agreed today by the Permanent Representatives' Committee. I am therefore now in a position to confirm that, should the European Parliament adopt its position at first reading, in accordance with Article 294 paragraph 3 of the Treaty, in the form set out in the compromise package contained in the Annex to this letter (subject to revision by the legal linguists of both institutions), the Council would, in accordance with Article 294, paragraph 4 of the Treaty, approve the European Parliament's position and the acts shall be adopted in the wording which corresponds to the European Parliament's position.

On behalf of the Council I also wish to thank you for your close cooperation which should enable us to reach agreement on this file at first reading.

Yours sincerely,

Willem van de VOORDE
Chair of the
Permanent Representatives Committee

Copy: Ms Mairéad McGUINNESS, Commissioner
Ms Danuta Maria HÜBNER, European Parliament Rapporteur

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2022/0403 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank[1],

Having regard to the opinion of the European Economic and Social Committee[2],

Acting in accordance with the ordinary legislative procedure,

Whereas:

[1] […]
[2] […]

(1) Regulation (EU) No 648/2012 of the European Parliament and of the Council[3] contributes to the reduction of systemic risk by increasing the transparency of ***the*** over-the-counter (OTC) derivatives market and by reducing the counterparty credit and operational risks associated with OTC derivatives.

(2) Post-trade infrastructures are a fundamental aspect of the Capital Markets Union and are responsible for a range of post-trade processes, including clearing. An efficient and competitive clearing system in the Union is essential for the functioning of Union capital markets and is a cornerstone of the Union's financial stability. It is therefore necessary to lay down further rules to improve the efficiency of clearing services in the Union in general, and of central counterparties (CCPs) in particular, by streamlining procedures, especially for the provision of additional services or activities and for changing CCPs' risk models, by increasing liquidity, by encouraging clearing at Union CCPs, by modernising the framework under which CCPs operate, and by providing the necessary flexibility to CCPs and other financial actors to compete within the single market.

[3] 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 (OJ L 201, 27.7.2012, p. 1).

(3) ***Union market participants need to have more options as regards access to safe and efficient clearing services.*** To attract business, CCPs must be safe and resilient. Regulation (EU) No 648/2012 lays down measures to increase the transparency of derivatives markets and mitigate risks through clearing and the exchange of margin. In that respect, CCPs play an important role in mitigating financial risks. Rules should therefore be laid down to further enhance the stability of Union CCPs, notably by amending certain aspects of the regulatory framework. In addition, and in recognition of Union CCPs' role in preserving the Union's financial stability, it is necessary to strengthen further their supervision, with particular attention to their role within the broader financial system and the fact they provide services across borders.

(4) Central clearing is a global business and Union market participants are active internationally. However, since the Commission adopted the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority) and amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs in 2017[4], concerns have been expressed repeatedly, including by the European Securities and Markets Authority (ESMA)[5], about the ongoing risks to the Union financial stability arising from the excessive concentration of clearing in some third-country CCPs, in particular due to the potential risks that can arise in a stress scenario. In the short-term, to mitigate the risk of cliff edge effects related to the withdrawal of the UK from the Union due to an abrupt disruption of Union market participants' access to UK CCPs, the Commission adopted a series of equivalence decisions to maintain access to UK CCPs. However, the Commission called on Union market participants to reduce their excessive exposures to systemic CCPs outside the Union in the medium term. The Commission reiterated that call in its communication "The European economic and financial system: fostering openness, strength and resilience"[6] in January 2021.

[4] COM(2017)331.

[5] ESMA Report "Assessment report under Article 25(2c) of EMIR - Assessment of LCH Ltd and ICE Clear Europe Ltd", 16 December 2021, ESMA91-372-1945.

[6] Communication from the Commission of 19 January 2021 to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions: "The European economic and financial system: fostering openness, strength and resilience" (COM(2021) 32 final).

The risks and effects of excessive exposures to systemic CCPs outside the Union were considered in the report published by ESMA in December 2021[7] following an assessment conducted in accordance with Article 25(2c) of Regulation (EU) No 648/2012. That report concluded that some services provided by those systemically important UK CCPs were of such substantial systemic importance that the current arrangements under Regulation (EU) No 648/2012 were insufficient to manage the risks to the Union financial stability. To mitigate the potential financial stability risks to the Union due to the continued excessive reliance on systemic third-country CCPs, but also to enhance the proportionality of measures for those third-country CCPs that present less risks for the financial stability of the Union, it is necessary to further tailor the framework introduced by Regulation (EU) 2019/2099 to the risks presented by different third-country CCPs.

(5) Article 4(2) and Article 11(5) to (10) of Regulation (EU) No 648/2012 exempt intragroup transactions from the clearing obligation and the margin requirements. To provide more legal certainty and predictability concerning the framework for intragroup transactions, the equivalence decisions in Article 13 of that Regulation should be replaced by a simpler framework. Article 3 of that Regulation should therefore be amended to replace the need for an equivalence decision with a list of third countries for which an exemption should not be granted. ▌ ***In addition***, Article 13 of that Regulation should be ▌ ***amended to only provide for equivalence decisions in relation to Article 11 of that Regulation***. Since Article 382 of Regulation (EU) No 575/2013 of the European Parliament and of the Council[8] refers to intragroup transactions as provided for in Article 3 of Regulation (EU) No 648/2012, that Article 382 should also be amended accordingly.

[7] ESMA Report "Assessment report under Article 25(2c) of EMIR - Assessment of LCH Ltd and ICE Clear Europe Ltd", 16 December 2021, ESMA91-372-1945.

[8] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

(6) Given the fact that entities that are established in countries that are listed as high-risk third countries that have strategic deficiencies in their regime on anti-money laundering and counter terrorist financing, as referred to in Article 9 of Directive (EU) 2015/849 of the European Parliament and of the Council[9], or in third countries that are listed in Annex I to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes[10] are subject to a less stringent regulatory environment, their operations may increase the risk, including due to increased counterparty credit risk and legal risk, for the Union financial stability. Consequently, such entities should not be eligible to be considered in the framework of intragroup transactions.

(7) Strategic deficiencies in the regime on anti-money laundering and counter terrorist financing, or ***a*** lack of cooperation for tax purposes are not necessarily the only factors that can influence ***the*** risk, including counterparty credit risk and legal risk, associated with derivative contracts. Other factors, such as the supervisory framework, also play a role.

[9] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

[10] Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes and the Annexes thereto (OJ C 413 I, 12.10.2021, p. 1).

The Commission should therefore be empowered to adopt delegated acts to identify the third countries whose entities ▌ ***are not permitted to*** benefit from ▌ ***the intragroup*** exemptions despite ***those third countries*** not being identified ***pursuant to Article 9 of Directive (EU) 2015/849 or listed in Annex I to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes. In light of the fact*** ▌ that intragroup transactions benefit from reduced regulatory requirements, regulators and supervisors should carefully monitor and assess the risks associated with transactions involving entities from third countries.

(8) To ensure a level playing field between Union and third-country credit institutions offering clearing services to pension scheme arrangements, an exemption from the clearing obligation under Article ▌ ***4(1)***, point (iv), of Regulation (EU) No 648/2012 should be introduced where a Union financial counterparty or a non-financial counterparty that is subject to the clearing obligation enters into a transaction with a pension scheme arrangement established in a third country which is exempted from the clearing obligation under that third country's national law.

(9) Regulation (EU) No 648/2012 promotes the use of central clearing as the main risk-mitigation technique for OTC derivatives. The risks associated with an OTC derivative contract are therefore best mitigated when that derivative contract is cleared by a CCP authorised under Article 14 or recognised under Article 25 of that Regulation. It follows that in the calculation of the position that is compared to the thresholds specified pursuant to Article 10(4), point (b), of Regulation (EU) No 648/2012, only those derivative contracts that are not cleared by a CCP authorised under Article 14 or recognised under Article 25 of that Regulation should be included in that calculation. In order to ensure that the current prudent coverage of the clearing obligation is not affected by the new methodology, it is appropriate to empower ESMA to set also an aggregate threshold, if needed.

(9a) Post-trade risk reduction (PTRR) services reduce risks such as credit and operational risk of derivatives portfolios and are therefore a valuable tool for improving the resilience of the OTC derivatives market. They include services such as portfolio compression, portfolio optimisation and rebalancing services. PTRR service providers often use complex financial instruments to ensure that the transactions resulting from PTRR exercises are not subject to the clearing obligation. This limits the usability and accessibility of PTRR services to advanced financial markets participants and reduces the benefits resulting from the use of PTRR services, as the use of complex products that are not subject to the clearing obligation increases risk in the financial system. Given the benefits of PTRR services, their use should be facilitated and made available to a wider group of market participants. Therefore, transactions resulting from those services should be exempted from the clearing obligation. At the same time, to ensure the use of safe and efficient use of PTRR services, the exemption should be subject to appropriate conditions which are to be further specified and complemented by ESMA.

(10) It is necessary to address the financial stability risks associated with excessive exposures of Union clearing members and clients to systemically important third-country CCPs (Tier 2 CCPs) that provide clearing services that have been identified by ESMA as clearing services of substantial systemic importance pursuant to Article 25(2c) of Regulation (EU) No 648/2012. In December 2021, ESMA concluded that the provision of certain clearing services provided by two Tier 2 CCPs, namely for interest rate derivatives denominated in euro and Polish zloty, Credit Default Swaps (CDS) denominated in euro and Short-Term Interest Rate Derivatives (STIR) denominated in euro, are of substantial systemic importance for the Union or one or more of its Member States. As noted by ESMA in its December 2021 assessment report, were those Tier 2 CCPs to face financial distress, changes to those CCPs' eligible collateral, margins or haircuts may negatively impact the sovereign bond markets of one or more Member States, and more broadly the Union financial stability. Furthermore, disruptions in markets relevant for monetary policy implementation may hamper the transmission mechanism critical to central banks of issue. It is therefore appropriate to require any financial counterparties and non-financial counterparties that are subject to the clearing obligation to hold, directly or indirectly, accounts and clear a representative number of transactions at CCPs established in the Union. That requirement should contribute to a reduction in the provision of those clearing services by those Tier 2 CCPs. In light of recent market developments, in particular concerning CDS denominated in euro, it is appropriate that the requirement only applies to OTC interest rate derivatives denominated in euro and Polish zloty and STIR denominated in euro, in addition to any other clearing service deemed to be of substantial systemic importance by ESMA in its future assessments pursuant to Article 25(2c) of Regulation (EU) No 648/2012.

(10a) The active account requirement should apply to financial and non-financial counterparties that are subject to the clearing obligation and exceed the clearing thresholds in any of the categories of derivative contracts identified by ESMA as of substantial systemic importance. When verifying whether they are subject to the active account requirement, counterparties that are part of groups headquartered in the Union should take into account the derivative contracts belonging to the clearing services of substantial systemic importance that are cleared by any entity within the group, including entities established in third countries, since those entities might contribute to the excessive degree of exposure of the group as a whole. Derivative contracts of third-country subsidiaries of Union groups should be included also to prevent that those groups move their clearing activities outside the Union in order to avoid the active account requirement. A counterparty that is subject to the active account requirement and that belongs to a group should be required to meet the representativeness obligation based on its own transactions. Third-country entities that are not subject to the clearing obligation under the EU rules are not subject to the obligation to maintain an active account.

(10b) The active account requirement is a new requirement. The novelty of the requirement and the need for market participants to gradually adapt to it should be properly taken into account. That is why it is appropriate that the requirement can be met by market participants by establishing accounts at EU CCPs that are permanently functional. The active accounts should include operational elements. It should be suitable for quickly clearing a significant number of trades moved out from a Tier 2 CCP and for clearing all new trades in the categories of derivative contracts identified by ESMA as of substantial systemic importance. The need for meeting these operational elements should also contribute to incentivising counterparties to move trades to the EU. In this regard, it is appropriate to take into account the situation of counterparties that are already clearing a majority/significant amount of their transactions in interest rate derivatives denominated in euro and Polish zloty and STIR denominated in euro at CCPs established in the Union. These counterparties should not be subject to the operational requirements associated with the active account obligation.

(10ba) In order to ensure that the active account requirement appropriately contributes to the overarching objective of reducing the excessive exposures to substantially systemic clearing services provided by third-country CCPs and that it is not dormant, a minimum number of derivative contracts should be cleared in the active accounts, which should be representative of the different sub-categories of the derivative contracts belonging to the clearing services of substantial systemic importance. Such representativeness requirement should reflect the diversity of the portfolios of financial and non-financial counterparties subject to the active account requirement. Contracts with different maturities and different sizes should be cleared through the active accounts, as well as contracts of different economic nature, including all classes of interest rate derivatives that are subject to the clearing obligation under Commission Delegated Regulation (EU) 2015/2205 and Commission Delegated Regulation 2016/1178 as regards those denominated in Polish zloty.

To define the minimum number of derivative contracts that should be cleared through the active accounts, ESMA should identify up to three derivative classes amongst the derivative contracts belonging to the clearing services of substantial systemic importance. ▌ ESMA should further identify up to five most relevant subcategories of trades, per derivative class, based on a combination of size and maturity. Counterparties will then be required to clear at least five trades in the reference period in each relevant subcategories. The number of derivative contracts to be cleared should be at least five trades in the reference period on an annual average basis, meaning that in assessing whether counterparties fulfil the representativeness obligation, competent authorities should consider the total number of trades over a year.

In order to ensure a proportionate approach and not to impose an excessive burden on counterparties that have a limited activity in the different subcategories of derivatives identified by ESMA, a de-minimis threshold should apply to the representativeness requirement. In addition, the specific business model of Union pension scheme arrangements needs to be properly taken into account. In several cases they have a limited number of interest rate derivatives trades, which are concentrated, long-term and with a high notional amount. That is why it is appropriate that a scaled-down representativeness requirement is established, which should require to clear one trade instead of five in the most relevant subcategories per reference period. Member States should introduce appropriate periodic penalty payments for cases where a counterparty subject to the active account requirement fails to meet its obligations with regard to the operational criteria or the representativeness criteria.

(10c) ESMA has an important role in the assessment of the substantial systemic importance of third-country CCPs and their clearing services. By 18 months following the entry into force of this Regulation, or at any point in time in case of a financial stability risk, ESMA should assess and report to the European Parliament and Council and the Commission, on the effect of this Regulation in reducing the exposures to systemically important Tier 2 CCPs. ESMA should propose any measures it deems necessary, as well as quantitative thresholds and accompany them with an impact assessment and a cost-benefit analysis. ESMA should cooperate with the ESCB, the ESRB and the Joint Monitoring Mechanism when drafting its assessment and report. Within six months from receiving the ESMA report, the Commission should prepare its own report which may be accompanied, where appropriate, by a legislative proposal.

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(12) To ensure that clients are aware of their options and can take an informed decision as where to clear their derivative contracts, clearing members and clients that provide clearing services in both Union and recognised third-country CCPs should inform their clients about the option to clear a derivative contract in a Union CCP with the aim to encourage clearing in the Union, in order to ensure the financial stability of the Union. The information provided should include information on all the costs that will be charged to clients by clearing members and clients that provide clearing services. The information on the costs that clearing members and clients that provide clearing services should disclose should be limited to Union CCPs in relation to which they provide clearing services. The obligation to inform about the option to clear a derivative contract in a Union CCP should be distinct from the active account requirement and should apply generally to ensure awareness of the clearing offer in Union CCPs.

(13) To ensure that competent authorities have the necessary information on the clearing activities undertaken by clearing members or clients in recognised CCPs, a reporting obligation should be introduced for such clearing members or clients. The information to be reported should distinguish between securities transactions, derivative transactions traded on a regulated market and over-the-counter (OTC) derivatives transactions. ESMA should provide details on the content and format of the information to be reported, and in doing so should ensure that the obligation does not create additional reporting requirements, unless necessary, so that the administrative burden for clearing members and clients is minimised.

(13a) Under the current framework, ESMA receives transaction data under Regulation (EU) No 648/2012 and Regulation (EU) 2015/2365 of the European Parliament and of the Council[11], which provide a Union-wide view on markets, but not on CCPs' risk management. ESMA, should therefore in addition to such data require timely and reliable information on CCPs' activities and practices to fulfil its financial stability mandate. It is therefore necessary that a formal reporting requirement regarding CCP risk management data by Union CCPs to ESMA is introduced. That would also help to further strengthen standardisation and comparability across data and ensure it is delivered periodically.

[11] *Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (OJ L 337, 23.12.2015, p.1.*

(14) The recent stress episodes in commodities markets have highlighted the importance that authorities have a comprehensive picture of the derivatives activities and exposures of non-financial counterparties that are subject to the clearing obligation. Non-financial counterparties ***subject to the clearing obligation*** that are part of a group whose intragroup trades are exempt from the reporting obligation, should have their derivatives positions reported by their EU parent undertaking on an aggregated basis. The reporting should be done on a weekly basis at entity-level and broken down by type of derivatives. Such information should be provided to ESMA and the relevant competent authority of the individual entities in the group. It is also appropriate to consider the concerns raised by the supervisory community about the data quality of the reporting made by financial and non-financial counterparties pursuant to Regulation (EU) No 648/2012. Entities subject to the reporting obligation pursuant to that Regulation should therefore be required to exercise due diligence by establishing appropriate procedures and arrangements to ensure data quality before submitting their data. While entities have the possibility to delegate their reporting obligation, they remain responsible in case the data that is being reported by the entity to which they have delegated their reporting obligation is inaccurate or duplicative. ESMA should establish guidelines to further specify such procedures and arrangements, taking into account the possibility to apply the requirements in a proportionate manner. To ensure that the abovementioned requirements on data quality are fulfilled, Member States should adopt appropriate penalties in the case the data reported contains manifest errors. ESMA should specify what will constitute a manifest error for the purposes of applying the penalties.

(15) To ensure that competent authorities are at all times aware of exposures at entity and group level and are able to monitor such exposures, competent authorities should establish effective cooperation procedures to calculate the positions in contracts not cleared at an authorised or recognised CCP and to actively evaluate and assess the level of exposure in OTC derivative contracts at entity and group level. In order for ESMA to have an overall picture of the activity in OTC derivatives of non-financial counterparties established in the EU, as well as their parent companies, the authorities responsible for these counterparties and parent undertakings should report to ESMA on a regular basis. That reporting should not replicate the information already submitted by means of other reporting requirements set out in Regulation (EU) No 648/2012, but provide information on the evolution of the portfolios of those counterparties between two reporting dates, as well as an assessment of the risks such counterparties may be exposed to. Authorities responsible for non-financial counterparties that are part of a group shall cooperate to minimise the reporting burden and assess the intensity and type of activity in OTC derivatives of these non-financial counterparties.

(16) It is necessary to ensure that 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[12] relating to the criteria for establishing which OTC derivative contracts are objectively measurable as reducing risks continues to be appropriate in light of market developments. It is also necessary to ensure that the clearing thresholds laid down in that Commission Delegated Regulation relating to values of those thresholds properly and accurately reflect the different risks and characteristics in derivatives, other than interest rate, foreign exchange, credit and equity derivatives. ESMA should therefore also review and clarify, where appropriate, that Commission Delegated Regulation and propose amending it if necessary. ESMA is encouraged to consider and provide, inter alia, more granularity for commodity derivatives. That granularity could be achieved by separating the clearing thresholds by sector and type, such as differentiating between agriculture, energy or metal related commodities or differentiating those commodities based on other features such as environmental, social and governance criteria, environmentally sustainable investments or crypto-related features. During the review, ESMA should endeavour to consult relevant stakeholders that have specific knowledge on particular commodities.

(17) Non-financial counterparties that exchange collateral for OTC derivative contracts not cleared by a CCP should have sufficient time to negotiate and test the arrangements to exchange such collateral.

[12] 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 (OJ L 52, 23.2.2013, p.11).

(17a) In order to avoid market fragmentation and ensure a level playing field, acknowledging the fact that in some jurisdictions the exchange of variation and initial margin for single-stock options and equity index options is not subject to equivalent margin requirements, the treatment of those products should be exempted from risk management procedures regarding the timely, accurate and appropriately segregated exchange of collateral, as long as there is insufficient international convergence on their treatment. ESMA, in cooperation with EBA and EIOPA, should monitor regulatory developments in other jurisdictions and the evolution of the exposure by counterparties subject to Regulation (EU) No 648/2012 in single-stock options and equity index options not cleared by a CCP, and should report to the Commission on the results of that monitoring at least every three years. Where the Commission has received such a report, it should assess whether international developments have led to more convergence in the treatment of single-stock and equity index options and whether the exemption endangers financial stability in the Union or in one or more of its Member States. In such a case, the Commission should be empowered to end the exemption in the treatment of single-stock options and equity index options. In this way, it can be ensured that appropriate requirements are in place in the Union to mitigate counterparty credit risk in respect of such contracts whilst avoiding scope for regulatory arbitrage.

(18) In order to comply with initial margin requirements set out in Regulation (EU) No 648/2012, a large number of EU market participants uses industry-wide, pro-forma initial margin models. Given that those models are used industry-wide, they are unlikely to be significantly modified by the preference of every single user or by the different assessments of every single competent authority that authorise the use of those models by the entities it supervises. In practice, since the same model is used by a large number of EU counterparties, the consequent need for that model to be validated by a plurality of competent authorities gives rise to a coordination problem. To address this problem, EBA should be given the task to operate as a central validator of such pro-forma models. In its role as central validator, EBA should validate the elements and general aspects of those models, including their calibration, design, and coverage of instruments, assets classes, and risk factors. To assist its work, EBA should collect feedback from competent authorities, ESMA and EIOPA, and coordinate their collective views. Given that competent authorities would continue to be responsible for authorising the use of these models and for monitoring the implementation of those models at the supervised entity level, EBA should assist them in their approval processes regarding the general aspects of the implementation of those models. In addition, EBA should serve as a single point of discussion with the industry to help ensure a more effective EU coordination on the design of such models. Competent authorities will remain responsible for authorising the use of such models and for monitoring the implementation of those models at the supervised entity level.

(18a) Central banks, public bodies charged with or intervening in the management of the public debt, and public sector entities, are free to choose whether to use clearing services of CCPs to clear their derivatives contracts. Where they decide to use those services, they are encouraged to clear, in principle, at Union CCPs where the products sought are available. Given that the modalities of those entities' participation in CCPs vary across Member States and in view of diverging practices regarding the calculation of the exposures of those entities to Union CCPs and their contributions to the financial resources of those CCPs, further harmonisation of those aspects, by means of ESMA guidelines, would be desirable.

(18b) EBA, in cooperation with ESMA and EIOPA, should draft regulatory technical standards to specify supervisory procedures ensuring the initial and ongoing validation of the risk-management procedures specified under Article 11(15) point (aa). To ensure proportionality, only financial counterparties that are most active in OTC derivatives not cleared by a CCP should be subject to the procedures specified in those technical standards.

(19) To ensure a consistent and convergent approach amongst competent authorities throughout the Union, authorised CCPs or legal persons that wish to be authorised under Article 14 of Regulation (EU) No 648/2012 to provide clearing services and activities in financial instruments should also be able to be authorised to provide clearing services and other activities in relation to non-financial instruments. Regulation (EU) No 648/2012 applies to CCPs as entities, and not to specific services, as set out in Article 1(2) of that Regulation. When a CCP clears non-financial instruments, in addition to financial instruments, the CCP's competent authority should be able to ensure that the CCP ▌ ***is compliant with*** Regulation (EU) No 648/2012 for all services it offers.

(20) Union CCPs face challenges in expanding their product offer for clearing services and experience difficulties in bringing clearing services for new products to the market. In face of the challenges that CCPs face and in line with the objective of enhancing the attractiveness of the Union's clearing, the process of authorising Union CCPs or extending their authorisation should therefore be simplified and should include defined timelines, while ensuring the appropriate involvement of ESMA and the college. First, to avoid significant, and potentially indefinite, delays, when competent authorities assess the completeness of an application for an authorisation, they should swiftly acknowledge receipt of that application.

To ensure that Union CCPs submit all required documents and information with their applications, ESMA should develop draft regulatory and implementing technical standards specifying which documents should be provided, what information those documents should contain and in which format they should be submitted. When preparing the draft regulatory technical standards, ESMA should take into account existing documentation requirements and practices under Regulation (EU) No 648/2012 and streamline their submission where possible. To avoid an excessive time to market and to ensure that the information to be provided by the CCP applying for an extension of authorisation is proportional to the materiality of the change for which the CCP applies, without making the overall process unduly complex, burdensome and disproportionate. Second, to ensure an efficient and concurrent assessment of applications, CCPs should be able to submit all documents via a central database. Third, a CCP's competent authority should, during the assessment period, coordinate questions to the CCP from itself, ESMA and the college to ensure a swift, flexible, and cooperative process for a comprehensive review. To avoid duplication and unnecessary delays, all questions and subsequent clarifications should also be shared simultaneously between the CCP's competent authority, ESMA and the college.

(21) There is currently uncertainty as to when an additional service or activity is covered by a CCP's existing authorisation. It is necessary to address that uncertainty and to ensure proportionality when the proposed additional service or activity not covered by a CCP's existing authorisation does not significantly increase the risks for the CCP. In such case, the additional service or activity should not undergo the full assessment procedure, but be subject to an accelerated procedure. The accelerated procedure should not require a separate opinion from ESMA and the college since such requirement would be disproportionate, but rather ESMA and the members of the college would provide input to the CCP's competent authority on the assessment of whether the extension qualifies to fall under the expedited procedure. In order to ensure supervisory convergence, ESMA should further specify the conditions for the application of the accelerated procedure as well as the procedure for providing its input and the input of the college.

(21a) To alleviate the administrative burden on CCPs and competent authorities, without modifying the overall risk profile of a CCP, CCPs should be able to ask their competent authorities to implement extensions of services for business as usual changes without an authorisation, where a CCP considers that the proposed additional service or activity would not have a material impact on its risk profile, in particular where the new clearing service or activity is very similar to the services the CCP is already authorised to provide. To enable the CCPs to swiftly implement such business as usual changes, CCPs should be exempted from the procedures for the extension of activities and services in relation to such extensions. CCPs should notify the competent authority and ESMA where they decide to make use of such exemption. The competent authority should review the changes implemented in the context of its annual review and evaluation process.

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(23) To ensure the consistent functioning of all colleges and to further enhance supervisory convergence, the college should be co-chaired by the national competent authority and any of the independent members of the CCP Supervisory Committee. To foster cooperation between ESMA and competent authorities, for instance, the co-chairs should jointly decide the dates of the college meetings and establish the agenda of such meetings. However, to ensure consistent decision making and that the CCP's competent authority remains ultimately responsible, in case of disagreement between the Co-chairs, the ultimate decision should in any case be taken by the competent authority, who should provide ESMA with a reasoned explanation of its decision.

(24) ESMA should be able to contribute more effectively to ensuring that Union CCPs are safe, robust and competitive in providing their services throughout the Union. Therefore, ESMA should, in addition to the supervisory competences currently laid down in Regulation (EU) No 648/2012, issue an opinion to the CCP's competent authority about a CCP's withdrawal of authorisation except where a decision is required urgently, meaning within a period of time shorter than the period allocated for ESMA to provide its opinions, as well as on the review and evaluation process, margin requirements and participation requirements. Competent authorities should provide explanations for any significant deviations from ESMA's opinions and ESMA should inform the Board of Supervisors, where a competent authority does not comply or does not intend to comply with ESMA's opinion and with any conditions or recommendations included therein. The information should also include the reasons provided by the competent authority for not complying with the ESMA opinion or any conditions or recommendations contained therein.

(24a) To ensure swift and efficient sharing of information and documentation under Regulation (EU) No 648/2012, to foster greater cooperation among competent authorities involved in the supervision of entities subject to that Regulation and to simplify communication between competent authorities and their supervised entities in relation to procedures mandated under that Regulation, ESMA should establish and maintain a central database. All the relevant competent authorities and bodies should have access to the central database, each for the information pertinent to their tasks and responsibilities. Similarly, entities subject to the requirements in Regulation (EU) No 648/2012 should have access to information and documentation they submitted and any documentation addressed to them. The central database should be used to share as much information and documentation as possible, and at least information and documentation in relation to authorisations, extensions of services, and model validations should be shared through the central database.

(25) It is necessary to ensure that the CCP complies with Regulation (EU) No 648/2012 on an ongoing basis, particularly in relation to the provision of additional clearing services or activities authorised via the accelerated procedure or exempted from authorisation in accordance with the implementation of business as usual changes as well as the implementation of model changes after an accelerated procedure for the validation of such a model change, as in such cases ESMA and the college do not issue separate opinions. Hence, the review conducted by the competent authority of the CCP, at least on an annual basis, should in particular consider the above mentioned new clearing services or activities and model changes. To ensure supervisory convergence and coordination between competent authorities and ESMA, and that Union CCPs are safe, robust and competitive in providing their services throughout the Union, the competent authority should, at least annually, submit its report in relation to its review and evaluation of the CCP to ESMA and the college for their opinion. ESMA's opinion should assess the aspects covered by the competent authority's report, which include a follow-up on the provision of services or activities by the CCP, with specific attention to accelerated procedures and business as usual changes, as well as the cross-border risks the CCPs might be exposed to, and considering the overall CCP's position as a clearing service provider within the Union.

Onsite inspections play a key role in the conduct of supervisory tasks, offering invaluable information to competent authorities. As such, they should be conducted at least once a year and, to ensure a prompt exchange of information, knowledge sharing and effective cooperation between the competent authority and ESMA, ESMA should be informed of both planned and urgent onsite inspections, be able to request to participate to such inspections and receive any relevant information in relation to such on-site inspection, as well as a reasoned explanation for the refusal to participate, when it does not participate. In addition, to further enhance coordination between ESMA and the competent authorities, ESMA, under specific circumstances and in the context of the supervisory review and evaluation, may request an ad hoc meeting with the CCP and the competent authority. The college should be informed of the outcome of such meetings. To strengthen information sharing between the competent authorities and ESMA, the latter should also be able to request from the competent authorities the information it needs to carry out its tasks in the context of the supervisory review and evaluation.

(26) ESMA should have the means to identify potential risks to the Union's financial stability. ESMA should therefore, in cooperation with the ***ESRB,*** EBA, EIOPA, and the ECB in the framework of the tasks concerning the prudential supervision of credit institutions within the single supervisory mechanism conferred upon it in accordance with Council Regulation (EU) No 1024/2013[13], identify the interconnections and interdependencies between different CCPs and legal persons, including***, to the extent possible,*** shared clearing members, clients and indirect clients, shared material service providers, shared material liquidity providers, cross-collateral arrangements, cross-default provisions and cross-CCP netting, cross-guarantee agreements and risks transfers and back-to-back trading arrangements.

(27) The central banks of issue of the Union currencies of the financial instruments cleared by authorised CCPs that have requested membership of the CCP Supervisory Committee are non-voting members of that committee. They only participate ***in*** its meetings for Union CCPs in the context of discussions about the Union-wide assessments of the resilience of those CCPs to adverse market developments and relevant market developments. Contrary to their involvement in the supervision of third-country CCPs, central banks of issue are thus insufficiently involved on supervisory matters for Union CCPs that are of direct relevance to the conduct of monetary policy and the smooth operation of payments systems, which leads to insufficient consideration of cross-border risks. It is therefore appropriate that those central banks of issue are able to attend as non-voting members all meetings of the CCP Supervisory Committee when it convenes for Union CCPs.

[13] [...]

(28) deleted

(29) To enhance the ability of relevant Union bodies to have a comprehensive overview of market developments relevant for clearing in the Union, monitor the implementation of certain clearing related requirements of Regulation (EU) No 648/2012 and collectively discuss the potential risks arising from the interconnectedness of different financial actors and other issues related to the financial stability it is necessary to establish a cross-sectoral monitoring mechanism bringing together the relevant Union bodies involved in the supervision of Union CCPs, clearing members and clients. Such Joint Monitoring Mechanism should be managed and chaired by ESMA as the Union authority involved in the supervision ▌***of*** Union CCPs and supervising systemically important third-country CCPs.▌ Other participants should include representatives from the Commission,▌ EBA, EIOPA, the ESRB, the ▌***central banks of issue of the currencies of denomination of the contracts belonging to clearing services of substantial systemic importance, national competent authorities,*** and the ECB in the framework of the tasks concerning the prudential supervision of credit institutions within the single supervisory mechanism conferred upon it in accordance with Council Regulation (EU) No 1024/2013▌ .

(30) To inform future policy decisions, ESMA, in cooperation with the other bodies participating in the Joint Monitoring Mechanism, should submit an annual report to the European Parliament, the Council and the Commission on the results of their activities. ESMA might institute a breach of Union law procedure pursuant to Article 17 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[1],where, on the basis of the information received as part of the Joint Monitoring Mechanism and following the discussions held therein, ESMA considers that competent authorities fail to ensure clearing members' and clients' compliance with the requirement to clear at least a proportion of identified contracts at accounts at Union CCPs, or where ESMA identifies a risk to the financial stability of the Union due to an alleged breach or non-application of Union law. Before instituting such breach of Union law procedure, ESMA might issue guidelines and recommendations pursuant to Article 16 of that Regulation. Where, on the basis of the information received as part of the Joint Monitoring Mechanism and following the discussions held therein, ESMA considers that compliance with the requirement to clear at least a proportion of identified contracts at accounts at Union CCPs does not effectively ensure the reduction of Union clearing members' and clients' excessive exposure to Tier 2 CCPs, it should review and propose amending the relevant Commission Delegated Regulation specifying further that requirement, proposing to set, where necessary, an appropriate adaptation period.

(31) The 2020 market turmoil as a result of the Covid-19 pandemic and the 2022 high prices on energy wholesale markets following Russia's unprovoked and unjustified aggression against Ukraine showed that, while it is essential for competent authorities to cooperate and exchange information to address ensuing risks when events with cross-border impacts emerge, ESMA still lacks the necessary tools to ensure such coordination and a convergent approach at Union level. ESMA should therefore be empowered to act in an emergency situation at one or more CCPs that have or are likely to have destabilising effects on cross-border markets. In such emergency situations, ESMA should be entrusted with a coordination role between competent authorities, colleges and resolution authorities to build a coordinated response. ESMA should be able to convene meetings of the CCP Supervisory Committee, either on its own initiative or upon request, potentially with an enlarged composition, to coordinate effectively competent authorities' responses in emergency situations. ESMA should also be able to request, information from relevant competent authorities regarding where necessary for ESMA to perform its coordination function in those situations and to be able to issue recommendations to the competent authority, and may request such information directly from the CCP or market participants where the competent authority does not provide answers within the appropriate timeline. The role of ESMA in emergency situations should be without prejudice to the final responsibility of the CCP's competent authority to take supervisory decisions on the CCP it supervises, including on emergency measures. It is also essential that college members are able to forward the information they receive in an emergency situation to public bodies, including ministries, responsible for the financial stability of their markets.

(32) To reduce the burden on CCPs and ESMA, it should be clarified that where ESMA undertakes a review of a third-country CCP's recognition pursuant to Article 25(5), first subparagraph, point (b), that third-country CCP should not be obliged to submit a new application for recognition. It should, however, provide ESMA with all information necessary for such review. Consequently, ESMA's review of a third-country CCP's recognition should not constitute a new recognition of that CCP.

(33) The Commission should be able, when adopting an equivalence decision, to waive the requirement for that third country to have an effective equivalent system for the recognition of third-country CCPs. In considering ▌ ***whether*** such an approach would be proportionate, the Commission might consider a range of different factors, including compliance with the Principles for Financial Market Infrastructures published by the Committee on Payments and Market Infrastructures and the International Organisation of Securities Commissions, the size of the third-country CCPs established in that jurisdiction and, where known, the expected activity in ▌ ***those*** third-country CCPs by clearing members and trading venues established in the Union.

(34) To ensure that cooperation arrangements between ESMA and the relevant competent authorities of third countries are proportionate, such arrangements should ▌***take into consideration a range of different aspects, including the categorisation of third country CCPs as Tier 1 or Tier 2 CCPs,*** the specific features of the scope of services provided, or intended to be provided, within the Union ▌ and whether those services entail specific risks to the Union or to one or more of its Member States ***as well as adherence of the third country CCPs to international standards***. The cooperation arrangements should therefore reflect the degree of risk that the CCPs established in a third country potentially present to the financial stability of the Union or of one or more of its Member States.

(35) ESMA should therefore tailor its cooperation arrangements to different third-country jurisdictions based on the CCPs established in the respective jurisdiction. In particular, Tier 1 CCPs cover a wide range of CCP profiles hence ESMA should ensure that a cooperation arrangement is proportionate to the CCPs established in each third-country jurisdiction. ***In particular,*** ESMA should consider, amongst others, the liquidity of the markets concerned, the degree to which the CCPs' clearing activities are denominated in euro or other Union currencies and the extent to which Union entities use the services of such CCPs. Considering that the vast majority of Tier 1 CCPs provide clearing services to a limited extent to clearing members and trading venues established in the Union ***and may clear products that are not in the scope of this Regulation amending Regulation (EU) No 648/2012***, ESMA's scope of assessment and information to be requested should also be limited in all those jurisdictions.▌

To limit information requests for Tier 1 CCPs, a pre-defined range of information should in principle be requested by ESMA annually. Where the risks from a Tier 1 CCP or jurisdiction are potentially greater, more, and at least quarterly, requests and a wider scope of information requested would be justified***. Cooperation arrangements should be tailored to reflect such a differentiation in the risk profile of different Tier 1 CCPs and should include provisions that organise the appropriate framework for the exchange of information***. However, any cooperation arrangements in place when this Regulation enters into force should not be required to be adjusted unless the relevant third-country authorities so request.

(36) Where recognition is provided under Article 25(2b) of Regulation (EU) No 648/2012, considering that those CCPs are of systemic importance for the Union or one or more of its Member States, the cooperation arrangements between ESMA and the relevant third-country authorities should cover the exchange of information for a broader range of information and with increased frequency. In that case, the cooperation arrangements should also entail procedures to ensure such a Tier 2 CCP is supervised pursuant to Article 25 of that Regulation. ESMA should ensure it can obtain all information necessary to fulfil its duties under that Regulation, including information necessary to ensure compliance with Article 25(2b) of that Regulation and to ensure that information is shared where a CCP has been granted, partially or fully, comparable compliance. To enable ESMA to carry out full and effective supervision of Tier 2 CCPs, it should be clarified that those CCPs should provide ESMA with information periodically.

(36a) ESMA should also, where comparable compliance is granted, regularly assess the continued compliance by Tier 2 CCPs with the conditions for their recognition through comparable compliance, by monitoring CCPs' compliance with the requirements set out in Article 16 and Titles IV and V under the Commission Delegated Regulation (EU) 2020/13041. In undertaking that assessment ESMA, should, in addition to receiving the relevant information and confirmations from the Tier 2 CCP, cooperate and agree on administrative procedures with the third country authority to ensure ESMA has the relevant information to monitor that the conditions for comparable compliance is complied with and, to the extent possible, reduce the administrative and regulatory burdens for those Tier 2 CCPs.

(37) To ensure that ESMA is also informed about how a Tier 2 CCP is prepared for, can mitigate and recover from financial distress, the cooperation arrangements should include the right for ESMA to be ***consulted in the preparation and assessment of recovery plans and in the preparation of resolution plans, as well as to be*** informed where a Tier 2 CCP establishes a recovery plan or where a third-country authority establishes resolution plans. ESMA should also be informed on the aspects relevant for the financial stability of the Union, or of one or more of its Member States, and on how individual clearing members, and to the extent known clients and indirect clients, could be materially affected by the implementation of such a recovery or resolution plan. The cooperation arrangements should also indicate that ESMA should be informed when a Tier 2 CCP intends to activate its recovery plan or where the third-country authorities have determined that there are indications of an emerging crisis situation that could affect the operations of the CCP, its clearing members, clients and indirect clients***, or have the intention to activate their resolution plans***.

(37a) ESMA should be able to withdraw the recognition of a third-country CCP where that CCP has seriously and systematically infringed any of the applicable requirements laid down in Regulation (EU) No 648/2012, including the submission to ESMA of information pertaining to the recognition of that CCP, the payment of fees to ESMA or the answer to ESMA's requests for information necessary for ESMA to carry its duties over third-country CCPs, and has not taken the remedial action requested by ESMA within a timeframe appropriately set by ESMA.

(38) To mitigate potential risks for the financial stability of the Union, CCPs and clearinghouses should not be able to be clearing members of other CCPs nor should CCPs be able to accept to have other CCPs or clearinghouses as clearing members or indirect clearing members, market participants currently operating under such arrangements should have to find other ways to centrally clear. This ban should not impact interoperability arrangements, which are regulated under Title V of Regulation (EU) 648/2012 and arrangements entered into for the purpose of a CCP undertaking its investment policy in accordance with the Regulation, such as sponsored memberships or direct access to cleared repo markets between CCPs. To provide sufficient time for adaptation, existing arrangements should be phased out within two years from the date of entry into force of this Regulation. Market participants and authorities should explore different solutions, including setting up interoperability arrangements.

(38a) Regulation (EU) No 648/2012 should apply to interoperability arrangements for all types of financial and non-financial instruments, such as derivative contracts, in addition to money market instruments and transferable securities as defined in Article 4(1) of Directive 2014/65/EU. ESMA, after consulting the members of the ESCB and the ESRB, should therefore develop draft regulatory technical standards to ensure consistent, efficient and effective assessments of interoperability arrangements.

(38b) To ensure the supervisory framework for Union CCPs results in safe and resilient CCPs, and is built on cooperation between the competent authority and ESMA, the results of independent audits should be communicated to the board but also be made available to ESMA and the CCP's competent authority. In addition, both ESMA and the CCP's competent authority may request to attend the CCP's risk-committee meetings in a non-voting capacity and be informed of the activities and decisions of the risk committee. ESMA should also promptly receive the decisions of the risk committee in which the board decides not to follow the advice of the risk committee and explain such decision.

(39) The recent events ***of extreme volatility*** on commodity markets ▌ illustrate the fact that non-financial counterparties do not have the same access to liquidity as financial counterparties. Therefore, non-financial counterparties should ▌ ***only*** be allowed to offer client clearing services ▌ ***to non-financial counterparties belonging to the same group***. Where a CCP has or intends to accept non-financial counterparties as clearing members that CCP should ensure that ▌ non-financial counterparties ***are able to demonstrate that they*** can fulfil the margin requirements and default funds contributions, including in stressed conditions.▌

Considering non-financial counterparties are not subject to the same prudential requirements and liquidity safeguards as financial counterparties, their direct access to CCPs should be monitored by the competent authorities of CCPs accepting them as clearing members. ▌ The competent authority for the CCP should report to ESMA and the college on a regular basis on the ▌ ***products cleared by those*** counterparties***, the overall exposure and any identified risks. This regulation does not aim to restrict the capacity of non-financial counterparties to become direct clearing members in a CCP in a prudentially sound manner***▌ .

(40) To ensure clients and indirect clients have better visibility and predictability of margin calls, and thus further develop their liquidity management strategies, clearing members and clients providing clearing services should ensure transparency towards their clients. Due to their ***provision of clearing services*** and their professional experience with central clearing and liquidity management, clearing members are best placed to communicate in a clear and transparent manner to clients how ***margin*** models work, including in stress events, and the implications such events can have on the margins clients are requested to post, including any additional margin clearing members themselves may ask ***from their clients***. A better understanding of margin models can improve clients' ability to reasonably predict margin calls and prepare themselves for collateral requests, particularly in stress events. ***In order to ensure that clearing members are able to provide effectively the required levels of transparency on margin calls and CCP margin models to their clients, CCPs should also provide them with the information needed. ESMA, in consultation with EBA and the ESCB, should further specify the scope and format of the exchange of information between CCPs and clearing members and between clearing members and their clients.***

(41) To ensure that margin models reflect current market conditions, CCPs should not only regularly ***but also continuously*** revise the level of their margins taking into account any potentially procyclical effects of such revisions. When calling and collecting margins on an intraday basis, CCPs should further consider the potential impact of their intraday margin collections and payments on the liquidity position of their participants.

(42) To ensure liquidity risk is accurately defined, the entities whose default a CCP should take into account when determining such risk should be expanded to cover not only the default of clearing members but also of liquidity providers, excluding central banks.

(43) To facilitate access to clearing to those ***non financial*** entities that do not hold sufficient amounts of highly liquid assets and in particular energy companies, under conditions to be specified by ESMA and to ensure a CCP takes those conditions into account when calculating its overall exposure to a bank that is also a clearing member, commercial bank and public bank guarantees should be considered eligible collateral. ***When specifying the conditions under which commercial bank guarantees may be accepted as collateral, ESMA should allow the CCP to decide the level of collateralisation of those guarantees based on its risk assessment, including the possibility for those guarantees to be uncollateralised, subject to appropriate concentration limits, credit quality requirements and stringent wrong-way risk requirements.*** In addition, given their low credit risk profile, it should be explicitly specified that public guarantees are also eligible as collateral. Finally, a CCP should, when revising the level of the haircuts it applies to the assets it accepts as collateral, take into account any potential procyclical effects of such revisions.

(43a) To facilitate the transfer of a client's positions in the case of a clearing member default, the clearing member that receives such positions should be given time to comply with certain requirements that come with the provision of client clearing services. In particular, and considering that the portability of a client's positions takes place under extraordinary circumstances and over the course of a short period of time, the receiving clearing member should be given three months to undertake and complete its due diligence processes to ensure compliance with anti-money laundering requirements under EU law. In addition, and if applicable, the receiving clearing member should also have three months to comply with capital requirements for exposures of clearing members towards clients under the capital requirements regulation unless a shorter period is agreed with its competent authority. The starting point of this grace period should be the date of transfer of the client's positions from the defaulting clearing member to the receiving clearing member.

(44) In relation to the validation of changes to the models and parameters of CCPs, certain amendments should be introduced to simplify the process in order to facilitate CCPs' ability to respond promptly to market developments that may require amendments to their risk models and parameters. To ensure supervisory convergence, Regulation (EU) No 648/2012 should specify the conditions to be considered when assessing whether a given change is significant and ESMA, in close cooperation with the ESCB, is requested to further refine these conditions by defining quantitative thresholds and specific elements to be considered. In particular, ESMA should specify the criteria for changes that should be considered significant, including which structural elements of risk models should be included in scope of changes that are always deemed to be significant. Such structural elements should include, for example, the anti-procyclicality tools implemented by CCPs. All significant changes should be subject to a full validation before their adoption. Where a CCP is applying and using a previously validated model, or applies minor changes to it, such as adjusting the parameters within an approved range that is part of the validated model due to external factors such as changes to prices in the market, it should not be considered a change to the model and therefore they do not need to be validated.

(44a) Non-significant changes to models and parameters that do not increase the risks for a Union CCP should be able to be approved through a swift procedure. Hence, in line with the objective of having safe and resilient EU CCPs while building a modern and competitive EU clearing ecosystem able to attract business, an accelerated procedure for non-significant changes to models and parameters is introduced in order to limit the challenges and uncertainty that currently exist in the supervisory validation procedure of such changes. Where a change is not significant, an accelerated validation procedure should apply. This is to facilitate CCPs' ability to respond promptly to market developments that may require amendments to their risk models and parameters, the process of the validation of changes to such models and parameters should therefore be simplified.

(45) Regulation (EU) No 648/2012 should be reviewed no later than 5 years after the date of entry into force of this ***amending*** Regulation**,** ***in order to*** allow ***sufficient*** time to apply the changes introduced by this Regulation. Whilst a review of Regulation (EU) No 648/2012 in its entirety should be carried out, ***the*** review should focus on the effectiveness and efficiency of that Regulation in meeting its aims, improving the efficiency and safety of Union clearing markets and preserving ***the*** financial stability of the Union. The review should also consider the attractiveness of Union CCPs, the impact of this Regulation on encouraging clearing in the Union, and the extent to which the enhanced assessment and management of cross-border risks have benefited the Union.

(46) To ensure consistency ▌ ***between*** Regulation (EU) 2017/1131 of the European Parliament and of the Council[14]▌ ***and*** Regulation (EU) No 648/2012 and to preserve the integrity and stability of the internal market, it is necessary to lay down in Regulation (EU) 2017/1131 a uniform set of rules to address counterparty risk in financial derivative transactions performed by money market funds (MMF), ▌ ***where*** the transactions have been cleared by a CCP that is authorised or recognised under Regulation (EU) No 648/2012. As central clearing arrangements mitigate counterparty risk that is inherent in financial derivative contracts, it is necessary to take into consideration whether a derivative has been centrally cleared by a CCP that is authorised or recognised under that Regulation, when determining the applicable counterparty risk limits. It is also necessary for regulatory and harmonisation purposes, to lift counterparty risk limits only where the counterparties use CCPs which are authorised or recognised in ▌ ***under*** that Regulation, to provide clearing services to clearing members and their clients.

[14] Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds (OJ L 169, 30.6.2017, p. 8).

(47) To ensure consistent harmonisation of rules and supervisory practice on applications for authorisation, extension of authorisation and model validations as well as the active account requirement and the CCP participation requirements, the Commission should be empowered to adopt regulatory technical standards developed by ESMA with regard to the following: the documents and information CCPs are required to submit when applying for authorisation, extension of authorisation, expedited procedures for extension of authorisation, expedited procedure for model or parameter changes and validation of model or parameter changes; the conditions to determine if the expedited procedures for extension of authorisation may apply; to further specify the changes to models and parameters that are likely to constitute a significant change; the operational and representativeness criteria for the active account requirement; the scope and details of the reporting by Union clearing members and clients to their competent authorities on their clearing activity in third-country CCPs and whilst providing the mechanisms triggering a review of the values of the clearing thresholds following significant price fluctuations in the underlying class of OTC derivatives to also review the scope of the hedging exemption and thresholds for the clearing obligation to apply; and the elements to be considered when laying down the admission criteria to a CCP. The Commission should adopt those regulatory technical standards by means of delegated acts pursuant to Article 290 of the Treaty on the Functioning of the European Union (TFEU) and in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

(48) To ensure uniform conditions for the implementation of this Regulation, the Commission should also be empowered to adopt implementing technical standards developed by ESMA with regard to the format of the required documents for applications and the format of the reporting by Union clearing members and clients to their competent authorities on their clearing activity in third-country CCPs. The Commission should adopt those implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010.

(49) To ensure ***that*** the list of third countries whose entities ▌ ***are not permitted to*** benefit from ▌ ***the intragroup*** exemptions***,*** despite ***those third countries*** not being identified ▌ ***as high-risk countries*** is relevant for the objectives of Regulation (EU) No 648/2012, to ensure the consistent harmonisation of the obligation to clear certain transactions in an account with an authorised CCP where ESMA undertakes an assessment pursuant to Article 25(2c) and to ensure ***that*** the list of non-material changes for the non-objection procedure to apply remains relevant, the power to adopt acts in accordance with Article 290▌ TFEU should be delegated to the Commission to adjust the transactions in scope of the obligation and to change the list of non-material changes. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[15]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

[15] OJ L 123, 12.5.2016, p. 1.

(50) Since the objectives of this Regulation, namely to increase the safety and efficiency of Union CCPs by improving their attractiveness, encouraging clearing in the Union and enhancing the cross-border consideration of risks cannot be sufficiently achieved by the Member States but can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(51) Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 should therefore be amended accordingly.

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) No 648/2012

Regulation (EU) No 648/2012 is amended as follows:

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‘(...) in Article 40, the following paragraph is added:

"Without prejudice to Article 1(4) and (5), and with the objective of facilitating central clearing by public sector entities ESMA shall, by ...[18 months from the date of entry into force of this amending Regulation], issue guidelines in accordance with Article 16 of (5)(EU) No 1095/2010 specifying the method to be used by CCPs authorised under Article 14 of this Regulation for the calculation of exposures and of the contributions, if any, to the CCPs' financial resources of public sector entities participating in such CCPs, duly taking account of the mandate of public sector entities";

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(0) in Article 1, paragraph 3 is deleted;

(1) Article 3 is replaced by the following:

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Article 3

Intragroup transactions

1. In relation to a non-financial counterparty, an intragroup transaction shall be an OTC derivative contract entered into with another counterparty which is part of the same group provided that both ***of the following conditions are met:***

(a) both counterparties are included in the same consolidation on a full basis and they are subject to appropriate centralised risk evaluation, measurement and control procedures;

(b) that counterparty is established in the Union or, if it is established in a third country, that third country is not identified under paragraph 4 nor in the delegated acts adopted pursuant to paragraph 5.

2. In relation to a financial counterparty, an intragroup transaction shall be any of the following:

(a) an OTC derivative contract entered into with another counterparty which is part of the same group, provided that all of the following conditions are met:

▌ ***(i)*** the financial counterparty is established in the Union or, if it is established in a third country, that third country is not ▌ ***identified under paragraph 4 nor in the delegated acts adopted*** pursuant to ▌ ***paragraph 5.***;

▌ ***(ii)*** the other counterparty is a financial counterparty, a financial holding company, a financial institution or an ancillary services undertaking subject to appropriate prudential requirements;

▌ ***(iii)*** both counterparties are included in the same consolidation on a full basis; ***and***

▌ ***(iv)*** both counterparties are subject to appropriate centralised risk evaluation, measurement and control procedures;

(b) an OTC derivative contract entered into with another counterparty where both counterparties are part of the same institutional protection scheme, referred to in Article 113(7) of Regulation (EU) No 575/2013, provided that the condition set out in point (a)(ii) of this paragraph is met;

(c) an OTC derivative contract entered into between credit institutions affiliated to the same central body or between such credit institution and the central body, as referred to in Article 10(1) of Regulation (EU) No 575/2013;

(d) an OTC derivative contract entered into with a non-financial counterparty which is part of the same group, provided ***that both of*** the following conditions are met:

(i) both counterparties to the derivative contract are included in the same consolidation on a full basis and are subject to appropriate centralised risk evaluation, measurement and control procedures;

(ii) the non-financial counterparty is established in the Union or, if it is established in a ***third country***, that third country is not ***identified*** under ***paragraph 4 nor in the delegated acts adopted pursuant to paragraph*** 5.

3. For the purposes of this Article, counterparties shall be considered included in the same consolidation when ***both counterparties are*** any of the following:

(a) included in a consolidation in accordance with Directive 2013/34/EU or International Financial Reporting Standards (IFRS) adopted pursuant to Regulation (EC) No 1606/2002 or, in relation to a group the parent undertaking of which has its head office in a third country, in accordance with generally accepted accounting principles of a third country determined to be equivalent to IFRS in accordance with Regulation (EC) No 1569/2007 or accounting standards of a third country the use of which is permitted in accordance with Article 4 of that Regulation;

(b) covered by the same consolidated supervision in accordance with Directive 2013/36/EU or, in relation to a group the parent undertaking of which has its head office in a third country, the same consolidated supervision by a third-country competent authority verified as equivalent to that governed by the principles laid down in Article 127 of ▌ ***that Directive***.

4. For the purposes of this Article, transactions with counterparties established in any of the following third countries shall not benefit from any of the exemptions for intragroup transactions:

(a) where the third country is ▌ ***identified*** as a high-risk third country that has strategic deficiencies in its regime on anti-money laundering and counter terrorist financing, ▌ ***pursuant to*** Article 9 of Directive (EU) 2015/849 of the European Parliament and of the Council[16];

(b) where the third country is listed in Annex I to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes[17]▌ .

5. Where appropriate ▌ ***due to identified issues in*** the legal, supervisory and enforcement arrangements of a third country ▌ ***and where those issues result in increased*** risks, including counterparty credit risk and legal risk, the Commission is empowered to adopt delegated acts in accordance with Article 82 to supplement this Regulation to identify the third countries whose entities ▌ ***are not permitted to*** benefit from any of the exemptions for intragroup transactions despite ***those third countries*** not being ▌ ***identified*** pursuant to paragraph 4.

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[16] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

[17] Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes and the Annexes thereto (OJ C 413 I, 12.10.2021, p. 1).

(2) in Article 4(1), the following subparagraph is added:

‘The obligation to clear all OTC derivative contracts ▌ ***shall*** not apply to contracts concluded in ▌ ***the situations*** referred to in the first subparagraph, point (a)(iv), between, on ***the*** one side, a financial counterparty that meets the conditions set out in Article 4a(1), second subparagraph, or a non-financial counterparty that meets the conditions set out in Article 10(1), second subparagraph, and, on the other side, a pension scheme arrangement established in a third country and operating on a national basis, provided that such entity or arrangement is authorised, supervised and recognised under national law and where its primary purpose is to provide retirement benefits and is exempted from the clearing obligation under its national law.;

’

(3) ▌ Article ▌ ***4a is amended as follows***:

(a) paragraph 1 is replaced by the following:

‘

1. Every 12 months, a financial counterparty taking positions in OTC derivative contracts may calculate the following positions:

(a) its uncleared positions in accordance with paragraph 3, first subparagraph;

(b) its aggregate month-end average positions in cleared and uncleared derivative contracts for the previous 12 months ('aggregate positions') in accordance with paragraph 3, second subparagraph.

Where a financial counterparty:

(a) does not calculate its uncleared positions, or where the result of the calculation of those uncleared positions under point (a) of the first subparagraph exceeds any of the clearing thresholds specified pursuant to Article 10(4), point (b); or

(b) does not calculate its aggregate positions, or where the result of the calculation of those aggregate positions under point (b) of the first subparagraph exceeds any of the clearing thresholds specified pursuant to paragraph 4,

that financial counterparty shall:

(a) immediately notify ESMA and the relevant competent authority thereof;

(b) establish clearing arrangements within four months after the notification referred to in point (a) of this subparagraph; and

(c) become subject to the clearing obligation referred to in Article 4 for all OTC derivative contracts pertaining to any class of OTC derivatives which is subject to the clearing obligation entered into or novated more than four months following the notification referred to in point (a) of this subparagraph.

The financial counterparty may delegate the task to notify ESMA under point (a) of the second subparagraph to any other entity within the group the financial counterparty belongs to. The financial counterparty remains legally liable for ensuring such notification has been made to ESMA.

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(b) paragraphs 3, 4 and 5 are replaced by the following:

3. In calculating the uncleared positions referred to in paragraph 1, first subparagraph, point (a), of this Article the financial counterparty shall include all OTC derivative contracts that are not cleared in a CCP authorised under Article 14 or recognised under Article 25, entered into by that financial counterparty or entered into by other entities within the group to which that financial counterparty belongs.

In calculating the aggregate positions referred to in paragraph 1, first subparagraph, point (b), the financial counterparty shall include all OTC derivative contracts entered into by that financial counterparty or entered into by other entities within the group to which that financial counterparty belongs.

Notwithstanding the first subparagraph, for UCITS and AIFs, the uncleared positions and the aggregate positions referred to in paragraph 1 shall be calculated at the level of the fund.

UCITS management companies which manage more than one UCITSs and AIFMs which manage more than one AIF shall be able to demonstrate to the relevant competent authority that the calculation of positions at the fund level does not lead to:

(a) a systematic underestimation of the positions of any of the funds they manage or the positions of the manager; and

(b) a circumvention of the clearing obligation.

The relevant competent authorities of the financial counterparty and of the other entities within the group shall establish cooperation procedures to ensure the effective calculation of the positions at the group level.

4. ESMA shall develop draft regulatory technical standards, after having consulted the ESRB and other relevant authorities, specifying the value of the clearing thresholds applicable to aggregate positions where necessary to ensure a prudent coverage of financial counterparties under the clearing obligation.

Where ESMA reviews the clearing thresholds specified pursuant to point (b) of Article 10(4), ESMA shall also review the clearing threshold specified pursuant to the first subparagraph of this paragraph.

ESMA shall submit those draft regulatory technical standards to the Commission by … [PO: please insert the date =12 months from the date of entry into force of this Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

5. For the purposes of this Article and Article 10, 'uncleared position' means aggregate month-end average position for the previous 12 months in derivative contracts that are not cleared by a CCP authorised under Article 14 or recognised under Article 25.

(c) paragraph 2 is replaced by the following:

2. A financial counterparty that is subject to the clearing obligation referred to in Article 4 on 17 June 2019 or that becomes subject to the clearing obligation in accordance with the second subparagraph of paragraph 1, shall remain subject to that obligation and shall continue clearing until that financial counterparty demonstrates to the relevant competent authority that its uncleared position does not exceed the clearing threshold specified pursuant to paragraph 4 of this Article or Article 10(4), point (b).

The financial counterparty shall be able to demonstrate to the relevant competent authority that the calculation of the uncleared or aggregate position, as applicable, does not lead to a systematic underestimation of that position.

(...) the following article is inserted:

'Article 4aa

Post-trade risk reduction services

‘

1. Without prejudice to risk-mitigation techniques under Article 11, the clearing obligation laid down in Article 4(1) shall not apply to OTC derivative contracts that are initiated and concluded as the result of an eligible post-trade risk reduction exercise (‘PTRR transaction’) carried out pursuant to paragraphs 2 to 4 of this Article.

2. A PTRR transaction shall only be exempted from the clearing obligation laid down in Article 4(1) where:

(a) the entity providing the post-trade risk reduction exercise (‘PTRR service provider‘) complies with the requirements set out under paragraphs 3 and 4; and

(b) each participant to the post-trade risk reduction exercise (‘PTRR exercise‘) complies with the requirements under paragraph 3.

3. A PTRR exercise shall:

(a) be performed by an entity authorised in accordance with Article 7 of the Directive 2014/65/EU that is independent of the counterparties to the OTC derivative contracts included in the PTRR exercise;

(aa) achieve a reduction in risk in each of the portfolios submitted to the PTRR exercise;

(ab) be accepted in full and, as a result, the participants to the PTRR exercise shall not be able to choose which trades to execute under such exercise;

(ac) be open for participation only to the entities that initially submitted a portfolio to the PTTR exercise.

(b) be market risk neutral;

(c) not contribute to price formation;

(d) take the form of a compression, rebalancing or optimisation exercise or a combination thereof;

(e) be executed on a bilateral or multilateral basis;

4. A PTRR service provider shall:

(a) comply with the pre-agreed rules of the PTRR exercise, including methods and algorithms in prescheduled cycles, and act in a reasonable, transparent and non-discriminatory manner;

(b) ensure that entities participating in a PTRR exercise have no influence over the result of the exercise;

(c) undertake regular compression exercises where PTRR exercises result in new PTRR transactions;

(d) keep complete and accurate records of all transactions executed pursuant to a PTRR exercise, including:

(i) information on transactions entered into as part of the exercise,

(ii) transactions resulting from the PTTR exercise either as modified transactions or as new transactions, and

(iii) the overall change in the risk of the different portfolios included in the exercise;

(e) upon request make available, without undue delay, the records referred to in point (d) to the relevant competent authority and to ESMA; and

(f) monitor the transactions resulting from the PTRR exercise in order to ensure, to the extent possible, that the PTRR exercise does not result in any misuse or circumvention of the clearing obligation.

5. The competent authority which has authorised the PTRR service provider shall, before PTRR transactions resulting from a PTRR exercise provided by that provider may be exempted from the clearing obligation in accordance with paragraph 1 without undue delay do both of the following:

(a) notify the name of the PTRR service provider to ESMA;

(b) share with ESMA its assessment of how the conditions under paragraphs 3 and 4 are complied with by the PTTR service provider.

The competent authority shall, at least on an annual basis, confirm to ESMA that the PTRR service provider continues to comply with the conditions referred to in the first subparagraph, point (b), or that the provider is no longer providing PTRR services, as applicable.

ESMA shall transmit the information received under the first and second subparagraphs of this paragraph to the authorities of each Member State with supervisory powers in relation to the clearing obligation laid down in Article 4(1).

The competent authority shall, without undue delay, notify ESMA where a PTRR service provider no longer meets the conditions of paragraphs 3 and 4. Upon such notification, the PTRR service provider shall be removed from the list referred to in the fifth subparagraph of this paragraph. From the date the PTRR service provider has been removed from that list, PTRR transactions resulting from a PTRR exercise provided by that provider shall no longer be exempted from the clearing obligation in accordance with paragraph 1.

ESMA shall, on a yearly basis, publish a list of PTRR service providers notified to ESMA under the first subparagraph, point (a).

(6) ESMA shall develop draft regulatory technical standards to further specify the elements and conditions set out in paragraphs 3 and 4 and the following other conditions or characteristics of PTRR exercises:

(a) what constitutes market risk neutrality in a PTRR exercise;

(b) the required risk reduction in submitted portfolios;

(c) the possible inclusion of mixed portfolios containing both cleared and uncleared transactions in the same exercise and the conditions under which that would be allowed;

(d) requirements regarding the management of the PTRR exercise;

(e) requirements for different types of PTRR services;

(f) the process for monitoring the application of the exemption granted;

(g) the criteria to apply when assessing whether the clearing obligation is circumvented.

ESMA shall submit those draft regulatory technical standards to the Commission by ...[12 months from the date of entry into force of this amending Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

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(3c) in Article 6(2), the following point is added:

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(g) the proportion, as of the end of the calendar year, of derivatives contracts cleared in CCPs authorised in accordance with Article 14 compared with derivatives contracts cleared in CCPs recognised in accordance with Article25, presented on an aggregated basis and per asset class.

’

(4) the following Articles ▌ are inserted:

‘

Article 7a

Active Account

1. Financial counterparties ▌ ***and*** non-financial counterparties that are subject to the clearing obligation in accordance with Articles 4a and 10 ***on the ...[date of entry into force of this amending Regulation], or become subject to the clearing obligation thereafter, and that exceed the clearing threshold in***▌ any of the categories of the derivative contracts referred to in paragraph 2***, in an individual category listed in that paragraph or on aggregate across all categories listed in that paragraph,*** shall ***hold, for these categories of derivative contracts referred to in paragraph 2, at least one active account at a CCP authorised under Article 14, where clearing services for the derivatives concerned are provided by that CCP, and*** clear at least a ▌ ***representative number of trades in this account. Where a financial counterparty or a non-financial counterparty becomes subject to the obligation to hold an active account in accordance with the first subparagraph, that counterparty shall notify ESMA, and its relevant competent authority thereof and shall establish such an active account within six months of becoming subject to the obligation.***

1a. In determining its obligations in relation to paragraph 1, a counterparty belonging to a group subject to consolidated supervision in the Union shall consider all derivative contracts referred to in paragraph 2 that are cleared by that counterparty or by other entities within the group to which that counterparty belongs with the exception of intragroup transactions.

1aa. Counterparties that become subject to the obligation set out in the first subparagraph of paragraph 1 shall ensure that all of the following conditions are met:

(a) the account shall be permanently functional, including with IT connectivity, internal processes and legal documentation associated to the account being in place;

(b) the counterparty has available systems and resources so that it is operationally able to use the account, even at short notice, for large volumes of derivative contracts referred to in paragraph 2 at all times and able to receive a large flow of transactions from positions held at a clearing service of substantial systemic importance pursuant to Article 25(2c) in a short period of time;

(c) all new trades of the respective counterparty in the derivative contracts referred to in paragraph 2 can be cleared in the account at all times;

(d) the counterparty shall clear in the active account trades which shall be representative of derivative contracts referred to in paragraph 2 that are cleared at a clearing service of substantial systemic importance pursuant to Article 25(2c) during the reference period.

This representativeness obligation shall be assessed according to the following criteria:

(a) the different classes of derivative contracts;

(b) the maturity of the trades;

(c) the trade sizes.

The representativeness obligation in point d) of the previous subparagraph shall not apply to counterparties with a notional clearing volume outstanding of less than six billion euros in derivative contracts referred to in paragraph 2.

The assessment of the representativeness obligation shall be based on subcategories. For each class of derivative contracts, the number of subcategories will result from the combination of the different sizes of the trades and the maturity ranges.

The requirements referred to in points (a) to (c) of the first subparagraph of this paragraph shall be fulfilled by the counterparty within 6 months of becoming subject to the obligation set out in paragraph 1 of this Article and that counterparty shall regularly report to its competent authority and ESMA in accordance with Article 7aa. The requirements shall be regularly stress-tested at least once a year.

For the representativeness obligation in point (d) to be fulfilled, counterparties shall clear, on annual average basis, at least five trades in each of the most relevant subcategories per class of derivative contracts and per reference period defined in accordance with the third subparagraph of paragraph 3 of this Article. Where the resulting number of trades exceeds half of that counterparty's total trades for the preceding twelve months, in which case the representativeness obligation in point d) shall be considered fulfilled where that counterparty clears at least one trade in each of the most relevant subcategories per class of derivative contracts per reference period.

The representativeness obligation shall not apply to the provision of client clearing services and the calculation of the notional clearing volume outstanding of a counterparty referred to in the fourth subparagraph of paragraph 3 shall not include its client clearing activities.

1ab. Financial counterparties and non-financial counterparties that are subject to the obligation referred to in paragraph 1 of this Article and that clear at least 85% of their derivative contracts belonging to the categories referred to in paragraph 2 of this Article at a CCP authorised under Article 14 shall be exempt from the requirements referred to in points (a) to (c) of the first subparagraph of paragraph 1aa of this Article, the requirement referred to in the fifth subparagraph of paragraph 1aa of this Article and the additional reporting requirement referred to in Article 7aa(2).

2. The categories of derivative contracts subject to the obligation referred to in paragraph 1 shall be any of the following:

(a) interest rate derivatives denominated in euro and Polish zloty;

(b) ▌ ***Short-Term Interest Rate Derivatives (STIR***) denominated in euro▌ **.**

2a. Where ESMA undertakes an assessment pursuant to Article 25(2c) and concludes that certain services or activities provided by Tier 2 CCPs are of substantial systemic importance for the Union or one or more of its Member States, or that services or activities that were previously identified by ESMA as being of substantial systemic importance for the Union or one or more of its Member States no longer are, the list of contracts subject to the active account obligation may be amended.

In order to amend the list of contracts subject to active account obligations, ESMA, after consulting the ESRB and in agreement with the central banks of issue, will submit to the Commission a thorough and comprehensive cost benefit analysis, in line with the quantitative technical assessment specified in Article 25.2c. letter c, of the first subparagraph, as relevant, including effects on other EU currencies, and assessing the possible effects of extending the active account obligations to the new types of contracts, and an opinion in connection to this assessment. The agreement of the central banks of issue shall only relate to the contracts denominated in the currency they issue.

Where ESMA undertakes the assessment and issues an opinion concluding that the list of contracts should be amended, the Commission is empowered to adopt a delegated act to amend the list of derivative contracts under the first subparagraph of this paragraph in accordance with Article 82.

3. ▌***ESMA shall develop, in cooperation with EBA, EIOPA and the ESRB and after consulting the ESCB, draft regulatory technical standards further specifying the conditions under points a), b) and c) of paragraph 1aa, the conditions of the stress testing thereof and the details of the reporting in accordance with Article 7aa. In developing these technical standards, ESMA*** shall ▌***take into account the size of the portfolios of different counterparties according to the third subparagraph of this*** paragraph***, so that counterparties with more trades in their portfolios shall be subject to more stringent operational conditions and reporting requirements than counterparties with fewer trades***▌.

Regarding the criteria specified under point d) of paragraph 1aa, ESMA shall specify the different classes of derivative contracts, subject to a limit of three classes, the different maturity ranges, subject to a limit of four maturity ranges, and the different trade size ranges, subject to a limit of three trade size ranges, to ensure the representativeness of the derivative contracts to be cleared through the active accounts.

ESMA shall set the number, which shall not be higher than five, of most relevant subcategories per class of derivative contracts to be represented in the active account. The most relevant subcategories shall be those containing the highest number of trades during the reference period.

ESMA shall also set the duration of the reference period, which shall not be lower than six months for counterparties with a notional clearing volume outstanding of less than 100 billion euro in derivative contracts referred to in paragraph 2 and not lower than one month for counterparties with a notional clearing volume outstanding of more than 100 billion euro in derivative contracts referred to in paragraph 2.

ESMA shall submit those draft regulatory technical standards to the Commission by 6 months after the date of entry into force of this amending Regulation.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

4. ▌***Competent authorities shall monitor and calculate on an entity, group and aggregate average basis the level of activity in the derivative contracts*** referred to in paragraph 2 ▌***of this Article and*** shall ▌transmit that information to▌ the Joint Monitoring Mechanism referred to in Article 23c.

Without prejudice to the right of Member States to provide for and impose criminal penalties, where a financial or non-financial counterparty is found to be in breach of its obligations under this Article its competent authority shall, by decision, impose administrative penalties or periodic penalty payments, or request competent judicial authorities to impose penalties or periodic penalty payments, in order to compel that counterparty to put an end to its infringement.

The periodic penalty payment referred to in the second subparagraph shall be effective and proportionate, not exceeding a maximum of 3 % of the average daily turnover in the preceding business year. It shall be imposed for each day of delay, and calculated from the date stipulated in the decision imposing the periodic penalty payment.

The periodic penalty payment referred to in the second subparagraph shall be imposed for a maximum period of six months following the notification of the competent authority's decision. Following the end of that period, the competent authority shall review the measure and extend it if necessary.

5. ▌ ***By ... [18 months after the date of entry into force of this amending Regulation] ESMA, in close*** cooperation with the ▌ ***ESCB and the ESRB,*** and after consulting the ▌ ***Joint Monitoring Mechanism, shall assess the effectiveness of the provisions under this Article in mitigating the financial stability risks for the Union represented by the exposures of EU counterparties to those Tier 2 CCPs offering services of substantial systemic importance pursuant to Article 25(2c).***

ESMA shall ▌ ***accompany that assessment with a report*** to the Commission***, the Council and the European Parliament, including a fully reasoned impact assessment on complementing measures, including quantitative thresholds***▌ .

▌ ***Notwithstanding the provisions under the first subparagraph, ESMA shall send its assessment and recommendations at any point in time following the receipt of a formal notification by the Joint Monitoring Mechanism, indicating the likely materialisation of financial stability risks in the Union as a result of specific circumstances triggering an event with systemic implications***.

Within six months from receiving the ESMA report, the Commission shall prepare its own report which may be accompanied, where appropriate, by a legislative proposal.

Article 7aa

1. A financial counterparty or a non-financial counterparty that is subject to the obligation in Article 7a shall calculate its activities and risk exposures in the categories of derivative contracts referred to in paragraph 2 of Article 7a, and report every 6 months to its competent authority, the information necessary to assess compliance with that obligation. The competent authority shall transmit this information to ESMA without undue delay.

Those counterparties shall use the information reported under Article 9 where relevant. The reporting shall also include a demonstration to the competent authority that the legal documentation, technological connectivity and internal processes associated to the active accounts are in place.

2. Financial counterparties and non-financial counterparties subject to the obligation in paragraph 1 which hold, for the derivative contracts referred to in paragraph 2 of Article 7a, accounts at a Tier 2 CCP in addition to active accounts, shall also report every 6 months to their competent authority , their resources and systems in place to ensure the condition under paragraph 1aa, point (b), is met. The competent authority shall transmit this information to ESMA without undue delay.

3. The competent authorities referred to in the first paragraph shall ensure that the financial and non-financial counterparties subject to the requirement referred to in Article 7a take the appropriate steps to meet that requirement, including using their supervisory powers under their sectoral legislation, where appropriate, or the penalties referred to in Article 12 of Regulation (EU) 648/2012 where necessary. Competent authorities may require more frequent reporting in particular where, based on the information reported, insufficient steps have been taken to meet the requirements set out in this Regulation as regards active accounts.

Article 7b

Information on ***the provision of*** clearing services

1. Clearing members and clients that provide clearing services both at a CCP authorised under Article 14 and at a CCP recognised under Article 25 shall▌ ***inform*** their clients ▌ ***of*** the possibility to clear ▌ ***their contracts at a CCPs*** authorised under Article 14 ***where the offer is available***.

2. ***Notwithstanding Article 4(3a),*** clearing members and clients that ▌ ***provide clearing services to clients shall also disclose, in a clear and understandable manner, for each CCP at which they provide clearing services, the fees to be charged to such clients for the provision of a clearing service and any other fees charged including fees charged to the client which pass on costs, and other associated costs related to the provision of clearing services costs associated with clearing services***.

3. ▌ ***Clearing members and clients that provide clearing services shall provide*** the information▌ ***in paragraph 1:***

(a) when they establish a client clearing relationship with a client; and

(b) at least on a quarterly basis.

4. ESMA shall***, in consultation with EBA,*** develop draft ▌***regulatory*** technical standards ***further*** specifying the ▌***type of*** information▌ referred to in paragraph 2.

ESMA shall submit those draft ▌***regulatory*** technical standards to the Commission by ▌[▌ 12 months after the date of entry into force of this ***amending*** Regulation].

Power is ▌***delegated to*** the Commission to adopt the ▌***regulatory*** technical standards referred to in the first subparagraph in accordance with ▌***Articles 10 to 14*** of Regulation (EU) No 1095/2010.▌

(4a) the following article is inserted:

Article 7ba

Information on clearing services in CCPs recognised under Article 25

1. Clearing members and clients that clear in a CCP recognised under Article 25 shall report their clearing activity as follows:

(a) where they are established in the Union but not part of a group subject to consolidated supervision in the Union, they shall report to their competent authorities;

(b) where they are part of a group subject to consolidated supervision in the Union, the EU parent undertaking of that group shall report such clearing activity on a consolidated basis to its competent authority.

The report shall contain the scope of the clearing activity in the recognised CCP on an annual basis, specifying all of the following:

(a) the type of financial instruments or non-financial instruments contracts cleared;

(b) the average values cleared over one year per Union currency and per asset class;

(c) the amount of margins collected;

(d) the default fund contributions;

(e) the largest payment obligation.

That competent authority shall promptly transmit that information to ESMA and the Joint Monitoring Mechanism referred to in Article 23c.

2 ESMA shall, in cooperation with EBA, EIOPA and the ESRB and after consulting the members of the ESCB, develop draft regulatory technical standards further specifying the content of the information to be reported and the level of detail of the information to be provided in accordance with paragraph 1 of this Article, taking into account the existing reporting channels and the information already available to ESMA under the existing reporting framework, including under Article 9.

ESMA shall submit those draft regulatory technical standards to the Commission by …[12 months from the date of entry into force of this amending Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

3. ESMA shall develop draft implementing technical standards specifying the format of the information to be submitted to the competent authority referred to in paragraph 2 taking into account existing reporting channels.

ESMA shall submit those draft implementing technical standards to the Commission by …[12 months from the date of entry into force of this amending Regulation].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

(4aa) the following article is inserted:

'Article 7c

Information on CCPs established in the Union

'

1. CCPs authorised under Article 14 shall report on a monthly basis, via the central database referred to in Article 17c, to ESMA at least the following information:

(a) the values and volumes cleared per currency and per asset class, including the value of positions held by clearing participants;

(b) the CCP's investments, capital, including dedicated own resources used in the default waterfall or referred to in Article 45(4) of this Regulation and in Article 9(14) of Regulation (EU) 2021/23;

(c) the clearing members' margin requirements, default fund contributions, and contractually committed resources in the default management or in the recovery plans referred to in Article 9 of Regulation (EU) 2021/23;

(d) the adequacy of the margin and default fund contributions and waterfall resources;

(e) the CCP's available liquid resources and the results of the liquidity stress-testing;

(f) the details of the clearing members, clients holding individually segregated accounts, third parties providing major activities linked to the CCP's risk management, material liquidity providers connected to the CCP, as well as interoperable and linked CCPs;

(fa) any change that the CCP has directly implemented in accordance with Article 17ba.

The members of the college of the CCP referred to in Article 18 shall have access to the information provided in accordance with this Article via the central database.

2. ESMA shall, in close cooperation with EBA and the ESCB, develop draft regulatory technical standards further specifying the details and content of the information to be provided under paragraph 1.

ESMA shall submit those draft regulatory technical standards to the Commission by … [12 months from the date of entry into force of this amending Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

(3) To ensure uniform conditions of application of paragraph 1, ESMA shall develop draft implementing technical standards specifying the data standards and formats for the information to be reported.

ESMA shall submit those draft implementing technical standards to the Commission by … [12 months from the date of entry into force of this amending Regulation].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.;

,

(5) Article 9 is amended as follows:

ii. ***in paragraph 1,*** the following subparagraph is inserted:

Where a non-financial counterparty ▌***that meets the conditions set out*** ▌ in Article 10***(1), second subparagraph,*** that is part of a group benefits from the exemption set out in the third subparagraph of this paragraph, the EU parent undertaking of that counterparty shall report the net aggregate positions by class of derivatives of that counterparty to its competent authority on a weekly basis. For a counterparty established in the Union, the competent authority of the parent undertaking shall share the information with ESMA and with the competent authority of that counterparty.

- point (a) is replaced by the following:

“

(a) that ▌ ***third-country*** entity would be qualified as a financial counterparty if it were established in the Union; and

”

- point (b) is deleted.

(ba) paragraph 1e is replaced by the following:

1e. Counterparties and CCPs that are required to report the details of derivative contracts shall ensure that such details are reported correctly and without duplication, including where the reporting obligation has been delegated in accordance with paragraph 1f.

- the following paragraph is added:

‘

Financial counterparties, non-financial counterparties and CCPs subject to the reporting obligation shall put in place appropriate procedures and arrangements to ensure the quality of the data they report in accordance with this Article.

By ... [12 months from the date of entry into force of this amending Regulation] ESMA, in cooperation with EBA and EIOPA, shall draft guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 further specifying the procedures and arrangements referred to in the first subparagraph.

Article 12 is replaced by the following:

Article 12

Penalties

1. Member States shall lay down the rules on penalties applicable to infringements of the rules under this Title and shall take all measures necessary to ensure that they are implemented. Those penalties shall include at least administrative fines. The penalties provided for shall be effective, proportionate and dissuasive.

1a. Without prejudice to paragraph 1 and to the right of Member States to provide for and impose criminal penalties, the competent authority shall, by decision, impose administrative penalties or periodic penalty payments, or request competent judicial authorities to impose penalties or periodic penalty payments, on the entities subject to the reporting obligation pursuant to Article 9 where the details reported repeatedly contain manifest errors.

The periodic penalty payment shall not exceed a maximum of 1% of the average daily turnover for the preceding business year which, in the case of an ongoing breach, the entity shall be obliged to pay per day of breach until compliance with the obligation is restored. The periodic penalty payment may be imposed for a period of up to six months from the date set out in the decision of the competent authority requiring the termination of a breach and imposing the periodic penalty payment.

By … [12 months from the date of entry into force of this amending Regulation] ESMA shall, in cooperation with EBA, EIOPA and the ESRB, develop draft regulatory technical standards specifying what constitutes systematic manifest errors as referred to in the first subparagraph of this paragraph.

ESMA shall submit those draft regulatory technical standards to the Commission by [12 months after the date of entry into force of this Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the third subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

2. Member States shall ensure that the competent authorities responsible for the supervision of financial, and, where appropriate, non-financial counterparties disclose every penalty that has been imposed for infringements of Articles 4, 5 and 7 to 11 to the public, unless such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved. Member States shall, at regular intervals, publish assessment reports on the effectiveness of the penalty rules being applied. Such disclosure and publication shall not contain personal data within the meaning of Article 2(a) of Directive 95/46/EC.

By 17 February 2013, the Member States shall notify the rules referred to in paragraph 1 to the Commission. They shall notify the Commission of any subsequent amendment thereto without delay.

3. An infringement of the rules under this Title shall not affect the validity of an OTC derivative contract or the possibility for the parties to enforce the provisions of an OTC derivative contract. An infringement of the rules under this Title shall not give rise to any right to compensation from a party to an OTC derivative contract.

By … [24 months from the date of entry into force of this amending Regulation] ESMA shall submit a report to the Commission on whether the changes under Article 9have resulted in a sufficiently clear improvement in the conduct of ESMA's tasks and whether they have had an excessive negative impact on market participants. The report shall be accompanied by a cost-benefit analysis.

4. By way of derogation from paragraph 1 and 1a, where the legal system of a Member State does not provide for administrative penalties, this Article may be applied in such a manner that the penalty is initiated by the competent authority and imposed by judicial authorities, while ensuring that those legal remedies are effective and have an equivalent effect to the administrative penalties imposed by competent authorities. In any event, the penalties imposed shall be effective, proportionate and dissuasive. Those Member States shall notify to the Commission the provisions of their laws which they adopt pursuant to this paragraph by [OP please insert date = date of transposition of this amending Directive] and, without delay, any subsequent amendment law or amendment affecting them.

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(6) in Article 10, paragraphs ***1*** to 5 are replaced by the following:

1. Every 12 months, a non-financial counterparty taking positions in OTC derivative contracts may calculate its uncleared positions in accordance with paragraph 3.

Where a non-financial counterparty does not calculate its uncleared positions, or where the result of the calculation of those uncleared positions in respect of one or more classes of OTC derivatives exceeds the clearing thresholds specified pursuant to paragraph 4, first subparagraph, point (b), that non-financial counterparty shall:

(a) immediately notify ESMA and the relevant competent authority thereof, and, where relevant, indicate the period used for the calculation;

(b) establish clearing arrangements within four months of the notification referred to in point (a) of this subparagraph;

(c) become subject to the clearing obligation referred to in Article 4 for the OTC derivative contracts entered into or novated more than four months following the notification referred to in point (a) of this subparagraph that pertain to those asset classes in respect of which the result of the calculation exceeds the clearing thresholds or, where the non-financial counterparty has not calculated its position, that pertain to any class of OTC derivatives which is subject to the clearing obligation.

2. A non-financial counterparty that is subject to the clearing obligation referred to in Article 4 on 17 June 2019 or that becomes subject to the clearing obligation in accordance with the second subparagraph of paragraph 1 of this Article, shall remain subject to that obligation and shall continue clearing until that non-financial counterparty demonstrates to the relevant competent authority that its uncleared position does not exceed the clearing threshold specified pursuant to paragraph 4, point (b), of this Article.

The non-financial counterparty shall be able to demonstrate to the relevant competent authority that the calculation of the uncleared position does not lead to a systematic underestimation of that position.

‘

2a. The relevant competent authorities of the non-financial counterparty and of the other entities within the group shall establish cooperation procedures to ensure the effective calculation of the positions and evaluate and assess the level of exposure in OTC derivative contracts at the group level.

3. In calculating the ***uncleared*** positions referred to in paragraph 1 ***of this Article***, the non-financial counterparty shall include all▌ OTC derivative contracts that are not cleared in a CCP authorised under Article 14 or recognised under Article 25 entered into by the non-financial counterparty which are not objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the non-financial counterparty ***or of the group to which it belongs***.

4. ESMA shall develop draft regulatory technical standards, after having consulted the ESRB and other relevant authorities, specifying all of the following:

(a) ***the*** criteria for establishing which OTC derivative contracts are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity referred to in paragraph 3;

(b) ***the*** values of the clearing thresholds ***for uncleared positions***, which are determined taking into account the ***calculation methodology set out in paragraph 3 of this Article and Article 4a(3), the*** systemic relevance of the ▌***sum of net positions and*** exposures per counterparty and per class of OTC derivatives;

(c) ▌ ***the mechanisms triggering a review of the values of the clearing thresholds, following significant price fluctuations in the underlying class of OTC derivatives or a significant increase of financial stability risks.***

ESMA shall submit those draft regulatory technical standards to the Commission by … [▌ 12 months from the date of entry into force of this ***amending*** Regulation]▌

Power is delegated to the Commission to ▌ ***supplement this Regulation by adopting*** the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

ESMA shall▌ review, in consultation with the ESRB, the clearing thresholds referred to in the first subparagraph, point (b) ***and in Article 4a(4)***, taking into account, in particular, the interconnectedness of financial counterparties ***and the need to ensure a prudent coverage of financial counterparties under the clearing obligation***. That review shall be conducted at least every 2 years, and earlier where necessary or where required under the mechanism established under the first subparagraph, point ▌ ***(d), and, as a result of that review ESMA*** may propose changes to the thresholds as specified in the first subparagraph, ▌ ***points (b) and (c)***, by the regulatory technical standards adopted pursuant to this Article. When reviewing the clearing thresholds, ESMA shall consider whether the classes of OTC derivatives, for which a clearing threshold has been set, are still the relevant classes of OTC derivatives or if new classes should be introduced.

That periodic review shall be accompanied by a report by ESMA on the subject.

5. Each Member State shall designate an authority responsible for ensuring that the obligations of non-financial counterparties under this Regulation are met. That authority, in cooperation with the other authorities responsible for the other entities of the group, shall report to ESMA at least every two years, and more frequently where an emergency situation is identified under Article 24 on the outcome of the assessment on the level of exposure in OTC derivatives of the non-financial counterparties it is responsible for. The authority responsible for the EU parent company of the group to which the non-financial counterparty belongs shall report to ESMA, at least every 2 years, on the outcome of the assessment of the level of exposure in OTC derivatives of the group.

At least every ▌ ***two*** years ***from the day of entry into force of this amending Regulation***, ESMA shall present a report to the European Parliament, the Council and the Commission on the activities of Union non-financial counterparties in OTC derivatives, identifying areas where there is a lack of convergence and coherence in the application of this Regulation as well as potential risks to the financial stability of the Union.;

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(7) Article 11 is amended as follows:

(a) in paragraph 2, the following subparagraph is added:

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‘A non-financial counterparty ▌subject ▌ ***to that becomes*** the obligations laid down in the first subparagraph shall set up the necessary arrangements to comply with those obligations within four months following the notification referred to in Article 10(1), second subparagraph, point (a). A non-financial counterparty shall be exempted from those obligations for contracts entered into during the four months following that notification.***’***;

’

(b) in paragraph 3, the following subparagraphs are added:

‘***Financial counterparties shall have risk-management procedures that require the timely, accurate and appropriately segregated exchange of collateral with respect to OTC derivative contracts that are entered into on or after 16 August 2012. Non-financial counterparties referred to in Article 10 shall have risk-management procedures that require the timely, accurate and appropriately segregated exchange of collateral with respect to OTC derivative contracts that are entered into on or after the clearing threshold is exceeded.***

A non-financial counterparty becoming subject to the obligations set out in the first subparagraph shall set up the necessary arrangements to comply with those obligations within four months following the notification referred to in Article 10(1), second subparagraph, point (a). A non-financial counterparty shall be exempted from those obligations for contracts entered into during the four months following that notification.

▌ ***Financial counterparties and*** non-financial ▌ ***counterparties referred to in Article 10 shall apply for authorisation from their competent authorities before using, or adopting a change to, a model for initial margin calculation with regard to risk management procedures laid down*** in the first subparagraph***. In applying for authorisation, counterparties*** shall ▌ ***provide their competent authorities, via the central database referred to in Article 17c, with all relevant information regarding the risk management procedures referred to in the first subparagraph.*** Those ▌ ***competent authorities shall grant or refuse such authorisation within*** ▌ ***6 months from the receipt of the application for a new model and*** within ▌ ▌ ***3*** months ▌ ***from the receipt of the application for a change to an already authorised model.***

Where the model referred to in ***the third subparagraph of this paragraph is a pro-forma model, the counterparty shall apply for the validation of the pro-forma model to EBA and shall provide EBA with all relevant information referred to in the third*** subparagraph ***of this paragraph via the central database referred to in Article 17c. In addition, the*** counterparty shall ***provide EBA with the information on the outstanding notional amount referred to in paragraph 12a via the central database.***

Where the model referred to in the third subparagraph of this paragraph is based on a pro-forma model, the competent authorities may grant the authorisation only if the pro-forma model has been validated by EBA.

EBA***, in cooperation with ESMA and EIOPA,*** may issue guidelines or recommendations with a view to ensure a uniform application ***and authorisation process*** of the risk-management procedures referred to in the first subparagraph in accordance with the procedure laid down in Article 16 of Regulation (EU) No 1095/2010.

(ba) the following paragraph is inserted:

‘

By way of derogation from paragraph 3, single-stock options and equity index options not cleared by a CCP shall be exempted from risk-management procedures requiring the timely, accurate and appropriately segregated exchange of collateral.

For the purpose of first subparagraph of this paragraph, ESMA, in cooperation with EBA and EIOPA, shall monitor all of the following:

(a) regulatory developments in other jurisdictions in relation to the treatment of single-stock options and equity index options;

(b) the impact of the derogation laid down in the first subparagraph on the financial stability of the Union or of one or more of its Member States;

(c) the development of exposures in single-stock options and equity index options not cleared by a CCP.

At least every three years from ...[date of entry into force of this amending Regulation], ESMA, in cooperation with EBA and EIOPA, shall report its findings to the Commission.

Within one year of the date of receipt of the report referred to in the second subparagraph, the Commission shall assess whether:

(a) international developments have led to more convergence in the treatment of single stock options and equity index options; and

(b) the derogation laid down in the first subparagraph endangers the financial stability of the Union or of one or more of its Member States.

The Commission is empowered to adopt a delegated act in accordance with Article 82, to delete the derogation laid down in the first subparagraph by amending this Regulation following an adaptation period. The adaptation period shall not exceed two years.

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(ba) a new paragraph 12a is inserted:

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12a EBA shall set up a central validation function for the elements and general aspects of pro-forma models, and changes thereto, used or to be used by financial counterparties and non-financial counterparties referred to in Article 10 for the purpose of complying with the requirements set out in paragraph 3. In its role as a central validator, EBA shall validate the general elements and aspects of those models, including their calibration, design and coverage of instruments, assets classes and risk factors. EBA shall grant or refuse such validation within 6 months from the receipt of the application for validation referred to in the fourth subparagraph of paragraph 3 of this Article for a new model and within 3 months from the receipt of the application for a change to an already authorised model. To facilitate EBA's validation work, developers of those models shall, upon its request, submit to EBA all the necessary information and documentation.

EBA shall collect feedback from ESMA, EIOPA, and the competent authorities responsible for the supervision of counterparties using the pro-forma models subject to validation in accordance with the first subparagraph, including on the performance of those models, and shall coordinate their views with the aim of developing consensus on the general elements and aspects of those models. EBA shall serve as the main point of contact on discussions with market participants and developers of those models.

EBA shall assist competent authorities referred to in the second subparagraph of this paragraph in their authorisation processes regarding the general aspects of the implementation of those models under paragraph 3. To this end, EBA shall prepare a yearly report on the relevant aspects of its validation work, including the verification of the calibration of those models and the analysis of the issues reported. Where it deems it necessary, EBA shall issue, in cooperation with ESMA and EIOPA, recommendations in accordance with Article 16 of Regulation (EU) No 1093/2010 addressed to those competent authorities. In order to assist EBA in drafting the reports and recommendations, competent authorities shall provide EBA, upon its request, with the information collected during their initial and ongoing entity-level authorisation process of those models, or changes thereto.

Competent authorities shall be solely responsible for authorising the use of those models, or changes thereto, at the supervised entity level.

EBA shall charge an annual fee, per pro-forma model, to financial counterparties and non-financial counterparties referred to in Article 10 using the pro-forma models validated by EBA under the first subparagraph. Competent authorities shall report to EBA the financial counterparties and non-financial counter parties that implement models subject to the validation process under the first subparagraph. The fee shall be proportionate to the monthly average outstanding notional amount of non-centrally cleared OTC derivatives over the last 12 months of the counterparties concerned using the pro-forma models validated by EBA and shall be assigned to cover all costs incurred by EBA for the performance of its tasks in accordance with the first subparagraph.

For the purposes of this Article, 'pro-forma model' means an initial margin model established, published, and revised through market-led initiatives.

The Commission shall adopt a delegated act in accordance with Article 82 in order to supplement this Regulation to set out both of the following:

(a) the method for the determination of the amount of the fees;

(b) the modalities of the payment of the fees.

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(c) ▌paragraph 15▌ ***is amended as follows***

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i. first subparagraph, point (aa) is replaced by the following:

(i) in the first subparagraph, point (aa) is replaced by the following:

‘

(aa) the supervisory procedures, to ensure initial and ongoing validation of the risk-management procedures referred to in paragraph 3, applied by credit institutions authorised in accordance with Directive 2013/36/EU and investment firms authorised in accordance with Directive 2014/65/EU that have, or belong to a group that has a monthly average outstanding notional amount of non-centrally cleared OTC derivatives higher than or equal to EUR 750 billion, computed in accordance with the common regulatory technical standards to be developed by the ESAs in accordance with this paragraph.

’

(cb) the fourth subparagraph is replaced by the following:

‘ ***EBA, in cooperation with ESMA, shall submit the draft regulatory technical standards referred to in point (aa) of the first subparagraph to the Commission by ...[12 months from the date of entry into force of this amending Regulation].***

’

(8) Article 13 is ***replaced by the following:***

Article

‘

Article 13

Mechanism to avoid duplicative or conflicting rules with regard to OTC derivative contracts not cleared by a CCP

1. The Commission shall be assisted by the ESAs in monitoring the international application of principles laid down in Article 11, in particular with regard to potential duplicative or conflicting requirements on market participants, and recommend possible action.

2. The Commission may adopt implementing acts declaring that the legal, supervisory and enforcement arrangements of a third country:

(a) are equivalent to the requirements laid down in Article 11;

(b) ensure protection of professional secrecy that is equivalent to that set out in Article 83; and

(c) are being applied effectively and enforced in an equitable and non-distortive manner so as to ensure effective supervision and enforcement in that third country.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 86(2).

An implementing act on equivalence as referred to in paragraph 2 shall imply that counterparties entering into an OTC derivative contract not cleared by a CCP subject to this Regulation shall be deemed to have fulfilled the obligations contained in Article 11 where at least one of the counterparties is subject to the requirements which are considered equivalent under that implementing act.

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‘***3. An implementing act on equivalence as referred to in paragraph 2, point (a), means that counterparties entering into an OTC derivative contract not cleared by a CCP subject to this Regulation shall be deemed to have fulfilled the obligations contained in Article 11 where at least one of the counterparties is subject to the requirements which are considered equivalent under that implementing act.***

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(9) Article 14 is amended as follows:

(a) paragraph 3 is replaced by the following:

‘

3. The authorisation referred to in paragraph 1 shall be granted for ***services and*** activities linked to clearing and shall specify the services or activities ***for*** which the CCP is authorised to provide or perform ***clearing services*** including the classes of ***derivatives, securities, other*** financial instruments ***or non-financial instruments*** covered by such authorisation.

An entity applying for authorisation as a CCP to clear financial instruments shall include in its application▌ the classes of non-financial instruments suitable for clearing that such CCP intends to clear.

(b) the following paragraphs ▌ are added:

‘6. To ensure the consistent application of this Article, ESMA shall, in close cooperation with the ESCB, develop draft regulatory technical standards specifying the list of required documents that ▌ ***are to*** accompany an application for authorisation ▌ ***as referred to in*** paragraph 1 and specifying the information that such documents ▌ ***are to*** contain with a view to demonstrating that the ***applicant*** CCP complies with all relevant requirements of this Regulation.

ESMA shall submit those draft regulatory technical standards to the Commission by … [▌12 months after the date of entry into force of this ***amending*** Regulation]

Power is delegated to the Commission to ▌***supplement this Regulation by adopting*** the regulatory technical standards referred to in the first subparagraph ***of this paragraph*** in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

7. ESMA shall develop draft implementing technical standards specifying the electronic format of the application ***for authorisation under paragraph 1 of this Article*** to be submitted to the central database ▌referred to in ▌***Article 17c***.

ESMA shall submit those draft implementing technical standards to the Commission by … [▌12 months after the date of entry into force of this ***amending*** Regulation]▌

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.;

(10) Article 15 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘

1. A CCP ▌ ***intending*** to extend its business to additional services or activities***, including to non-financial instruments suitable to be centrally cleared at an authorised CCP,*** not covered by the existing authorisation shall submit a request for ▌ ***an extension of that authorisation to additional*** clearing services or activities ▌ ***in one or more classes of derivatives, securities, other financial instruments or non-financial instruments to the CCP's competent authority, unless such*** an extension of ▌ ***activities or services is exempted from*** authorisation ***under Article 17aa***.

The extension of authorisation shall be made in accordance with either the procedure set out in Article 17 or the procedure set out in Article 17a as applicable.

(b) paragraph 3 is replaced by the following:

‘3. ESMA shall, in close cooperation with the ESCB, develop draft regulatory technical standards specifying the lists of required documents that shall accompany an application for an extension of authorisation pursuant to paragraph 1 and specifying the information such documents shall contain. The lists of required documents and information shall be relevant and proportionate to the nature of the extension of authorisation procedures referred in paragraph 1, with a view to demonstrating that the CCP meets all relevant requirements of this Regulation.

‘

ESMA shall submit those draft regulatory technical standards to the Commission by … [▌12 months after the date of entry into force of this ***amending*** Regulation].

Power is delegated to the Commission to ▌***supplement this Regulation by adopting*** the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.;

’

(c) the following paragraph 4 is added:

‘

4. ESMA shall develop draft implementing technical standards specifying the electronic format of the application for an extension of the authorisation referred to in paragraph 1 of this Article to be submitted via the central database referred to in Article 17c.

‘ESMA shall submit those draft implementing technical standards to the Commission by … [▌12 months after the date of entry into force of this ***amending*** Regulation].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.;

(11) Article 17 is amended as follows:

(a) the title ▌ is replaced by the following:

‘Procedure for granting and refusing ▌ authorisation

,

(b) paragraphs 1, 2 and 3 are replaced by the following:

‘1. The applicant CCP shall submit an application for authorisation as referred to in Article 14(1) or an application for an extension of ***an existing*** authorisation as referred to in Article 15(1) in an electronic format via the central database referred to in ***Article 17c.*** ▌ The application shall be immediately shared ***via that central database*** with the CCP’s competent authority, ESMA and the college referred to in Article 18(1).

The ▌ ***applicant CCP*** shall▌ ***provide all information necessary to demonstrate that it has established, at the time*** of the ▌ ***initial authorisation, all the necessary arrangements to meet the requirements laid down in this Regulation. Where an applicant CCP is requesting an extension of authorisation*** pursuant to Article ▌ ***15, it shall provide all information necessary to demonstrate that, at the time such*** extension of ▌ ***authorisation under Article 15 is granted, it will have established all additional arrangements to meet any requirements laid down in this Regulation in respect of such extension of authorisation***.

▌ ***In accordance with Article 17c, an acknowledgement of receipt of the application shall be sent via the central database within 2 working days after such application has been submitted under the first subparagraph***.

2. The ▌ ***CCP's competent authority shall, following the acknowledgement of receipt referred to in the second subparagraph of paragraph 1, notify to the applicant CCP whether the application contains the documents and information required***.

The notification shall be sent within the following time limits:

(a) within 20 working days from the acknowledgment of the receipt, where the applicant CCP has applied for an authorisation pursuant to Article 14(1);

(b) within 10 working days from the acknowledgment of the receipt, where the applicant CCP has applied for an extension of the existing authorisation pursuant to Article 15(1).

Where, during the relevant period specified under the second subparagraph, the CCP's competent authority decides that not all documents or information required pursuant to Article 14(6) and (7) or Article 15(3) and (4) have been submitted, it shall request the applicant CCP to submit such additional documents or information, via the central database referred to in Article 17c.

The application shall be rejected where the CCP's competent authority decides that the applicant CCP has failed to comply with any such request. The CCP's competent authority shall inform the CCP thereof via the central database referred to in Article 17c.

3. ▌The CCP's competent authority▌ shall ▌ conduct a risk assessment of the CCP's compliance with the relevant requirements laid down in this Regulation▌ ***within the period specified under the second subparagraph, points (a) and (b) ("***the risk assessment period***").***

Where an application is made under:

(a) ▌ ***Article 14(1), within 80 working days of the confirmation set out in paragraph 2, first subparagraph, point (a)***; ***and***

(b) ▌ ***Article 15(1), within 40 working days of the confirmation set out in paragraph 2, first subparagraph, point (b).***

By the end of the risk assessment period, the CCP's competent authority shall submit its draft decision and report to ESMA and the college referred to in Article 18 (1) via the central database referred to in Article 17c.

Following receipt of the draft decision and report referred to in the third subparagraph of this Article, and on the basis of the findings therein, the college referred to in Article 18(1) shall within 15 working days adopt an opinion pursuant to Article 19 determining whether the applicant CCP complies with the requirements laid down in this Regulation and transmit it to the CCP's competent authority and ESMA in an electronic format via the central database referred to in Article 17c.

The college referred to in Article 18(1) may include in its opinion any conditions or recommendations it considers necessary to mitigate any shortcomings in the CCP's risk management.

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Following receipt of the draft decision and report referred to in the third subparagraph ESMA shall within 15 working days adopt an opinion determining whether the applicant CCP complies with the requirements laid down in this Regulation in accordance with Article 23a(1)(e) and (2), and Article 24a(7) first subparagraph, point (bc), and transmit it to the CCP's competent authority and the college.

ESMA may include in its opinion any conditions or recommendations it considers necessary to mitigate any shortcomings in the CCP's risk management in relation to identified cross-border risks or risks to the financial stability of the Union.

3a. Without prejudice to the opinion referred to in the sixth subparagraph of paragraph 3, following receipt of the draft decision and report referred to in the third subparagraph, ESMA may also provide an opinion in accordance with Article 23a and 24a(7) on the draft decision to the competent authority where necessary to promote a consistent and coherent application of the relevant Article, within 15 working days of receipt of the draft decision.

Where the draft decision submitted to ESMA in accordance with paragraph 3 of this Article shows a lack of convergence or coherence in the application of this Regulation, ESMA shall issue guidelines or recommendations to promote the necessary consistency or coherence in the application of this Regulation pursuant to Article 16 of Regulation (EU) No 1095/2010.

The adopted opinions by ESMA and the college shall be submitted in an electronic format via the central database referred to in Article 17c, to the respective recipients.

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3aa. During the risk assessment period referred to in paragraph 3 ***of this Article***, the CCP’s competent authority, through the central database referred to in Article 17c:

(a) may submit questions to, and request complementary information from, the applicant CCP;

(b) shall coordinate and submit questions from ESMA or any member of the college to the applicant CCP; and

(c) shall share with ESMA and the members of the college all the answers provided by the CCP.

Where the CCP’s competent authority has not provided the requested information to ESMA or any member of the college referred to in Article 18(1) within 10 working days from the submission of the request, ESMA or any member of the college referred to in Article 18(1) may submit their request directly to the CCP via the central database referred to in Article 17c.

Where the applicant CCP has not responded to the questions referred to in the first subparagraph of this paragraph within the set deadline by the authority requesting the information, the CCP's competent authority, after consulting the requesting authority may decide to extend once the relevant risk assessment period specified under paragraph 3, second subparagraph, points (a) and (b), by a maximum of 10 working days in total, if, in its view or in the view of the requesting authority , any of the questions is material for the assessment. The competent authority shall inform the applicant CCP, via the central database referred to in Article 17c, about the extension provided. The competent authority may take a decision on the application in the absence of the CCP's response.

3b. Within 10 working days of receipt of ▌ the ESMA opinion***(s) and the*** ▌ opinion ***of the college referred to in Article 18(1),*** the CCP's competent authority shall adopt its decision and transmit it to ESMA and ▌ ***the college referred to in Article 18(1) via the central database referred to in Article 17c.***

Where the decision of the CCP's competent authority does not reflect the opinion of the college ***referred to in Article 18(1), including any conditions or recommendations contained therein, it shall contain a fully reasoned explanation of any significant deviation from that opinion or conditions or recommendations***.

Where the CCP's competent authority does not comply or does not intend to comply with ESMA's opinion or with any conditions or recommendations included therein, ESMA shall inform the Board of Supervisors in accordance with Article 24a. The information shall also include the reasoning from the CCP's competent authority for not complying.

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4. ***The CCP’s competent authority*** shall, after duly considering the ***opinions of ESMA and*** the college referred to in paragraph 3 ***of this Article***, including any conditions or recommendations contained therein, ***decide to*** grant authorisation as referred to in Articles 14 and Article 15(1), second subparagraph, only where it is fully satisfied that the applicant CCP:

(a) complies with the requirements laid down in this Regulation***.,*** including, where applicable, for the provision of clearing services or activities for non-financial instruments; and

(b) is notified as a system pursuant to Directive 98/26/EC.

Where an applicant CCP is requesting an extension of authorisation pursuant to Article 15, ESMA, the college as referred to in Article 18(1) and the CCP’s competent authority may rely on part of the assessment previously made pursuant to this Article to the extent that the request for extension will not result in a change or otherwise affect the previous assessment for this part of the current authorisation. The CCP should confirm to the CCP’s competent authority that there is no change to the underlying facts of the part of the assessment ESMA, the college as referred to in Article 18(1) and the CCP’s competent authority may rely on.

The ***applicant*** CCP shall not be authorised***;***

(a) where all the members of the college ***referred to in Article 18(1)***, excluding ***the*** authorities of the Member State where the ***applicant*** CCP is established reach a joint opinion by mutual agreement, pursuant to Article 19(1), that the ***applicant CCP shall*** not be authorised. That opinion shall state in writing the full and detailed reasons why the college ***referred to in Article 18(1)*** considers that the requirements laid down in this Regulation or other Union law are not met***; or***

(b) where the CCP's competent authority has decided not to grant the authorisation.

Where a joint opinion by mutual agreement as referred to in ***point (a) of the third*** subparagraph ***of this paragraph*** has not been reached and a majority of two-thirds of the college ***referred to in Article 18(1)*** have expressed a negative opinion, any of the competent authorities concerned, based on that majority of two-thirds of the college ***referred to in Article 18(1)***, may, within 30 calendar days of the adoption of that negative opinion, refer the matter to ESMA in accordance with Article 19 of Regulation (EU) No 1095/2010.

The referral decision shall state in writing the full and detailed reasons why the relevant members of the college ***referred to in Article 18(1)*** consider that the requirements laid down in this Regulation or other parts of Union law are not met. In that case the CCP's competent authority shall defer its decision on authorisation and await any decision on authorisation that ESMA may take in accordance with Article 19(3) of Regulation (EU) No 1095/2010. The ***CCP's*** competent authority shall take its decision in conformity with ESMA's decision. The matter shall not be referred to ESMA after the end of the 30-day period referred to in the third subparagraph.

Where all the members of the college ***referred to in Article 18(1)***, excluding the authorities of the Member State where the ***applicant*** CCP is ▌***established***, reach a joint opinion by mutual agreement, pursuant to Article 19(1), that the ***applicant CCP shall*** ▌ not be authorised, the CCP's competent authority may refer the matter to ESMA in accordance with Article 19 of Regulation (EU) No 1095/2010.

The competent authority of the Member State where the CCP is ▌***established*** shall transmit the decision to the other competent authorities concerned.▌

The competent authority shall without undue delay of taking a decision under paragraph 3b, inform the applicant CCP in writing of its decision via the central database referred to Article 17c, with a fully reasoned explanation, whether authorisation has been granted or refused.

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(e) paragraph 7 is ▌ ***deleted***

(12) the following Articles 17a and 17b are inserted:

'Article 17a

▌ ***Accelerated*** procedure for ▌ ***authorisation of an*** extension of ▌ ***authorisation***

1. The ▌ ***accelerated*** procedure shall***, in accordance with paragraph 3,*** apply ▌ ***where, under Article 15,*** a CCP▌ ***intends to extend its provision of clearing services or activities t and*** where ▌ ***such extension fulfils all the following conditions***:

(a) ▌ ***it does not result in the CCP needing to adapt significantly its operational structure, at any point in the contract cycle;***

(b) ▌ ***it does not include offering contracts that cannot be liquidated in the same manner as or together with contracts*** already ▌ ***cleared*** by the CCP▌ ;▌

(c) ▌ ***it does not result in*** the CCP▌ ***needing to take into account material new contract specifications;***

(d) it does not result in the introduction of material new risks or significantly increase the CCP's risk profile;

(e) it does not include offering a new settlement or delivery mechanism or service which involves establishing links with a different securities settlement system, CSD or payment system which the CCP did not previously use.

2. ▌ ***A CCP that submits a request for an extension of its existing authorisation to additional clearing services or activities*** pursuant to ▌ ***the accelerated*** procedure ▌ ***set out in*** this Article***, shall demonstrate why the proposed extension of its business to***▌ additional clearing ▌ ***services or activities qualifies to be assessed under that procedure.***

The CCP shall submit its application for an extension in an electronic format via the central database referred to in Article 17c and shall provide all information, pursuant to Article 15(3) and (4), necessary to demonstrate that it has established, at the time of authorisation, all the necessary arrangements to meet the relevant requirements laid down in this Regulation. In accordance with Article 17c, an acknowledgement of receipt of the application will be sent via the central database, within 2 working days after such application has been submitted.

3. ▌***Within 15 working days of receipt of an application pursuant to paragraph 2, the CCP's competent authorit***y shall***, after considering the input from ESMA and the college referred to in Article 18, decide on both of the following:***

(a) whether the ▌ application ▌ ***qualifies to be assessed under the accelerated procedure set out in this*** Article▌ ***; and***

(b) whether to:

(i) grant the extension of the authorisation where the CCP complies with this Regulation; or,

(ii) refuse the extension of the authorisation where the CCP does not comply with▌ this Regulation.

▌ ***Where an applicant CCP is requesting*** an extension of ▌ ***authorisation pursuant to Article 15, the CCP's competent authority may rely on part of the assessment previously made pursuant to this Article to the extent that the request for extension will not result in a change or otherwise affect the previous assessment for this part of the current authorisation. The CCP shall confirm to*** the CCP's competent authority ***that there is no change to the underlying facts of the part of the assessment the CCP's competent authority may rely on***▌ .

Where the competent authority has decided that the extension of authorisation does not qualify to be assessed under the accelerated procedure, the CCP's application shall be rejected.

Where the competent authority has decided not to grant the extension of the authorisation, the extension of the authorisation shall be refused.

4. ▌***The CCPs*** competent ▌***authority*** shall▌ ***notify the applicant CCP in writing, via the central database referred to in*** Article ▌***17c, within the timeline stated in paragraph 3,*** of its ▌***decisions under that paragraph***.

5. ▌***ESMA shall, in close cooperation with the ESCB, develop draft regulatory technical standards further specifying the criteria referred to in paragraph 1, points (a) to (e) and also specifying the procedure for consulting ESMA and the college according to paragraph 3 on whether or not those criteria are met.***

In further specifying the conditions pursuant to the first subparagraph ESMA shall set the methodology to use and the parameters to apply for deciding when a condition is considered to have been fulfilled. ESMA shall also list and specify whether there are typical extension of services and activities that could be considered in principle to fall under the accelerated procedure set out in this Article.

5a. ESMA shall submit those draft regulatory technical standards to the Commission by … [12 months after the date of entry into force of this amending Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the second subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 17b

Procedure for ▌ ***adopting decisions, reports or other measures***

1. A CCP's competent ▌ ***authority*** shall submit in electronic format via the central database referred to in Article ▌ ***17c*** a request for an opinion▌

(a) by ESMA pursuant to Article 23a(2), where the competent authority intends to adopt a decision, report or other measure in relation to Articles 7, 8, 20, 21, 29, 30, 31, 32, 33, 35, 36, 37, 41 and 54;

(b) by the college, pursuant to Article 19, where the competent authority intends to adopt a decision, report or other measure in relation to Articles 20, 21, 30, 31, 32, 35, 37, 41, 49, 51, 54.

That request for an opinion***, together with all relevant documents,*** shall be shared immediately with the registered recipients and with the College.

2. Unless otherwise specified under the relevant Article, ***the CCP's competent authority*** shall, within 30 working days ***of submitting*** the request referred to in paragraph 1 ('the assessment period'), assess the CCP's compliance with the respective requirements. By the end of the assessment period ***the CCP's competent authority shall transmit its respective draft decision, report, or other measure to ESMA and the college.***

3. Unless otherwise specified under the relevant Article, following the receipt of both the request for an opinion referred to in paragraph 1 and the draft decisions, reports or other measures referred to in paragraph 2:

(a) ESMA shall with respect to Article 20, adopt an opinion assessing the CCP's compliance with the respective requirements in accordance with Article 23a(1)(e) and (2) and Article 24a(7), first subparagraph, point (bc). ESMA shall transmit its opinion to the CCP's competent authority and the college. ESMA may include in its opinion any conditions or recommendations it considers necessary to mitigate any shortcomings in the CCP's risk management, in relation to identified cross-border risks or risks to the financial stability of the Union.

In addition, ESMA shall with respect to Article 21 and 37 adopt an opinion in accordance with such Articles and in accordance with Article 23a(2) and Article 24a(7), first subparagraph, point (bc) and ESMA may include in its opinion any conditions or recommendations it considers necessary;

(b) ESMA may, with respect to Articles 7, 8, 29, 30, 31, 32, 33, 35, 36, 41, and 54, adopt an opinion in accordance with Article 23a and Article 24a(7), first subparagraph, point (bc), on that draft decision report or other measure where necessary to promote a consistent and coherent application of the relevant Article; and

(c) the college shall adopt an opinion pursuant to Article 19 assessing the CCP's compliance with the respective requirements and transmit it to the CCP's competent authority and ESMA. The opinion of the college may include conditions or recommendations that the college considers necessary to mitigate any shortcomings in the CCP's risk management.

For the purpose of point (b), where the draft decision, report or other measure submitted to ESMA in accordance with the point (b) shows a lack of convergence or coherence in the application of this Regulation, ESMA shall issue guidelines or recommendations to promote the necessary consistency or coherence in the application of this Regulation pursuant to Article 16 of Regulation (EU) No 1095/2010. Where ESMA adopts an opinion in accordance with this point, the competent authority shall give it due consideration and shall inform ESMA of any subsequent action or inaction thereto.

ESMA and the college shall each adopt their opinions within the deadline provided by the CCP's competent authority, which shall be at least 15 working days following the receipt of the relevant documents referred to paragraph 2, second subparagraph.

3. Within ***10***▌ working days of receipt of the ESMA ▌opinion, the college opinion, and where required, the ESMA opinion adopted under point (b) of the first subparagraph of paragraph 2, ▌ ***or within the relevant period if otherwise specified in this Regulation,*** the CCP's competent authority shall, after duly considering the ▌ ***opinions of*** ESMA and of the college, including any conditions or recommendations contained therein, adopt its decision***, report or other measure as required under the relevant Article*** and transmit it to ▌ the college.

Where the ▌ ***decision, report or other measure*** does not ▌ ***reflect*** an opinion of ESMA or ▌ the college, including any conditions or recommendations contained therein, ▌ ***it*** shall contain full reasons and an explanation of any significant deviation from that opinion or conditions or recommendations.

For the purpose of point (a) and (b) of the first subparagraph of paragraph 2, where the CCP's competent authority does not comply or does not intend to comply with ESMA's opinion or with any conditions or recommendations included therein, ESMA shall inform its Board of Supervisors in accordance with Article 24a. The information shall also include the reasoning from the CCP's competent authority for not complying.

▌ ***The CCP's*** competent ▌ ***authority shall adopt its decisions, reports or other measures in accordance*** with the ▌ ***respective Articles listed in paragraph 1***.▌

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(12a) the following article is inserted:

(12b) Article 17aa

Exemption of an extension of activities and services

‘***Notwithstanding Article 15, a CCP intending to extend its business to include an additional service or activity not covered by its existing authorisation shall not be required to be authorised for such an extension where that service or activity, as applicable, would not have a material impact on the CCP’s risk profile.***

The CCP shall notify the registered recipients via the central database referred to in Article 17c, where it decides to make use of the exemption provided for in the first subparagraph of this paragraph, including the service or activity it intends to make use of.

The changes implemented by a CCP in accordance with this Article shall be subject to review and evaluation in accordance with Article 21.

ESMA may review the provision of clearing services and activities and report to the college established in accordance with Article 18(1) and to the Commission on the risks arising from CCPs’ provision of services and activities pursuant to this Article and on their appropriateness.

ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify further both of the following:

(a) the type of extension of clearing services or activities that would not have a material impact on a CCP's risk profile;

(b) the frequency with which a CCP shall notify the use of the exemption referred to in paragraph 1, which shall not exceed once every three months.

Article 17c

Central database

1. ESMA shall establish and maintain a central database providing access to the CCP's competent authority and ESMA, ('registered recipients') as well as to the members of the college for that CCP where required under the relevant Article, to all documents registered within the database for the CCP. ESMA shall ensure that the central database performs the functions under this Article.

ESMA shall announce the establishment of the central database on its website.

2. A CCP shall submit the applications referred to in Article 14, Article 15(1), second subparagraph, Article 49 and Article 49a via the central database. An acknowledgement of receipt shall be sent via the central database within 2 working days of receipt of the application.

A CCP shall upload promptly all documents it is required to provide under the authorisation processes referred to in Articles 14 and 15 or validation processes referred to in Articles 49 and 49a, as applicable. The registered recipients shall upload promptly all documents they receive from the CCP in relation to an application referred to in the first subparagraph of this paragraph unless the CCP has already uploaded such documents.

A CCP shall have access to the central database as regards the documents it submitted to that database or the documents transmitted to the CCP through that database by any of the registered recipients.

The competent authority shall submit its request for an opinion referred to in Article 17b via the central database.

4. Questions submitted to, or information requested from, a CCP by ESMA, the CCP's competent authority or the members of the college during the assessment periods under Articles 17, 17a, 17b, 49 and 49a shall be submitted and answered by the CCP via the central database.

5. The CCP's competent authority shall notify the CCP via the database where a decision, report or other measure has been taken,as applicable, pursuant to Articles 14, 15, 17, 17a, 17aa, 17b, 20, 21, 30, 31, 32, 35, 41, 49, 49a, 51 and 54 and of any decisions the CCP's competent authority voluntarily decides to share with the CCP via the central database.

6. The central database shall be designed to automatically inform the registered recipients when changes have been made to its content, including the uploading, deletion or replacement of documents, submission of questions and requests for information.

7. Members of the CCP Supervisory Committee shall also have access to the central database for the performance of their tasks pursuant to Article 24a(7). The Chair of the CCP Supervisory Committee may limit access to some of the documents for the members of the CCP Supervisory Committee referred to in Article 24a(2), points (c) and (d)(ii), where justified based on confidentiality concerns.

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(13) Article 18 is amended as follows:

(a) paragraph 1 is replaced by the following:

'***1.*** Within 30 calendar days ***the submission by the CCP of the notification referred to in Article 17(2) first subparagraph point (a), /***[redacted] the CCP's competent authority shall establish a college to facilitate the exercise of the tasks referred to in Articles 15, 17[redacted] , 20, 21, 30, 31, 32, 35, 41, 49, 51 and 54.

The college shall be co-chaired and managed by the competent authority and any of the independent members of the CCP Supervisory Committee referred to in Article 24a(2), point (b) ('the co-chairs');;

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(b) in paragraph 2, point (a) is replaced by the following:

'(a) ***2. The college shall consist of***

(a) the Chair or any of the independent members of the CCP Supervisory Committee referred to in Article 24a(2)[redacted] ***point*** (a) and (b)[redacted] ;

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(c) in paragraph 4, the second subparagraph is replaced by the following:

The Co-chairs shall decide the dates of the college meetings and establish the agenda of such meetings.

In order to facilitate the performance of the tasks assigned to colleges pursuant to the first subparagraph of this paragraph, members of the college referred to in paragraph 2 shall be entitled to contribute to the setting of the agenda of the college meetings, in particular by adding points to the agenda of a meeting taking into consideration the outcome of the work carried out by the Joint Monitoring Mechanism.

‘***(d) In paragraph 5, the third subparagraph is replaced by the following:***

The agreement may also determine tasks to be entrusted to the CCP's competent authority, ESMA or another member of the college.

In case of disagreement between the Co-chairs, the ultimate decision shall be taken by the competent authority, who should provide ESMA with a reasoned explanation of its decision.

(14) Article 19 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Where the college is required to give an opinion pursuant to this Regulation, it shall reach a joint opinion determining whether the CCP complies with ▌ the requirements laid down in this Regulation.

Without prejudice to Article 17(4), third subparagraph, ▌ if no joint opinion is reached in accordance with the first subparagraph, the college shall adopt a majority opinion within the same period.;

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(b) in paragraph 3, the fourth subparagraph is replaced by the following:

‘The members of the college referred to in ▌ ***points (a)***,▌ (ca) and (i)▌ ***of Article 18(2)*** shall have no voting rights on the opinions of the college.▌

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(c) paragraph 4 is deleted;

(15) ▌Article 20▌ ***is amended as follows:***

(a) the following paragraph is inserted:

'-1. 1. Without prejudice to Article 22(3), the CCP's competent authority shall withdraw authorisation, in full or in part, where the CCP:

(a) has not made use of the authorisation within 12 months,

(aa) has not made use of an authorisation for a clearing service or activity in a class of derivatives, securities, other financial instruments or non-financial instruments, within 12 months from when the authorisation was granted or from when the CCP last offered such clearing service or activity;

(ab) expressly renounces the authorisation;

(ac) has provided no services or performed no activity for the preceding 12 months in a class of derivatives, securities, other financial instruments or non-financial instruments covered by an authorisation;

(b) has obtained authorisation by making false statements or by any other irregular means;

(c) is no longer in compliance with the conditions under which authorisation was granted and has not taken the remedial action within a set time frame; or

(d) has seriously and systematically infringed any of the requirements laid down in this Regulation.

(e) Where the CCP's competent authority shall withdraw authorisation pursuant to the first subparagraph, it may limit such withdrawal of authorisation to a particular clearing service or activity, in relation to a class of derivatives, securities, other financial instruments or non-financial instrument(s).

3. ***Before*** the CCP's competent authority ***takes a decision to withdraw the authorisation in full or in part, including for one or more clearing services or activities, in one or more classes of derivatives, securities, other financial instruments or non-financial instrument(s) under paragraph 1, it shall request the opinion*** ▌ of ESMA and the college▌ ***referred to in Article 18 (1)*** in accordance with ▌ ***Article 17b***, on the necessity to withdraw the authorisation***, in full or in part,*** of the CCP, except ***for*** where a decision is required urgently.

4. ***ESMA*** or any member of the college ***referred to in Article 18(1)*** may, at any time, request that the CCP's competent authority examine whether the CCP remains in compliance with the conditions under which authorisation was granted.

5. ▌ ***Where a*** CCP's competent authority ▌ ***takes a decision to withdraw an authorisation in full or in relation to one or more clearing services or activities in one or more classes of derivatives, securities, other*** financial instruments or▌ non-financial instruments***, that decision shall take effect throughout the Union and the CCP's competent authority shall inform the CCP, via the central database referred to in Article 17c, without undue delay***.

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(16) Article 21 is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

1. The competent authorities referred to in Article 22 shall do at least all of the following in relation to a CCP:

‘(a) review the arrangements, strategies, processes and mechanisms implemented by CCPs to comply with this Regulation;

(b) review the services or activities provided by the CCP, in particular services or activities provided following the accelerated procedures pursuant to Article 17a or pursuant to Article 49a;

(c) evaluate the risks, including financial and operational risks, to which CCPs are, or might be, exposed.;

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(d) review the changes implemented by a CCP in accordance with Article 17aa.;

2. The review and evaluation referred to in paragraph 1 shall cover all the requirements on CCPs laid down in this Regulation.

The CCPs competent authority may request ESMA's assistance in any of its supervisory activities including *those listed in the first subparagraph.*

(b) paragraphs 3 and 4 are replaced by the following:

3. The competent authorities shall, after having considered the input of ▌ ***ESMA and the college***, establish the frequency and depth of the review and evaluation referred to in paragraph 1 of this Article, having particular regard to the size, systemic importance, nature, scale, complexity of the activities and interconnectedness with other financial market infrastructures of the CCPs concerned and to the supervisory priorities established by ESMA in accordance with Article 24a(7), first subparagraph, point (ba). The competent authorities shall update the review and evaluation at least on an annual basis.

CCPs shall be subject to on-site inspections by the CCP's competent authority at least annually. The CCP's competent authority shall inform ESMA of a planned on-site inspection one month before such inspection shall take place, unless the decision to conduct an on-site inspection is taken in an emergency, in which case the CCP's competent authority shall inform ESMA as soon as that decision is taken. ESMA may request to be invited to on-site inspections.

Where, following a request pursuant to the first subparagraph, the CCP's competent authority refuses to invite ESMA to an on-site inspection, it shall provide a reasoned explanation for such refusal.

Without prejudice to the second and third subparagraphs, the CCP's competent authority shall forward to ESMA and the members of the college any relevant information received from the CCPs in relation to all on-site inspections it carries out.

4. The CCP's competent authority shall regularly, and at least annually, submit a report to ESMA and the college on the assessment and the results of the review and evaluation as referred to in paragraph 1, including whether the competent authority has ***requested*** ▌ any remedial action or imposed penalties.

The report shall cover a calendar year and shall be submitted *to ESMA* and the college by 30 March of the following calendar year. That report shall be subject to an opinion of the college pursuant to Article 19 and an opinion by ESMA pursuant to Article 24a(7), first subparagraph, point (bc) issued in accordance with the procedure set out in Article 17b.

ESMA may request to hold an ad hoc meeting with the CCP and its competent authority. ESMA may request such a meeting in any of the following cases:

(a) where there is an emergency situation under Article 24;

(b) where ESMA has identified material concerns in the CCP's compliance with the requirements under this Regulation;

(c)where ESMA considers that ▌ the activity of the CCP ***could have*** ▌ an adverse cross-border impact on clearing members or on their clients.

The college shall be informed that a meeting will be held and shall receive a summary of the main outcomes of that meeting.

4a. ESMA may require competent authorities to provide it with the necessary information to carry out its tasks pursuant to this Article in accordance with the procedure set out Article 35 of Regulation (EU) No 1095/2010.

(17) Article 23a is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

‘

1. ESMA shall fulfil a coordination role between competent authorities and across colleges to:

(a) build a common supervisory culture and consistent supervisory practices;

(b) ensure uniform procedures and consistent approaches;

(c) strengthen consistency in supervisory outcomes, in particular with regard to supervisory areas which have a cross-border dimension or a possible cross-border impact;

(d) ▌***strengthen*** coordination in emergency situations in accordance with Article 24;

(e) assess risks when providing opinions to competent authorities pursuant to paragraph 2 on CCPs’ compliance with the requirements of this Regulation in relation to identified cross-border risks or risks to the financial stability of the Union, and providing recommendations as to how a CCP shall mitigate those risks.

2. Competent authorities shall submit their draft decisions***, reports or other measures*** to ESMA for its opinion before adopting any act or measure pursuant to Articles 7, 8 and 14, Article 15(1), second subparagraph, ▌▌ ***Article 21***, Articles 29 to 33, and Articles 35, 36***, 37,*** 41, 54 ***and Article 20 except, for the latter, where a decision is required urgently***.

Competent authorities may also submit draft decisions to ESMA for its opinion before adopting any other act or measure in accordance with their duties under Article 22(1).

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(18) the following▌ ***Article 23c is*** inserted:

'Article 23c

Joint Monitoring Mechanism

1. ESMA shall establish a Joint Monitoring Mechanism for the exercise of the tasks referred to in paragraph 2.

The Joint Monitoring Mechanism shall be composed of:

(a) representatives of ESMA;

(b) representatives of EBA and EIOPA;

(c) representatives of the ▌ESRB, the ECB and the ECB in the framework of the tasks concerning the prudential supervision of credit institutions within the single supervisory mechanism conferred upon it in accordance Council Regulation (EU) No 1024/2013.▌

(ca) representatives of the central banks of issue of currencies, other than the euro, in which the derivative contracts referred to in Article 7a(2) are denominated.

In addition to the entities referred to in the second subparagraph, the central banks of issue of the currencies of denomination of the derivative contracts referred to in Article 7a(2), other than those listed in point (ca), the national competent authorities supervising the obligation under Article 7a, limited to one per Member State, and the Commission may also participate in the Joint Monitoring Mechanism as observers.

ESMA shall manage and chair the meetings of the Joint Monitoring Mechanism. The Chair of the Joint Monitoring Mechanism ***may***, upon request of the other members of the Joint Monitoring Mechanism or on ▌***the Chair's*** own initiative,▌ invite other authorities to participate in the meetings when relevant to the topics to be discussed.

2. The Joint Monitoring Mechanism shall:

(a) monitor the implementation ***at aggregate Union level*** of the requirements set out in Articles 7a and 7b, including all of the following:

(i) the overall exposures and reduction of exposures to substantially systemically important clearing services identified pursuant to Article 25(2c);

(ii) developments related to clearing in CCPs authorised under Article 14 and access to clearing by clients to such CCPs, including fees charged by such CCPs for establishing accounts pursuant to Article 7a and any fees charged by clearing members to their clients for establishing accounts and undertaking clearing pursuant to Article 7a;

(iii) other significant developments in clearing practices having an impact on the level of clearing at CCPs authorised under Article 14;

(b) monitor ***the cross-border implications of*** client clearing relationships, including portability and clearing members' and clients' interdependencies and interactions with other financial market infrastructures;

(c) contribute to the development of Union-wide assessments of the resilience of CCPs focussing on liquidity***, credit and operational*** ▌risks concerning CCPs, clearing members and clients;

(d) identify concentration risks, in particular in client clearing, due to the integration of Union financial markets, including where several CCPs, clearing members or clients use the same service providers;

(e) monitor the effectiveness of the measures aimed at improving the attractiveness of Union CCPs, encouraging clearing at Union CCPs and enhancing the monitoring of cross-border risks.

The bodies participating in the Joint Monitoring Mechanism***, the college established in accordance with Article 18*** and national competent authorities shall cooperate and share the information necessary to carry out the ▌***tasks*** referred to in the first subparagraph ***of this paragraph***.

Where ▌***that*** information is not ▌***available to the Joint Monitoring Mechanism***, including information referred to in Article 7a(4), ▌***the relevant competent authority of*** authorised CCPs, their clearing members and their clients ▌***shall*** provide the necessary information enabling ESMA and the other bodies participating ▌***in the*** Joint Monitoring Mechanism to perform the ▌***tasks*** referred to in the first subparagraph.

2a. Where a relevant competent authority does not have the requested information, it shall require authorised CCPs, their clearing members or clients to provide that information. The relevant competent authority shall forward such information to ESMA without undue delay.

2b. Subject to the agreement of the relevant competent authority, ESMA may also request the information directly from the relevant entity. ESMA shall forward all information received from that entity to the relevant competent authority without undue delay.

2c. Information requests to CCPs shall be exchanged via the central database referred to in Article 17c.

3. ESMA shall, in cooperation with the other bodies participating in the Joint Monitoring Mechanism, submit an annual report to the European Parliament, the Council and the Commission on the results of its activities pursuant to paragraph 2.

3a. The report may include recommendations for potential Union-level actions to address identified horizontal risks.

4. ESMA shall act in accordance with Article 17 of Regulation (EU) No 1095/2010 ▌ ***in the event that***, on the basis of the information received as part of the Joint Monitoring Mechanism and following the discussions held therein***, ESMA***:

(a) ▌ considers that competent authorities fail to ensure clearing members' and clients' compliance with the requirement set out in Article 7a; ***or***

(b) ▌ identifies a risk to the financial stability of the Union due to an alleged breach or non-application of Union law.

Before acting in accordance with the first subparagraph, ESMA may issue guidelines or recommendations pursuant to Article 16 of Regulation (EU) No 1095/2010.

5. Where ESMA, on the basis of the information received as part of the Joint Monitoring Mechanism and following the discussions held therein, considers that compliance with the requirement set out in Article 7a does not effectively ensure the reduction of Union clearing members' and clients' excessive exposure to Tier 2 CCPs, it shall review the regulatory technical standards referred to in Article 7▌ ***a(3)***, setting, where necessary, an appropriate adaptation period ▌ ***not exceeding*** 12 months.▌

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(19) Article 24 is replaced by the following:

‘Article 24

Emergency situations

1. The CCP's competent ▌ ***authority*** or any other relevant authority shall inform ***ESMA***▌ , the college, the relevant members of the ESCB, the Commission and other relevant authorities without undue delay of any emergency situation relating to a CCP, including ▌

(a) situations or events which impact, or are likely to impact, the prudential or financial soundness or the resilience of CCPs authorised in accordance with Article 14, their clearing members or clients;

(b) where a CCP intends to activate its recovery plan pursuant to Article 9 of Regulation (EU) No 2021/23, a competent authority has taken an early intervention measure pursuant to Article 18 of that Regulation or a competent authority has required a total or partial removal of the senior management or board of the CCP pursuant to Article 19 of that Regulation;

(c) where there are developments in financial markets, ***or other markets where the CCP provides clearing services,*** which may have an adverse effect on market liquidity, the transmission of monetary policy, the smooth operation of payment systems or the stability of the financial system in any of the Member States where the CCP or one of its clearing members are established.

-1b. In an emergency situation, information shall be provided and updated without undue delay, and enable the members of the college to analyse the impact of the emergency situation in particular on their clearing members and clients. College members may forward the information to the public bodies responsible for the financial stability of their markets, subject to the professional secrecy requirements set out in Article 83. The obligation of professional secrecy in accordance with Article 83 shall apply to those bodies receiving that information.

2. ***In case of emergency situation at one or more CCPs that have or are likely to have destabilising effects on cross-border markets,*** ESMA shall coordinate competent authorities, the resolution authority designated pursuant to Article 3(1) of Regulation (EU) 2021/23 and colleges to build a coordinated response to emergency situations relating to a CCP ***and ensure effective information sharing among competent authorities, colleges and resolution authorities***.

3. In ▌ ***an*** emergency ▌ ***situation***, except where a resolution authority ***is taking or*** has taken a resolution action in relation to a CCP pursuant to Article 21 of Regulation (EU) No 2021/23, ▌ ***ad hoc meetings of the CCP Supervisory Committee, to coordinate the responses of competent authorities***:

(a) may be convened by the Chair of the CCP Supervisory Committee;

(b) shall be convened by the Chair of the CCP Supervisory Committee, upon the request of two members of the CCP Supervisory Committee.

4. Any of the following authorities ▌ ***shall*** also be invited to the ***ad hoc*** meeting referred to in the paragraph 3, where relevant, considering the issues to be discussed at ▌ ***that*** meeting:

(a) the relevant central banks of issue;

(b) the relevant competent authorities for the supervision of clearing members, including, where relevant, the ECB in the framework of the tasks concerning the prudential supervision of credit institutions within the single supervisory mechanism conferred upon it in accordance with Council Regulation (EU) No 1024/2013;

(c) the relevant competent authorities for the supervision of trading venues;

(d) the relevant competent authorities for the supervision of clients where they are known;

(e) the relevant resolution authorities designated pursuant to Article 3(1) of Regulation (EU) 2021/23▌ ***;***

(f) any member of the college established in accordance with Article 18, that is not already covered by the points (a) to (d).

Where ▌ ***an ad hoc*** meeting of the CCP Supervisory Committee is held pursuant to ▌ ***paragraph 3***, the Chair ***of that Committee*** shall inform EBA, EIOPA, the ESRB***, the SRB*** and the Commission thereof who shall also be invited to participate to that meeting upon their request.

4a. Where a meeting is held following an emergency situation as specified in paragraph 1, point (c), the Chair of the CCP Supervisory Committee shall always invite the relevant central banks of issue to participate in that meeting.

5. ESMA may require all relevant competent authorities to provide it with the necessary information to carry out its coordination function in accordance with this Article.

Where a relevant competent authority has the requested information, it shall forward it to ESMA without undue delay.

5a. Where a relevant competent authority does not have the requested information, it shall require the authorised CCPs, their clearing members or clients, connected financial market infrastructures or related third parties to whom those CCPs have outsourced operational functions or activities, as relevant and applicable, to provide it with that information, and shall inform ESMA thereof. Once the relevant competent authority receives the requested information, it shall forward it to ESMA without undue delay.

5b. Instead of requiring the information referred to in the third subparagraph, the relevant competent authority may allow ESMA to require that information directly from the relevant entity. ESMA shall forward all information received from such entity to the relevant competent authority without undue delay.

5c. Where ESMA has not received the information requested in accordance with paragraph 5 of this Article within 48 hours, it may, by simple request, require authorised CCPs, their clearing members and clients, connected financial market infrastructures and related third parties to whom those CCPs have outsourced operational functions or activities to provide it with that information without undue delay. ESMA shall forward all information received from such entity to the relevant competent authority without undue delay.

6. ESMA may, upon the proposal of the CCP Supervisory Committee, issue ▌recommendations pursuant to Article 16 of Regulation (EU) No 1095/2010 addressed to one or more competent authorities recommending them to adopt temporary or permanent supervisory decisions in line with the requirements set out in Article 16 and in Titles IV and V ***of this Regulation*** to avoid or mitigate significant adverse effects on the Union financial stability. ESMA may issue ▌***such*** recommendations only where more than one authorised CCP is ▌***affected*** or where Union-wide events are destabilising cross-border cleared markets.▌ ***’***

,

(20) Article 24a is amended as follows:

(a) in paragraph 2, point (d) (ii) is replaced by the following:

‘

(ii) where the CCP Supervisory Committee convenes in relation to CCPs authorised in accordance with Article 14, in the context of discussions pertaining to paragraph 7 of this Article, the central banks of issue of the Union currencies of the financial instruments cleared by authorised CCPs that have requested membership of the CCP Supervisory Committee, who shall be non-voting.;

,

(b) paragraph 3 is replaced by the following;

‘3. The Chair may invite as observers to the meetings of the CCP Supervisory Committee, where appropriate , members of the colleges referred to in Article 18, representatives from the relevant authorities of clients where they are known and from the relevant Union's institutions and bodies.

,

(c) paragraph 7 is amended as follows:

(i) the introductory wording is replaced by the following:

‘

In relation to CCPs authorised or applying for authorisation in accordance with Article 14, the CCP Supervisory Committee shall, for the purpose of Article ▌ ***23a***, prepare decisions and carry out the tasks entrusted to ESMA in ***Article 23a and in*** the following points:▌

’

(ii) the following points are inserted:

‘(ba) at least annually, discuss and identify supervisory priorities for CCPs authorised ▌ ***in accordance with*** Article 14 in order to feed in the preparation of the Union strategic supervisory priorities by ESMA in accordance with Article 29a of Regulation (EU) No 1095/2010;

(bb) consider, in cooperation with EBA, EIOPA, and the ECB in carrying out its tasks within a single supervisory mechanism under Regulation (EU) No 1024/2013, any cross-border risks arising from CCPs’ activities, including due to CCPs’ interconnectedness, interlinkages and concentration risks due to such cross-border connections;

(bc) prepare draft opinions for adoption by the Board of Supervisors in accordance with Articles 17 and 17b***,*** and draft ▌ ***validations for adoption by the Board of Supervisors in accordance with Article 49 and draft*** decisions ***for adoption by the Board of Supervisors*** in accordance with Article ▌ ***49a***;

(bd) provide input to the competent authorities pursuant to Article 17a;

(be) inform the Board of Supervisors where a competent authority does not comply or does not intend to comply with ESMA's opinions or with any conditions or recommendations contained therein, including the reasoning from the NCA, in accordance with Article 17(3b) and Article 17b(4).

,

(iia) point c is replaced by the following:

'***(c) promote the regular exchange and discussion among competent authorities designated in accordance with Article 22(1) in relation to:***

(i) relevant supervisory activities and decisions that have been adopted by the competent authorities referred to in Article 22 when carrying out their duties in accordance with this Regulation regarding the authorisation and supervision of CCPs established in their territory;

(ii) draft decisions submitted to ESMA by a competent authority in accordance with the first subparagraph of Article 23a(2);

(iii) draft decisions submitted to ESMA by a competent authority on a voluntary basis in accordance with the second subparagraph of Article 23a(2);

(iv) relevant market developments, including situations or events which impact or are likely to impact the prudential or financial soundness or the resilience of CCPs authorised in accordance with Article 14 or their clearing members;

,

(iii) the following subparagraph is added:

‘

ESMA shall on a yearly basis report to the Commission on the cross-border risks arising from CCPs’ activities referred to in point (bb) ▌ ***of*** the first subparagraph.;

’

(20a) in Article 24b, paragraphs 1 and 2 are replaced by the following:

‘

1. With regard to supervisory assessments conducted in relation to and decisions to be taken pursuant to Articles 41, 44, 46, 50 and 54 in relation to Tier 2 CCPs, the CCP Supervisory Committee shall consult the central banks of issue referred to in point (f) of Article 25(3). Each central bank of issue may respond. Where the central bank of issue decides to respond, it shall do so within 10 working days of receipt of the draft decision. In emergency situations, that period shall not exceed 24 hours. Where a central bank of issue proposes amendments or objects to assessments related to, or draft decisions pursuant to Articles 41, 44, 46, 50 and 54, it shall provide full and detailed reasons, in writing. Upon conclusion of the period for consultation, the CCP Supervisory Committee shall duly consider the response and any amendments proposed by the central banks of issue and provide its assessment to the central bank of issue.

2. Where the CCP Supervisory Committee does not reflect in its draft decision the amendments proposed by a central bank of issue, the CCP Supervisory Committee shall inform that central bank of issue in writing stating its full reasons for not taking into account the amendments proposed by that central bank of issue, providing an explanation for any deviations from those amendments. The CCP Supervisory Committee shall submit to the Board of Supervisors the responses received and the amendments proposed by central banks of issue and its explanations for not taking them into account together with its draft decision.

3. With regard to decisions to be taken pursuant to Articles 25(2c) and 85(6), the CCP Supervisory Committee shall seek the agreement of the central banks of issue referred to in point (f) of Article 25(3) for matters relating to the currencies they issue. The agreement of each central bank of issue shall be deemed to be given, unless the central bank of issue proposes amendments or objects within 10 working days of the transmission of the draft decision. Where a central bank of issue proposes amendments or objects to a draft decision, it shall provide full and detailed reasons, in writing. Where a central bank of issue proposes amendments with respect to matters relating to the currency it issues, the CCP Supervisory Committee may only submit to the Board of Supervisors the draft decision as amended with respect to those matters. Where a central bank of issue objects with respect to matters relating to the currency it issues, the CCP Supervisory Committee shall not include those matters in the draft decision it submits to the Board of Supervisors for adoption.

,

(21) Article 25 is amended as follows:

(a) in paragraph 4, the third subparagraph is replaced by the following;

‘The recognition decision shall be based on the conditions set out in paragraph 2 for Tier 1 CCPs and in paragraph 2, points (a) to (d), and paragraph 2b for Tier 2 CCPs. Within 180 working days of the determination that an application is complete in accordance with the second subparagraph, ESMA shall inform the applicant CCP in writing, with a fully reasoned explanation, whether the recognition has been granted or refused.;

,

(b) in paragraph 5, the second subparagraph is replaced by the following:

‘

▌ Where the review is undertaken in accordance with point (b) of the first subparagraph▌ ***of this paragraph,*** the CCP referred to in paragraph 1 shall not be required to submit a new application but shall provide ESMA with all information necessary for the review of its recognition.▌ ***Where ESMA undertakes a review of a recognised CCP under this paragraph, such review shall not constitute an application for recognition for the relevant recognised CCP.***

’

(c) in paragraph 6, the following subparagraph is added:

‘

Where ***it is*** in the interests of the Union and considering the potential risks for the Union financial stability due to the expected participation of clearing members and trading venues established in the Union to CCPs established in a third country, the Commission may adopt the implementing act referred to in the first subparagraph irrespective of whether point (c) of that subparagraph is fulfilled.;

’

(d) paragraph 7 is replaced by the following:

‘

7. ESMA shall establish effective cooperation arrangements with the relevant competent authorities of third countries whose legal and supervisory frameworks have been recognised as equivalent to this Regulation in accordance with paragraph 6..;

,

(e) the following paragraphs ▌ are added:

‘

7a. Where ESMA has not yet determined the tiering of a CCP or where ESMA has determined that all or some CCPs in a relevant third country are Tier 1 CCPs, the cooperation arrangements referred to in paragraph 7 shall take into account the risk the provision of clearing services by those CCPs entails and shall specify:

(a) the mechanism for the exchange of information on an annual basis between ESMA, the central banks of issue referred to in paragraph 3, point (f), and the competent authorities of the third countries concerned, so that ESMA is able to:

(i) ensure that the CCP complies with the conditions for recognition under paragraph 2;

(ii) identify any potential material impact on market liquidity or the financial stability of the Union or one or more of its Member States; and

(iii) monitor clearing activities in one, or more, of the CCPs established in such third country by clearing members established in the Union, or is part of a group subject to consolidated supervision in the Union.

(b) exceptionally, the mechanism for the exchange of information on a quarterly basis requiring detailed information covering the aspects referred to in paragraph 2a ***,*** and in particular information on significant changes to risk models and parameters, extension of CCP activities and services and changes in the client account structure, with the aim to detect if a CCP is potentially close to becoming or is potentially likely to become systemically important for the financial stability of the Union or one or more of its Member States ***as well as the mechanism for the exchange of information on market developments that could have consequences for the financial stability of the Union,***

(c) the mechanism for prompt notification to ESMA where a third-country competent authority deems a CCP it is supervising to be in breach of the conditions of its authorisation or of other law to which it is subject;

(ca) the mechanism for prompt notification to ESMA by the third-country competent authority where a third-country CCP which is supervised by that competent authority intends to extend or reduce its clearing services or activities;

(d) the procedures necessary for the effective monitoring of regulatory and supervisory developments in a third country;

(e) the procedures for third-country authorities to inform ESMA, the third-country CCP college referred to in Article 25c, and the central banks of issue referred to in paragraph 3, point (f), without undue delay of any emergency situations relating to the recognised CCP, including developments in financial markets, which may have an adverse effect on market liquidity and the stability of the financial system in the Union or one of its Member States and the procedures and contingency plans to address such situations;

(f) the procedures for third-country authorities to assure the effective enforcement of decisions adopted by ESMA in accordance with Articles 25f, ***25j,*** 25k(1), point (b), 25l, 25m and 25p;

(g) the consent of third-country authorities to the onward sharing of any information they have provided to ESMA under the cooperation arrangements with the authorities referred to in paragraph 3 and the members of the third-country CCP college, subject to the professional secrecy requirements set out in Article 83.

7b. Where ESMA has determined that at least one CCP in a relevant third country is a Tier 2 CCP, the cooperation arrangements referred to in paragraph 7 shall specify in relation to those Tier 2 CCPs at least the following:

(a) the elements referred to in paragraph 7a, points (a), (c), (d), (e) and (g), where cooperation arrangements are not already established with the relevant third-country pursuant to ▌***that paragraph***;

(b) the mechanism for the exchange of information ***at least*** on a monthly basis***, as appropriate,*** between ESMA, the central banks of issue referred to ***in*** paragraph 3, point (f), and the competent authorities of the third countries concerned, including access to all information requested by ESMA to ensure CCP's compliance with the requirements referred to in paragraph 2b;

(c) the procedures concerning the coordination of supervisory activities, including the agreement of third-country authorities to allow investigations and on-site inspections in accordance with Articles 25g and 25h respectively;

(d) the procedures for third-country authorities to assure the effective enforcement of decisions adopted by ESMA in accordance with Articles 25b, 25f to 25m, 25p and 25q;

(e) the procedures for third-country authorities to▌ :

(i) consult ESMA on the preparation and assessment of recovery plans and on the preparation of the resolution plans in relation to aspects relevant for the Union or one or more of its Member States;

▌ ***(ii) inform ESMA without undue delay of*** the establishment of recovery plans and resolution plans and any subsequent material changes to ▌ ***those*** plans ***in relation to aspects relevant for the Union or one or more of its Member States***;

(ii) ***inform ESMA without undue delay*** if a Tier 2 CCP intends to activate its recovery plan or where the third-country authorities have determined that there are indications of an emerging crisis situation that could affect the operations of that CCP, in particular, its ability to provide clearing services or where the third-country authorities envisage to take a resolution action in the near future.

7c. Where ESMA considers that a third-country competent authority fails to apply any of the provisions laid down in a cooperation arrangement established in accordance with paragraphs 7, 7a and 7b, it shall inform the Commission thereof confidentially and without delay. In such a case, the Commission may decide to review the implementing act adopted in accordance with paragraph 6.;

,

(ea) in Article 25a paragraphs 1 and 2 are replaced by the following:

‘***1. A CCP referred to in Article 25(2b) may submit a reasoned request that ESMA assesses whether in its compliance with the applicable third-country framework, taking into account the provisions of the implementing act adopted in accordance with Article 25(6), that CCP may be deemed to satisfy compliance with the requirements set out in Article 16 and Titles IV and V. ESMA shall immediately transmit the request to the third-country CCP college.***

2. The request referred to in paragraph 1 shall provide the factual basis for a finding of comparability and the reasons why compliance with the requirements applicable in the third country satisfies the requirements set out in Article 16 and Titles IV and V. The Tier 2 CCP shall submit its reasoned request referred to in paragraph 1 in an electronic format via the central database referred to in Article 17c.

ESMA shall grant comparable compliance, in part or in full, where it decides, based on the reasoned request referred to in paragraph 1, that the Tier 2 CCP in its compliance with relevant requirements applicable in the third country is deemed compliant with the requirements set out in Article 16 and Titles IV and V and thereby satisfies the requirement for recognition under Article 25(2b)(a).

ESMA shall withdraw, in full or in relation to a particular requirement, comparable compliance, where the Tier 2 CCP no longer complies with the conditions for comparable compliance and where such a CCP has not taken the remedial action requested by ESMA within a set time frame. When determining the date of entry into effect of the decision to withdraw comparable compliance, ESMA shall endeavour to provide for an appropriate adaptation period not exceeding six months.

Where comparable compliance is granted, ESMA shall continue to be responsible for carrying out its duties and perform its tasks under this Regulation, in particular under Articles 25 and 25b and shall continue to exercise its powers referred to in Articles 25c to 25d, 25f to 25m and 25p to 25q.

Without prejudice to ESMA's ability to perform those tasks, where comparable compliance has been granted, ESMA shall agree administrative arrangements with the third-country authority in order to ensure appropriate exchange of information and cooperation for ESMA to monitor comparable compliance are complied with on an ongoing basis.

(22) in Article 25b(1), the second subparagraph is replaced by the following:

‘ESMA shall require from each Tier 2 CCP all of the following:

(i) a confirmation, at least on a yearly basis, that the requirements referred to in Article 25(2b) points (a), (c) and (d), continue to be fulfilled;

(ii) information and data on a regular basis to ensure ***that*** ESMA is able to supervise ▌ ***the*** CCPs’ compliance with the requirements referred to in Article 25(2b), point (a).;

’

(22a) in Article 25f, paragraph 1 is replaced by the following:

‘1. ESMA may by simple request or by decision require recognised CCPs and related third parties to whom those CCPs have outsourced operational functions or activities to provide all necessary information to enable ESMA to monitor those CCPs’ provision of clearing services and activities in the Union and to carry out its duties under this Regulation.

The information referred to in the first subparagraph and requested by simple request may be of a periodic or one-off nature.

(22b) Article 25o is replaced by the following:

Article 25o

Amendments to Annexes III and IV

In order to take account of amendments to Title IV the Commission is empowered to adopt delegated acts in accordance with Article 82 to ensure that the infringements under Annex III correspond to the requirements under Article 16 and Title IV and V.

In order to take account of developments on financial markets the Commission is empowered to adopt delegated acts in accordance with Article 82 concerning measures to amend Annex IV.

(23) Article 25p is amended as follows:

(a) point (c) is replaced by the following:

‘

(c) the CCP concerned has seriously and systematically infringed any of the applicable requirements laid down in this Regulation or no longer complies with any of the conditions for recognition laid down in Article 25***;*** and has not taken the remedial action requested by ESMA within an appropriately set timeframe of up to a maximum of one year.

’

(b) paragraph 2 is replaced by the following:

2. Before withdrawing the recognition in accordance with point (c) of paragraph 1 of this Article, ESMA shall take into account the possibility of applying measures under points (a), (b) and (c) of Article 25q(1).

If ESMA determines that remedial action within the set timeframe of up to a maximum of one year under point (c) of the first subparagraph of paragraph 1 of this Article has not been taken or that the action taken is not appropriate, and after consulting the authorities referred to in Article 25(3), ESMA shall withdraw the recognition decision.

(24)

(25) ***Article 26 is amended as follows:***

(a) in paragraph 1, the first subparagraph is replaced by the following:

‘

1. A CCP shall have robust governance arrangements, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks to which it is or might be exposed, and adequate internal control mechanisms, including sound administrative and accounting procedures. ***Without prejudice to interoperability arrangements under Title V or the conduct of its investment policy in accordance with Article 47,*** a CCP shall not be or become a clearing member, a client, or establish indirect clearing arrangements with a clearing member with the aim to undertake clearing activities at a CCP.;

’

(b) paragraph 8 is replaced by the following:

‘***8. The CCP shall be subject to frequent and independent audits. The results of those audits shall be communicated to the board and shall be made available to ESMA and to the CCP's competent authority.***

,

(25b) Article 27 is amended as follows:

(a) the following paragraph is inserted:

‘***2a. The composition of the CCP’s board shall duly take into account the principle of gender balance;***

,

(25c) Article 28 is replaced by the following:

‘Article 28

Risk committee

1. A CCP shall establish a risk committee, which shall be composed of representatives of its clearing members, independent members of the board and representatives of its clients. The risk committee may invite employees of the CCP and external independent experts to attend risk-committee meetings in a non-voting capacity. ESMA and competent authorities may request to attend risk-committee meetings in a non-voting capacity and to be duly informed of the activities and decisions of the risk committee. The advice of the risk committee shall be independent of any direct influence by the management of the CCP. None of the groups of representatives shall have a majority in the risk committee.

2. A CCP shall clearly determine the mandate, the governance arrangements to ensure its independence, the operational procedures, the admission criteria and the election mechanism for risk-committee members. The governance arrangements shall be publicly available and shall, at least, determine that the risk committee is chaired by an independent member of the board, reports directly to the board and holds regular meetings.

3. The risk committee shall advise the board on any arrangements that may impact the risk management of the CCP, such as a significant change in its risk model, the default procedures, the criteria for accepting clearing members, the clearing of new classes of instruments, or the outsourcing of functions. The risk committee shall inform the board in a timely manner of any new risk affecting the resilience of the CCP. The advice of the risk committee is not required for the daily operations of the CCP. Reasonable efforts shall be made to consult the risk committee on developments impacting the risk management of the CCP in emergency situations, including on developments relevant to clearing members' exposures to the CCP and interdependencies with other CCPs.

4. Without prejudice to the right of ESMA and of the competent authorities to be duly informed, the members of the risk committee shall be bound by confidentiality. Where the chairman of the risk committee determines that a member has an actual or potential conflict of interest on a particular matter, that member shall not be allowed to vote on that matter.

5. A CCP shall promptly inform ESMA the competent authority and the risk committee of any decision in which the board decides not to follow the advice of the risk committee and explain such decision. The risk committee or any member of the risk committee may inform the competent authority of any areas in which it considers that the advice of the risk committee has not been followed.;

,

(25e) Article 30 is replaced by the following:

'Article 30

Shareholders and members with qualifying holding

1. The competent authority shall not authorise a CCP unless it has been informed of the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and of the amounts of those holdings.

2. The competent authority shall not authorise a CCP where it is not satisfied as to the suitability of the shareholders or members that have qualifying holdings in the CCP, taking into account the need to ensure the sound and prudent management of a CCP. Where a college has been established under Article 18, the college shall issue an opinion as to the suitability of the shareholders or members that have qualifying holdings in the CCP, pursuant to Article 19 in accordance with the procedure under Article 17b.

3. Where close links exist between the CCP and other natural or legal persons, the competent authority shall grant authorisation only where those links do not prevent the effective exercise of the supervisory functions.

4. Where the persons referred to in paragraph 1 exercise an influence which is likely to be prejudicial to the sound and prudent management of the CCP, the competent authority shall take appropriate measures to terminate that situation, which may include the withdrawal of the authorisation of the CCP. The college shall issue an opinion on whether the influence is likely to be prejudicial to the sound and prudent management of the CCP and on the measures envisaged to terminate that situation, pursuant to Article 19 in accordance with the procedure under Article 17b.

5. The competent authority shall not authorise the CCP where the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which that CCP has close links, or difficulties involved in their enforcement, prevent the effective exercise of the supervisory functions.

,

(26) Article 31 is ▌ ***replaced by the following***:

(a) in paragraph 2, the third and fourth subparagraph are replaced by the following:

‘The competent authority shall, promptly and in any event within two working days of receipt of the notification referred to in this paragraph and of the information referred to in paragraph 3, acknowledge receipt in writing thereof to the proposed acquirer or vendor and share the information with ESMA and the college.

Within 60 working days as from the date of the written acknowledgement of receipt of the notification and all documents required to be attached to the notification on the basis of the list referred to in Article 32(4) and unless extended in accordance with this Article, (‘the assessment period’), the competent authority shall carry out the assessment provided for in Article 32(1) (‘the assessment’). The college shall issue an opinion pursuant to Article 19 and ESMA shall issue an opinion pursuant to Article 24a(7), first subparagraph, point (bc) and in accordance with the procedure under Article 17b during the assessment period.**’**;

(b) in paragraph 3 the first subparagraph is replaced by the following:

‘The competent authority **shall, on its own behalf and where requested by ESMA or** ▌ the college▌ , **without undue delay** during the assessment period, where necessary, but no later than on the 50th working day of the assessment period, request ▌ **such** further information that is necessary to complete the assessment. Such request shall be made in writing and shall specify the additional information needed.**’**;

(27) in Article 32(1), the fourth subparagraph is replaced by the following:

‘The assessment of the competent authority concerning the notification provided for in Article 31(2) and the information referred to in Article 31(3), shall be subject to an opinion of the college pursuant to Article 19 and an opinion by ESMA pursuant to Article 24a(7), first subparagraph, point (bc), issued in accordance with the procedure set out in Article 17b.;

,

(28) Article 35 is amended as follows:

(a) in paragraph 1, the second subparagraph is replaced by the following:

‘

A CCP shall not outsource major activities linked to risk management unless such outsourcing is approved by the competent authority. The decision of the competent authority shall be subject to an opinion of the college pursuant to Article 19 and an opinion by ESMA pursuant to Article 24a(7), first sub-paragraph, (bc) issued in accordance with the procedure set out in Article 17b.▌

(aa) paragraph 2 is replaced by the following:

2. The competent authority shall require the CCP to allocate and set out its rights and obligations, and those of the service provider, clearly in a written agreement.

,

(b) paragraph 3 is replaced by the following:

‘3. A CCP shall make all information necessary ***available on request,*** to enable the competent authority, ESMA and the college to assess the compliance of the performance of the outsourced activities with this Regulation▌.▌

,

(29) Article 37 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. A CCP shall establish, where relevant per type of product cleared, the categories of admissible clearing members and the admission criteria, upon the advice of the risk committee pursuant to Article 28(3). Such criteria shall be non-discriminatory, transparent and objective so as to ensure fair and open access to the CCP and shall ensure that clearing members have sufficient financial resources and operational capacity to meet the obligations arising from participation in a CCP. Criteria that restrict access shall be permitted only to the extent that their objective is to control the risk for the CCP.▌ ***Without prejudice to interoperability arrangements under Title V or the conduct of the CCP’s investment policy in accordance with Article 47,*** the criteria shall ensure that CCPs or clearing houses cannot be clearing members, directly or indirectly, of the CCP.▌

’

(b) the following paragraph ▌ is inserted:

‘

1a. A CCP shall accept non-financial counterparties as clearing members only if ▌ ***those counterparties*** are able to demonstrate ▌ ▌ ***how they intend*** to fulfil the margin requirements and default fund contributions, including in stressed market conditions.

The competent authority of a CCP accepting non-financial counterparties ***as clearing members,*** shall regularly review ▌ ***the arrangements established by the CCP to monitor that the condition under the first subparagraph is met. The CCP's competent authority shall*** report ***on an annual basis to*** ▌ the college referred in Article 18 on ▌ ***the products cleared by those non-financial counterparties, the overall exposure and any identified risks*** .

A non-financial counterparty acting as a clearing member ▌ ***in a CCP may only provide*** client clearing services ▌ ***to non-financial counterparties belonging to the same group as that counterparty and may*** keep accounts at the CCP ***only*** for assets and positions held for its own account ***or the account of those counterparties***.

’

ESMA may issue an opinion or a recommendation on the appropriateness of such arrangements following an ad-hoc peer review.;

(c) the following paragraph ▌ is added:

‘

7. ESMA shall, after ▌ ***consulting EBA and the ESCB***, develop draft regulatory technical standards further specifying the elements to be considered when***:***

(a) a CCP establishes its▌ admission criteria referred to in paragraph 1***;***

(b) a CCP assesses the ability of non-financial counterparties acting as clearing members to meet margin requirements and default fund contributions referred to in paragraph 1a.

When developing those draft regulatory technical standards, ESMA shall take into account:

(a) the modalities and specificities through which non-financial counterparties may, or already do, access clearing services, including as direct clearing members in sponsored models;

(b) the need to facilitate prudentially sound direct access of non- financial counterparties to CCP clearing services and activities;

(c) the need to ensure proportionality;

(d) the need to ensure an effective management of risks.

ESMA shall submit those draft regulatory technical standards to the Commission by … [▌12 months after entry into force of this ***amending*** Regulation].

Power is delegated to the Commission to ▌***supplement this Regulation by adopting*** the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

”

(30) Article 38 is amended as follows:

‘

8. Clearing members providing clearing services and clients providing clearing services shall ▌***provide*** their clients ▌***with at least the following:***

(a) information on the way the margin models of the CCP work▌ ***;***

(b) information on the situations▌ ***and conditions that may trigger margin calls;***

(c) information on the procedures used to establish the amount to be posted by the clients; and

(d) a simulation of the margin requirements ▌ ***the clients*** may be subject to under different scenarios.

For the purposes of point (d), the simulation▌ shall include both the margins required by the CCP and any additional margins required by the clearing members and the clients providing clearing services***. The results of the simulation shall not be binding***▌ **.**▌

Upon request by a clearing member, a CCP shall, without undue delay, provide that clearing member with the information requested to allow that clearing member to comply with the provisions under the first subparagraph of this paragraph, unless such information is already provided pursuant to paragraphs 1 to 7. Where the clearing member or a client provides clearing services, and where appropriate, they shall transmit that information to their clients.

,

(b) paragraph 9 is replaced by the following:

‘

▌***9***. The clearing members of the CCP and clients providing clearing services, shall clearly inform their existing and potential clients of the potential losses or other costs that they may bear as a result of the application of default management procedures and loss and position allocation arrangements under the CCP’s operating rules, including the type of compensation they may receive, taking into account Article 48(7). Clients shall be provided with sufficiently detailed information to ensure that they understand the worst-case losses or other costs they could face should the CCP undertake recovery measures.▌

’

(30a) Article 38

(c) the following paragraph is added:

Transparency

‘

1. A CCP and its clearing members shall publicly disclose the prices and fees associated with the services provided. They shall disclose the prices and fees of each service provided separately, including discounts and rebates and the conditions to benefit from those reductions. A CCP shall allow its clearing members and, where relevant, their clients separate access to the specific services provided.

A CCP shall account separately for costs and revenues of the services provided and shall disclose that information to ESMA and the competent authority.

2. A CCP shall disclose to clearing members and clients the risks associated with the services provided.

3. A CCP shall disclose to ESMA, its clearing members and to its competent authority the price information used to calculate its end-of-day exposures to its clearing members.

A CCP shall publicly disclose the volumes of the cleared transactions for each class of instruments cleared by the CCP on an aggregated basis.

4. A CCP shall publicly disclose the operational and technical requirements relating to the communication protocols covering content and message formats it uses to interact with third parties, including the operational and technical requirements referred to in Article 7.

5. A CCP shall publicly disclose any breaches by clearing members of the criteria referred to in Article 37(1) and the requirements laid down in paragraph 1 of this Article, except where the competent authority, considers that such disclosure would constitute a threat to financial stability or to market confidence or would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

6. A CCP shall provide its clearing members with a simulation tool allowing them to determine the amount of additional initial margin at portfolio level that the CCP might require upon the clearing of a new transaction, including a simulation of the margin requirements that they might be subject to under different scenarios. That tool shall only be accessible on a secured access basis, and the results of the simulation shall not be binding.

ESMA shall submit those draft regulatory technical standards to the Commission by ...[12 months from the entry into force of this amending Regulation]. Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

,

‘

ESMA shall, in consultation with EBA and the ESCB, develop draft regulatory technical standards further specifying:

(a) the requirements that the simulation tool is to comply with and the type of output to be provided pursuant to paragraph 6;

(b) the information to be provided by CCPs to clearing members regarding transparency of margin models pursuant to paragraph 7;

(c) the information to be provided by clearing members and clients providing clearing services to their clients under paragraphs 7 and 8; and

(d) the requirements of the simulation of margins to be provided to clients and the type of output to be provided pursuant to paragraph 8.

7. A CCP shall provide its clearing members with information on the initial margin models it uses, including methodologies for any add-ons, in a clear and transparent manner. That information shall:

(a) clearly explain the design of the initial margin model and how it operates, including in stressed market conditions;

(b) clearly describe the key assumptions and limitations of the initial margin model and the circumstances under which those assumptions are no longer valid;

(c) be documented.

,

(31) Article 41 is amended as follows:

(a) paragraphs 1, 2 and ***3*** are replaced by the following:

‘

1. A CCP shall impose, call and collect margins to limit its credit exposures from its clearing members and, where relevant, from CCPs with which it has interoperability arrangements. Such margins shall be sufficient to cover potential exposures that the CCP ▌ ***considers will arise*** until the liquidation of the relevant positions. They shall also be sufficient to cover losses that result from at least 99 % of the exposures movements over an appropriate time horizon and they shall ensure that a CCP fully collateralises its exposures with all its clearing members, and, where relevant, with CCPs with which it has interoperability arrangements, at least on a daily basis. A CCP shall continuously monitor and revise the level of its margins to reflect current market conditions taking into account any potentially procyclical effects of such revisions.

2. A CCP shall adopt models and parameters in setting its margin requirements that capture the risk characteristics of the products cleared and take into account the interval between margin collections, market liquidity and the possibility of changes over the duration of the transaction. The models ***and parameters*** shall be validated by the competent authority and subject to an opinion ***by the college*** in accordance with Article 19 and an opinion by ESMA in accordance with Article 24a(7), first subparagraph, point (bc)▌ issued in accordance with the procedure under Article 17b.

3. A CCP shall call and collect margins on an intraday basis, at least when predefined thresholds are exceeded. In doing so a CCP shall consider***, to the extent possible, the potential*** ▌ impact of its intraday margin collections and payments on the liquidity position of its participants▌ ***and on the resilience of the CCP. A CCP shall not, to the extent possible,*** hold intraday variation margin ▌ ***payments*** after ***it has collected all such*** ▌ payments due ▌ .▌

’

(32) in Article 44(1), the second subparagraph is replaced by the following :

‘**‘**A CCP shall measure, on a daily basis, its potential liquidity needs. It shall take into account the liquidity risk generated by the default of at least the two entities▌ ***to which it has the largest exposures and which are*** clearing members or liquidity providers, ▌ ***excluding central banks****.’*;

,

(33) Article 46 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. A CCP shall accept highly liquid collateral with minimal credit and market risk to cover its initial and ongoing exposure to its clearing members.▌

A CCP may accept public guarantees▌ **,** public bank ***guarantees*** or commercial bank guarantees, provided that they are unconditionally available upon request within the liquidation period referred to in Article 41.

A CCP shall set in its operating rules the minimum acceptable level of collateralisation for the guarantees it accepts and may specify that it can accept fully uncollateralised bank guarantees. A CCP may accept commercial bank guarantees, public bank guarantees or public guarantees only to cover its initial and ongoing exposure to its clearing members that are non-financial counterparties or to clients of clearing members, provided that those clients are non-financial counterparties.

▌Where ***commercial bank guarantees or public*** bank guarantees are provided to a CCP, that CCP shall***:***

(a) take them into account when calculating its exposure to the bank ***issuing those guarantees and*** that is also a clearing member▌ ***;***

(b) subject uncollateralised bank guarantees to concentration limits;

(c) apply adequate haircuts to ▌ ***the value of assets, public guarantees, public bank guarantees and commercial bank*** guarantees to reflect the potential for ▌ ***those values*** to decline over the interval between their last revaluation and the time by which they can reasonably be assumed to be liquidated▌ ***or exercised, as applicable;***

(d) take into account the liquidity risk following the default of a market participant and the concentration risk on certain assets▌ in establishing the acceptable collateral and the relevant haircuts▌ ***for the CCP;***

(e) take into account the need to minimise any potential procyclicality effects of such revisions when revising the level of the haircuts ***that*** it applies to the assets ***and the guarantees*** it accepts as collateral▌**.**

,

(b) ▌ paragraph ▌ ***(..)*** is replaced by the following:

‘***3. ‘In order to ensure a consistent application of this Article, ESMA shall, in cooperation with the EBA, and after consulting the ESRB and the members of the ESCB, develop draft regulatory technical standards specifying:***

(a) the type of collateral that could be considered highly liquid, such as cash, gold, government and high-quality corporate bonds and covered bonds;

(b) the haircuts referred to in paragraph 1, taking into account the objective to limit their procyclicality; and;

(c) the conditions under which public guarantees, public bank guarantees and commercial bank guarantees may be accepted as collateral under paragraph 1, including appropriate concentration limits, credit quality requirements and stringent wrong-way risk requirements for public bank guarantees and commercial bank guarantees.

ESMA shall submit those draft regulatory technical standards to the Commission by ... [12 months after the date of entry into force of this amending Regulation]

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.';

,

(33a) Article 48 is amended as follows:

(a) paragraph 5 is replaced by the following:

‘

Where assets and positions are recorded in the records and accounts of a CCP as being held for the account of a defaulting clearing member’s clients in accordance with Article 39(2), the CCP shall, at least, contractually commit itself to trigger the procedures for the transfer of the assets and positions held by the defaulting clearing member for the account of all its clients to another clearing member designated by all of those clients, and shall transfer such assets and positions unless all clients object to the transfer before the transfer of assets and positions is concluded and without the consent of the defaulting clearing member. That other clearing member shall be obliged to accept those assets and positions only where it has previously entered into a contractual relationship with the clients by which it has committed itself to do so. If the transfer to that other clearing member has not taken place for any reason within a predefined transfer period specified in its operating rules, the CCP may take all steps permitted by its rules to actively manage its risks in relation to those positions, including liquidating the assets and positions held by the defaulting clearing member for the account of its clients.

’

(b) paragraph 6 is replaced by the following:

‘

Where assets and positions are recorded in the records and accounts of a CCP as being held for the account of a defaulting clearing member’s client in accordance with Article 39(3), the CCP shall, at least, contractually commit itself to trigger the procedures for the transfer of the assets and positions held by the defaulting clearing member for the account of the client to another clearing member designated by the client, on the client’s request and without the consent of the defaulting clearing member. That other clearing member shall be obliged to accept these assets and positions only where it has previously entered into a contractual relationship with the client by which it has committed itself to do so. If the transfer to that other clearing member has not taken place for any reason within a predefined transfer period specified in its operating rules, the CCP may take all steps permitted by its rules to actively manage its risks in relation to those positions, including liquidating the assets and positions held by the defaulting clearing member for the account of the client.

(c) the following paragraph is added:

7a. In the case of default

of a clearing member and where such default results in the transfer in full or in part of the assets and positions held by the clients from the defaulting clearing member towards another clearing member in accordance with paragraphs 5 and 6, the latter may, for three months from the date of transfer, rely on the due diligence performed by the defaulting clearing member pursuant to Section 4 of Chapter II of Directive 2015/849 for the purpose of complying with the

requirements pursuant to Directive (EU) 2015/849.

Where the clearing member to whom the transfer of assets and positions have been made is subject to Regulation (EU) No 575/2013, it shall comply with the capital requirements for exposures of clearing members towards clients under that Regulation within a period agreed with its competent authority, which shall not exceed three months from the date of the transfer.

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(34) Article 49 is amended as follows:

(a) paragraphs 1 to 1e are replaced by the following:

‘

1. A CCP shall regularly review the models and parameters adopted to calculate its margin requirements, default fund contributions, collateral requirements and other risk control mechanisms. It shall subject the models to rigorous and frequent stress tests to assess their resilience in extreme but plausible market conditions and shall perform back tests to assess the reliability of the methodology adopted.

The CCP shall obtain independent validation, shall inform its competent authority and ESMA of the results of the tests performed and shall obtain their validation in accordance with paragraphs 1a to 1e before adopting any significant change to the models ***and parameters***.

Where a CCP intends to adopt a change to a model or parameter referred to in the first subparagraph, it shall do one of the following:

(a) where the CCP considers that the intended change is significant pursuant to paragraph 1g, it shall apply for validation of the change in accordance with the procedure laid down in this Article;

(b) where the CCP considers that the intended change is not significant pursuant to paragraph 1g of this Article, it shall apply for validation of the change in accordance with the procedure laid down in Article 49a.

1b

All changes to models and parameters not assessed under Article 49a shall be assessed in accordance with the procedure laid down in this Article.

The adopted models ***and parameters***, including any significant change thereto, shall be subject to an opinion of the college in accordance with this Article.

ESMA shall ensure that information on the results of the stress tests is passed on to the ESAs, the ESCB and the Single Resolution Board to enable them to assess the exposure of financial undertakings to the default of CCPs.

1a. Where a CCP intends to adopt any ▌ change to ▌ ***a model or parameter*** referred to in paragraph 1, it shall submit an application for ▌ ***validation*** of such change in an electronic format via the central database referred to in Article ▌ ***17c. The application*** shall be immediately shared with the CCP's competent authority, ESMA and the college. The CCP shall enclose an independent validation of the intended change to its application.

▌Within ▌***two*** working days after such application has been received, ▌the CCP ▌***shall receive an acknowledgement of receipt of*** the application ▌***via the central database referred to in Article 17c***.

1b. ▌***The CCP's*** competent authority and ESMA shall ▌***each assess, within 10 working days of the acknowledgement of receipt*** of the ▌***application, whether the application contains the documents required and whether these documents contain all the information required, pursuant to paragraph 5, point (c)***.

Where ▌***the CCP's competent authority or ESMA concludes that not all documents or information required have been submitted, the CCP's competent authority shall request the applicant CCP to submit additional documents or information that it or ESMA has identified as missing, via the central database*** referred to in ***Article 17c. The stated time in the first***▌ subparagraph of ***this*** paragraph ▌***may in that case be extended by a maximum of 10 working days. The application shall be rejected where the CCP's competent authority or ESMA concludes that the*** CCP has ▌***failed to comply with any such request. In such cases, the authority which concluded that the application shall be rejected shall inform the other authority thereof. The CCP's competent authority shall inform the CCP of the decisions to reject the application via the central database referred to in Article 17c and inform the CCP of the documents or information identified as missing***.

1c. Within ▌ ***40*** working days of ***concluding that all documents and information have been submitted in accordance with paragraph 1b:***

(a) the competent authority shall conduct a risk assessment of the significant change and submit its report to ESMA and the college; and

(b) ESMA shall conduct a risk assessment of the significant change and submit its report to the CCP's competent authority and the college.

During the period referred ▌ to in the ▌ ***first*** subparagraph***, the CCP's competent authority, ESMA or any of the members of the college referred to in Article 18(1) may submit, via the central database referred to in Article 17c, questions directly to, and request complementary information from, the applicant CCP and shall set a deadline by which the applicant CCP shall provide such information.*** ▌

Within 15 working days of the receipt of the reports referred to in points (a) and (b) of the first subparagraph, the college shall adopt an opinion pursuant to Article 19 and transmit it to ESMA and the competent authority. Notwithstanding a provisional adoption in accordance with paragraph 1f, the competent authority and ESMA shall not adopt a decision granting or refusing the validation of significant changes to models or parameters until such an opinion has been adopted by the college, unless the college has not adopted that opinion within the deadline.

1d. Within 10 working days of receipt of the ▌ ***opinion of the college, or the deadline for that opinion to be provided, whichever comes earlier***, the CCP's competent authority and ESMA shall each ▌ ***do both of the following:***

(i) grant or refuse the validation, taking into account such reports and opinion;

(ii) inform each other in writing, including a fully reasoned explanation, whether the validation has been granted or refused.

Where one of them has not validated the change, the validation shall be refused.

Where the CCP's competent authority or ESMA do not agree with the opinion of the college, including any conditions or recommendations contained therein, their decisions shall contain full reasons and an explanation of any significant deviation from that opinion or those conditions or recommendations. ▌

1e. ▌ ***The CCP's*** competent authority ▌ shall▌ inform the CCP***, within the deadline referred to in paragraph 1d***▌ , including a fully reasoned explanation, ***on*** whether the validations have been granted or refused.

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‘

1f. The CCP may not adopt any significant change to ▌ ***a model or parameter*** referred to in paragraph 1, before obtaining the validations by ***both*** its competent authority and ESMA.

By way of derogation from the first subparagraph, where requested by the CCP, the competent authority, in agreement with ESMA, may allow for a provisional adoption of a significant change of ▌ ***a model or parameter*** prior to their validations where duly justified▌ Such a temporary change▌ shall only be allowed for a certain period of time jointly specified by the CCP’s competent authority and ESMA. After the expiry of this period, the CCP shall not be allowed to use such▌ change unless it has been approved pursuant to paragraphs 1a, ▌ ***1b, 1c and 1d***.

1fa. Changes to parameters, that are the result of applying a methodology that is part of a validated model, either due to external input or due to a regular review or calibration exercise, shall not be considered changes to models and parameters for the purpose of this Article and Article 49a.

1g. A change shall be considered as significant where ***at least*** one of ***the*** following conditions is met:

(a) the change leads to a ***significant*** decrease or increase of the ***CCP's*** total pre-funded financial resources, including margin requirements, default fund and ▌***dedicated own resources as referred to in Article 45(4);***

(b) the structure▌ or the ▌***structural elements*** of the margin model are▌ changed▌ ;

(c) ***a component of the margin model, including a margin parameter or an add-on, is introduced, removed, or amended in a manner which leads to a significant*** ▌ decrease or increase of the ▌ ***output of the margin model at the CCP level***;

▌ ***(d+da) (d) the methodology used to compute portfolio offsets is changed leading to a significant decrease or***

increase of the total margin requirements for these financial instruments;

(da) the methodology for defining and calibrating stress test scenarios for the purpose of determining ***the size of the CCP's*** default ▌***funds and the size of the individual clearing members' contributions to those default funds*** is changed, leading to a ***significant*** decrease or increase ▌ ***in the size of any of the*** default ▌***funds or*** of any individual default fund contribution;

▌ ***(e+ea)*** ***(e)*** the methodology applied to assess liquidity risk ▌ is changed, leading to a ***significant*** decrease or increase of the estimated liquidity needs in any currency ▌ ***or the total liquidity needs;***

(ea) the methodology applied to determine the concentration risk a CCP has towards an individual counterparty is changed, such that the CCP's overall exposure to that counterparty decreases or increases significantly;

(f) the methodology applied to value collateral, ▌ ***or calibrate collateral haircuts***, is changed, such that the total value of▌ collateral decreases or increases ▌ ***significantly***;

(g) ▌ ***the change*** could have a material effect on the overall risk of the CCP.

,

(c) paragraph 5 is replaced by the following:

‘

5. ESMA shall, in close cooperation with the ***members of the*** ESCB, develop draft regulatory technical standards ***further*** specifying ▌ ***all of the following;***

(a+b) (a) what constitutes a significant increase or decrease for the purposes of paragraph 1g, points (a), (c), (d), (da), (e), (ea)

and (f).

(b) the elements to be considered when assessing whether one of the conditions referred to in paragraph 1g are met;

(c+d) (c) other changes to models that can be considered as already covered by the approved model and are therefore not considered a model change and not subject to the procedures established in this Article or Article 49a;

(d) the list of required documents that shall accompany an application for validation pursuant to paragraph 1a of this Article and Article 49a and the information such documents shall contain to demonstrate that the CCP complies with all relevant requirements of this Regulation. The required documents and level of information shall be proportionate to the type of model validation but entail sufficient details to ensure a proper analysis of the change.

For the purposes of point (a) of the first subparagraph of this paragraph, ESMA may set different values for the different points of paragraph 1g.

ESMA shall submit those draft regulatory technical standards to the Commission by … [▌12 months after the date of entry into force of this ***amending*** Regulation]

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.;

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(d) the following paragraph 6 is added:

‘6. ESMA shall develop draft implementing technical standards specifying the electronic format of the application ***to be submitted to the central database referred to in Article 17c for the*** ▌validation referred to in paragraph 1a▌ ***of this Article and Article 49a***.

ESMA shall submit those draft implementing technical standards to the Commission by…▌ ***[***12 months after the date of entry into force of this ***amending*** Regulation].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.;

,

(34a) the following Article is inserted:

‘

Article 49a

Accelerated procedure for non-significant changes to the CCP's models and parameters

1. Where a CCP considers that a change to a model or parameter referred to in Article 49(1) that it intends to adopt does not meet the conditions in paragraph 1g of that Article, it may request that the application, to validate the change, be subject to the accelerated procedure under this Article.

1a. The accelerated procedure shall apply to a proposed change to a model or parameter where both of the following conditions are met:

(a) the CCP has requested a validation of a change to be assessed under this Article;

(b) the CCP’s competent authority and ESMA have each concluded that the proposed change is not significant pursuant to paragraph 4.

3. The CCP shall submit its application including all documents and information required pursuant to Article 49(5), point (c) in an electronic format via the central database referred to in Article 17c. The CCP shall provide all information necessary to demonstrate why the proposed change is to be deemed non-significant and therefore qualifies for assessment under the expedited procedure.

An acknowledgement of receipt of the application shall be sent to the CCP via, the central database referred to Article 17c, within 2 working days of receiving such application.

4. The CCP's competent authority and ESMA shall each decide, within 10 working days of the acknowledgement of receipt of the application whether the proposed change is significant or not significant.

5. Where, in accordance with paragraph 4, the CCP's competent authority or ESMA have decided that the change is significant, they shall inform each other in writing thereof and the application to validate the change shall not be subject to the accelerated procedure under this Article. The CCP's competent authority shall notify the applicant CCP in writing, via the central database referred to in Article 17c, including a fully reasoned explanation, within 2 working days of the decision made under paragraph 4. Within 10 working days of receipt of the notification, the CCP shall either withdraw the application or complement it to fulfil the requirements for an application under Article 49 .

6. Where, in accordance with paragraph 4, the CCP's competent authority and ESMA have decided that the change is not significant, they shall, within 3 working days of that conclusion, do both of the following :

(a) either grant the validation, where the CCP complies with this Regulation, or refuse it, where the CCP does not comply with this Regulation;

(b) inform each other in writing, including a fully reasoned explanation, whether the validation has been granted or refused.

Where any of them has not granted the model validation, the validation shall be refused.

7. The CCP's competent authority shall inform the applicant CCP in writing, via the central database referred to in Article 17c, including a fully reasoned explanation, within 2 working days of the decisions made under paragraph 2, second subparagraph whether the validation has been granted or refused.

,

(35) ▌ Article 54▌ ***is amended as follows***:

Paragraphs 1 to 4 are replaced by the following:

‘

1. An interoperability arrangement***, or any material change to an approved interoperability arrangement under Title V*** shall be subject to the prior approval of the competent authorities of the CCPs involved**.** ▌The CCPs’ competent authorities shall request the opinion of ESMA in accordance with 24a(7), first subparagraph, point (bc), and the college in accordance with Article 19, and issued in accordance with the▌ procedure set out in Article 17b.▌

2. The competent authorities shall grant approval of the interoperability arrangement only where the CCPs involved have been authorised to clear under Article 17 or recognised under Article 25 or authorised under a pre-existing national authorisation regime for a period of at least three years, the requirements laid down in Article 52 are met and the technical conditions for clearing transactions under the terms of the arrangement allow for a smooth and orderly functioning of financial markets and the arrangement does not undermine the effectiveness of supervision.

3. Where a competent authority considers that the requirements laid down in paragraph 2 are not met, it shall provide explanations in writing regarding its risk considerations to the other competent authorities and the CCPs involved. It shall also notify ESMA, which shall issue an opinion on the effective validity of the risk considerations as grounds for denial of the interoperability arrangement. ESMA's opinion shall be made available to all the CCPs involved. Where ESMA's opinion differs from the assessment of the relevant competent authority, that competent authority shall reconsider its position, taking into account ESMA's opinion.

4. By ...[18 months from the date of entry into force of this amending Regulation], ESMA shall issue guidelines or recommendations with a view to establishing consistent, efficient and effective assessments of interoperability arrangements by NCAs, in accordance with the procedure laid down in Article 16 of Regulation (EU) No 1095/2010.

ESMA shall develop drafts of those guidelines or recommendations after consulting the members of the ESCB.

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(ii) the following paragraph is added:

5. ESMA shall, after consulting the members of the ESCB and the ESRB, develop draft regulatory technical standards to further specify the requirements for CCPs to adequately manage the risks arising from interoperability arrangements. For that purpose, ESMA shall take into account the existing guidelines issued under paragraph 4 and assess whether the provisions included therein are appropriate in the case of interoperability arrangements covering all types of products or contracts, including derivative contracts and non-financial instruments.

ESMA shall submit those draft regulatory technical standards to the Commission by ...[12 months from the date of entry into force of this amending Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

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(36) in Article 81(3), the following point is added:

(s) the national authorities entrusted with the conduct of macroprudential policy .

,

(36) In Article 82, paragraphs 2 and 3 are replaced by the following:

"2. ▌ ***[***The power to adopt delegated acts referred to in Articles 1(6), Article 3(5), Article 4(3a), ***[Article 7a(3)] [***Article 7a(6)***]***, Article ***[7a(5)], [Article 11(3)], [Article 17a(6)]***▌ , Article 25(2a), Article 25(6a), Article 25a(3), Article 25d(3), Article 25i(7), Article 25o, Article 64(7), Article 70, Article 72(3), and Article 85(2) shall be conferred to the Commission for an indeterminate period of time.***]***

3. ***[***The delegation of power referred to in Article 1(6), Article 3(5), Article 4(3a), ***[Article 7a(3)], [***Article 7a(6)***]***, Article ***[7a(5)], [Article 11(3)], [Article 17a(6)]***▌ , Article 25(2a), Article 25(6a), Article 25a(3), Article 25d(3), Article 25i(7), Article 25o, Article 64(7), Article 70, Article 72(3) and Article 85(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.***]***

,

▌ Article 85 is amended as follows;

(a) paragraph 1 is replaced by the following:

‘1. By ▌ ***... [***5 years after the date of entry into force of this ***amending*** Regulation] the Commission shall assess the application of this Regulation and prepare a general report. The Commission shall submit that report to the European Parliament and to the Council, together with any appropriate proposals.;

,

(b) the following paragraph ▌ is inserted:

1b. By ▌ ***2 years*** after the entry into force of this ***amending*** Regulation ESMA shall submit a report to the Commission on the possibility and feasibility to require the segregation of accounts across the clearing chain of non-financial and financial counterparties. The report shall be accompanied by a cost-benefit analysis.;

,

(bb) the following paragraphs are inserted:

"1e. By ...[2 years from the date of the entry into force of this amending Regulation] ESMA shall submit a report to the Commission, to the European Parliament and to the Council on the appropriateness and implications of extending the definition of a CCP, as referred to in Article 1, point(1), to other markets beyond financial markets, such as commodity markets, including wholesale energy markets, or markets in crypto-assets as defined in Article 3(5) of Regulation (EU) 2023/1114 of the European Parliament and Council'

‘

1d. By ... [24 months from the date of entry into force of this amending Regulation], the European Commission shall provide a report to the European Parliament and the Council assessing level playing field and financial stability considerations in relation to generalized central bank access for EMIR-authorized Union CCPs without the condition of maintaining a banking license. In this context, the Commission shall also take into consideration the situation in third-country jurisdictions;

By ... [36 months from the date of entry into force of this amending Regulation] ESMA shall present a report to the European Parliament, the Council and the Commission on the overall activity in derivative transactions of financial counterparties and non-financial counterparties subject to this Regulation, providing, inter alia, the following information on those counterparties, differentiating between their financial or non-financial nature:

(a) the potential risks to Union financial stability that may arise from this type of activity;

(b) the positions in OTC commodity derivatives in excess of EUR 1 billion, specifying the exact amount of the positions concerned;

(c) the total volume of energy derivative contracts traded, distinguishing, where relevant, between those that are used for hedging and those that are not;

(d) the total volume of agricultural derivative contracts traded, distinguishing, where relevant, between those that are used for hedging and those that are not;

(e) the share of OTC and exchange-traded energy/agriculture derivative contracts that are physically settled in the total volume of energy derivative contracts traded.

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‘

8. By [2 years after the entry into force of this Amending Regulation] ESMA, in cooperation with the ESRB, shall submit a report to the Commission. The report shall:

(i) define in detail the notion of procyclicality in the context of Article 41 for margins called by a CCP and Article 46 for haircuts applied to collateral held by a CCP;

(ii) assess how the anti-procyclicality provisions of Regulation (EU) No 648/2012 and Delegated Regulation 153/2013 have been applied over the years and whether further measures are necessary to improve the use of anti-procyclicality tools;

(iii) inform on how anti-procyclicality tools could or could not result in margin increases that would be greater than without the application of said tools, taking into account potential add-ons or offsets a CCP is allowed to apply under this Regulation.

In preparing the report, ESMA shall also assess the rules applying to, and the practices of, third-country CCPs, as well as the international developments concerning procyclicality.’;

11. By ... [36 months from the date of entry into force of this amending Regulation] ESMA shall, in close cooperation with the ESRB and the Joint Monitoring Mechanism, assess how the provisions of Article 15, Articles 17 to 17ba and Article 49 have been applied.

In particular, that assessment shall establish:

(a) whether the changes introduced by Regulation (EU) .../... of the European Parliament and of the Council* have obtained the desired effect with respect to increasing the competitiveness of Union CCPs and reduce the regulatory burden they face;

(b) whether the changes introduced by Regulation (EU) .../...+ have reduced the time-to-market for new clearing services and products without negatively impacting the risk for the CCPs, their clearing members or their clients;

(c) whether the introduction of the possibility for CCPs to implement directly changes as referred to in Article 17aa have negatively impacted their risk profile or have increased the overall financial stability risks in the Union, and whether they should be amended.

ESMA shall submit a report on the outcome of that assessment to the European Parliament, the Council and the Commission.

**** Regulation (EU) .../... of the European Parliament and of the Council of ... amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets (OJ L ..., ..., p. ....).***

[OJ: Please insert in the text the number of this Regulation in the corresponding footnote the number, date of adoption and publication reference of that Regulation, including its ELI number]

,

(***d) the following paragraph 1d is inserted:***

1d. By [4 years after entry force of this amending Regulation], ESMA shall submit a report to the Commission. That report shall, in cooperation with the ESRB, assess whether:

(a) PTRR services should be considered systemically important;

(b) the provision of PTRR services by PTRR service providers has resulted in an increased risk for the Union financial ecosystem; and

(c) the exemption has resulted in any circumvention of the clearing obligation under Article 4.

Within 18 months of transmission of the report referred to in the first subparagraph, the Commission shall prepare a report on the aspects presented by ESMA in its report. The Commission shall submit its report to the European Parliament and to the Council, together with any appropriate proposals.';

(e) paragraphs 2,4 and 7 are deleted;

(37a) In Article 89 the following paragraphs are added:

(11) Where a CCP is a clearing member or a client of another CCP, or has established indirect clearing arrangements, before ...[date of entry into force of this amending Regulation], it shall become subject to Article 26(1) on ...[2 years from the date of entry into force of this amending Regulation].

By way of derogation from Article 37(1), a CCP can allow other CCPs or clearing houses that were its clearing members, directly or indirectly, as of 31 December 2023 to remain its clearing members until ...[2 years from the date of entry into force of this amending Regulation] at the latest.

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11a. Until… [OP please insert date = 1 years from date of entry into force of this regulation] or 30 days after the announcement referred to in Article 17c(1), second subparagraph, whichever date is earlier, the exchange of information, the submission of information and documentation, and notifications that are required to use the central database referred to in that Article shall be carried out through the use of alternative arrangements.

(11b) A CCP authorised under Article 14 that have entered an interoperability arrangement in financial instruments other than transferable securities and money-market instruments with another CCP authorised under Article 14 or a CCP recognised under Article 25 before ...[the date of entry into force of this amending Regulation] shall seek approval from their competent authorities in accordance with Article 54 before ...[24 months from the date of entry into force of this amending Regulation].

An interoperability arrangement established by a CCP authorised under Article 14 and a CCP that is neither authorised under Article 14 nor recognised under Article 25 shall be discontinued before ...[6 months from the date of entry into force of this amending Regulation]. If the CCP with which that interoperability arrangement is established becomes authorised under Article 14 or recognised under Article 25 before ...[6 months from the date of entry into force of this amending Regulation], the CCPs that are party to that interoperability arrangement shall seek approval from their competent authorities in accordance with Article 54 before ...[30 months from the date of entry into force of this amending Regulation].

(11c) By way of derogation from Article 11(12a), until EBA has publicly announced that it has set up its central validation function, the validation of pro-forma models shall be carried out by competent authorities.'

(39) Annex III is amended as follows:

(a) section II is amended as follows:

(i) point (a) is replaced by the following:

'(a) a Tier 2 CCP infringes Article 26(1) by not having robust governance arrangements which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks to which it is or might be exposed and adequate internal control mechanisms, including sound administrative and accounting procedures or by becoming a clearing member, a client, or establishing indirect clearing arrangements with a clearing member with the aim to undertake clearing activities at another CCP, unless such clearing activities are undertaken under an interoperability arrangement established under Title V or where conducting its investment policies under Article 47;';

(ii) the following point is inserted:

[(ra) a Tier 2 CCP infringes [Article 7c/29a(1)] by not reporting on a monthly basis the information referred to in paragraph 1, points (a) to (fa), of that Article.]

(iii) point (ab) is replaced by the following:

'(ab) a Tier 2 CCP infringes Article 37(1) or (2) by using, on an ongoing basis, discriminatory, opaque or subjective admission criteria, or by otherwise failing to ensure fair and open access to that CCP on an ongoing basis or by failing to ensure on an ongoing basis that its clearing members have sufficient financial resources and operational capacity to meet the obligations arising from the participation in that CCP, or by not having admission criteria ensuring that CCPs or clearing houses cannot be clearing members, directly or indirectly, of the CCP, or by failing to conduct a comprehensive review of compliance by its clearing members on an annual basis;';

(iv) the following points are inserted:

'(aba) a Tier 2 CCP infringes Article 37(1) or (2) by using, on an ongoing basis, discriminatory, opaque or subjective admission criteria, or by otherwise failing to ensure fair and open access to that CCP on an ongoing basis or by failing to ensure on an ongoing basis that its clearing members have sufficient financial resources and operational capacity to meet the obligations arising from the participation in that CCP, or by not having admission criteria ensuring that CCPs or clearing houses cannot be clearing members, directly or indirectly, of the CCP, or by failing to conduct a comprehensive review of compliance by its clearing members on an annual basis;

[(abb)] a Tier 2 CCP infringes Article 37(1a) by allowing non-financial counterparties as clearing members where such counterparties have not demonstrated how they will fulfil the margin requirements and default fund contributions, or by failing to review the arrangements established to monitor that the condition for such non-financial counterparties to act as clearing members is met.

(b) section III is amended as follows:

(i) point (h) is replaced by the following:

'(h) a Tier 2 CCP infringes Article 41(1) by not imposing, calling or collecting margins to limit its credit exposures from its clearing members or, where relevant, from CCPs with which it has concluded an interoperability arrangement, or by imposing, calling or collecting margins which are not sufficient to cover potential exposures that the CCP estimates to occur until the liquidation of the relevant positions or to cover losses that result at least 99 % of the exposures movements over an appropriate time horizon or sufficient to ensure that the CCP fully collateralises its exposures with all its clearing members and, where relevant, with all CCPs with which it has concluded an interoperability arrangement, at least on a daily basis, or, by failing to continuously monitor and revise the level of margins to reflect the current market conditions taking into account any potentially procyclical effects;';

(ii) point (j) is replaced by the following:

'(j) a Tier 2 CCP infringes Article 41(3) by not calling and collecting margins on an intraday basis, at least when predefined thresholds are exceeded or by holding intraday variation margin payments after it has collected all such payments due, instead of passing them on, where possible;';

(iii) the following point is inserted:

[(oa)] a Tier 2 CCP infringes Article 45a(1) by taking any of the actions listed under points (a) to (c) of that paragraph where ESMA has required the CCP to refrain from taking any of such actions for a period specified by ESMA;

(iv) the following point is inserted:

[(pa)] a Tier 2 CCP infringes Article 46(2) by accepting public guarantees, public bank guarantees or commercial bank guarantees, where such guarantees are not unconditionally available upon request within the liquidation period referred to in Article 41, or by not specifying, in its operating rules, the minimum acceptable level of collateralisation for the guarantees it accepts, or by accepting commercial bank guarantees, public bank guarantees or public guarantees to cover other exposures than initial and ongoing exposure to its clearing members that are non-financial counterparties or to clients of clearing members, provided that those clients are non-financial counterparties or by, where commercial bank guarantees or public bank guarantees are provided to the CCP, not complying with the requirements set out under points (a) to (e) of the third subparagraph of that paragraph;

(v) point (ai) is replaced by the following:

'(ai) a Tier 2 CCP infringes Article 54(1) by entering into an interoperability arrangement, or making a material change thereto, without the prior approval of ESMA.'.

(c) section IV is amended as follows:

(i) point (g) is replaced by the following:

'(g) a Tier 2 CCP infringes Article 38(6) by not providing its clearing members with a simulation tool allowing them to determine the amount of additional initial margin, at portfolio level, that the CCP may require upon the clearing of a new transaction including simulation of the margin requirements that they might be subject to under different scenarios or by making that tool accessible on an unsecured basis.';

(ii) point (h) is replaced by the following:

'(h) a Tier 2 CCP infringes Article 38(7) by not providing its clearing members with information on the initial margin models it uses, as detailed in points (a), (b) and (c) of the second sentence of that paragraph, in a clear and transparent manner.';

(iii) the following point is inserted:

[(ha)] a Tier 2 CCP infringes Article 38(8) by not providing, or providing with a significant delay, in response to a request by a clearing member, the information requested to allow that clearing member to comply with the provisions under the first subparagraph of that paragraph, where such information has not already been provided.

(d) section V is amended as follows:

(i) point (b) is replaced by the following:

'(b) a Tier 2 CCP or its representatives provide incorrect or misleading answers to questions asked pursuant to point (c) of Article 25g(1);';

(ii) point (c) is replaced by the following:

'(c) a Tier 2 CCP infringes point (e) of Article 25g(1) by not complying with ESMA's request for records of telephone or data traffic;';

(38) Article 90 is amended as follows:

“

By ... /[3 years after the date of entry into force of this ***amending*** Regulation], ESMA shall assess the staffing and resources needs arising from the assumption of its powers and duties in accordance with this Regulation and submit a report to the European Parliament, the Council and the Commission.

”

Article 2

Amendments to Regulation (EU) No 575/2013

Article 382 of Regulation (EU) No 575/2013 is amended as follows:

(-1) paragraph 4 is amended as follows:

(a) the following point is inserted:

‘

(aa) intragroup transactions entered into with non-financial counterparties as defined in Article 2, point 9, of Regulation (EU) No 648/2012 which are part of the same group provided that all the following conditions are met:

(i) the institution and the non-financial counterparties are included in the same consolidation on a full basis and are subject to supervision on a consolidated basis in accordance with Chapter 2 of Title II of Part One;

(ii) they are subject to appropriate centralised risk evaluation, measurement and control procedures; and,

(iii) the non-financial counterparties are established in the Union or, if they are established in a third country, the Commission has adopted an implementing act in accordance with paragraph 4c in respect of that third country.'

,

▌***(b)*** ▌point (b) is replaced by the following:

'(b) intragroup transactions entered into with financial counterparties as defined in Article 2, point 8, of Regulation (EU) No 648/2012, financial institutions or ancillary services undertakings that are established in the Union or that are established in a third country that applies prudential and supervisory requirements to those financial counterparties, financial institutions or ancillary services undertakings that are at least equivalent to those applied in the Union, unless Member States adopt national law requiring the structural separation within a banking group, in which case the competent authorities may require those intragroup transactions between the structurally separated entities to be included in the own funds requirements;

,

(2) the following paragraph ▌ is inserted:

‘

[4c].▌ For the purposes of paragraph 4, ***points (aa) and*** point (b), the Commission may adopt, by way of implementing acts, and subject to the examination procedure referred to in Article 464(2), a decision as to whether a third country applies prudential supervisory and regulatory requirements at least equivalent to those applied in the Union.

’

Article 3

Amendments to Regulation (EU) 2017/1131

Regulation (EU) 2017/1131 is amended as follows:

(1) in Article 2, the following point (24) is added

‘

(24) ‘CCP’ means a ▌ ***CCP as defined*** in Article 2 (1) of Regulation (EU) No 648/2012.;

(d+e) (d) the cash received by the MMF as part of the repurchase agreement that is not centrally cleared through a CCP authorised in accordance with Article 14 of Regulation (EU) No 648/2012 or recognised in accordance with Article 25 of that Regulation does not exceed 10 % of its assets;

(e) the cash received by the MMF as part of a repurchase agreement that is centrally cleared through a CCP authorised in accordance with Article 14 of Regulation (EU) No 648/2012 or recognised in accordance with Article 25 of that Regulation does not exceed 15% of its assets.

,

(2) Article 17 is amended as follows:

(a) paragraph 4 is replaced by the following:

‘

4. The aggregate risk exposure to the same counterparty of an MMF stemming from derivative transactions which fulfil the conditions set out in Article 13 and which are not centrally cleared through a CCP authorised in accordance with Article 14 of Regulation (EU) No 648/2012 or recognised in accordance with Article 25 of that Regulation, shall not exceed 5 % of the assets of the MMF.;

5. The aggregate amount of cash provided to the same counterparty of an MMF in reverse repurchase agreements that are not centrally cleared through a CCP authorised in accordance with Article 14 of Regulation (EU) No 648/2012 or recognised in accordance with Article 25 of that Regulation shall not exceed 15 % of the assets of the MMF.

Where a reverse repurchase agreement is centrally cleared through a CCP authorised in accordance with Article 14 of Regulation (EU) No 648/2012 or recognised in accordance with Article 25 of that Regulation, the cash paid out by an MMF as part of each reverse repurchase agreement shall not exceed 15 % of the assets of the MMF.

,

(b) in paragraph 6, first subparagraph, point (c) is replaced by the following:

‘(c) financial derivative instruments that are not centrally cleared through a CCP authorised in accordance with Article 14 of Regulation (EU) No 648/2012 or recognised in accordance with Article 25 of that Regulation, giving counterparty risk exposure to that body.

,

Article 3a Amendments to Regulation (EU) 2010/1095

(bb) In Article 1(2), the first subparagraph is replaced by the following:

(bc) The Authority shall act within the powers conferred by this Regulation and within the scope of Directives 97/9/EC, 98/26/EC, 2001/34/EC, 2002/47/EC, 2004/109/EC, 2009/65/EC, Directive 2011/61/EU of the European Parliament and of the Council (1), Regulation (EC) No 1060/2009 and Directive 2014/65/EU of the European Parliament and of the Council (2), Regulation (EU) 648/2012 of the European Parliament and of the Council[18], Regulation (EU) 2017/1129 of the European Parliament and of the Council (3), and to the extent that those acts apply to firms providing investment services or to collective investment undertakings marketing their units or shares and the competent authorities that supervise them, within the relevant parts of, Directives 2002/87/EC and 2002/65/EC, including all directives, regulations, and decisions based on those acts, and of any further legally binding Union act which confers tasks on the Authority.

[18] *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 (OJ L 201, 27.7.2012, p. 1).*

Article 4

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.

It shall apply from [OP please insert the date of entry into force of this Regulation] with the exception of:

Article 1, point (3) and point (6) amending Articles 4a(3) and 10(3) of Regulation (EU) No 648/2012, which shall not apply until the date of entry into force of the regulatory technical standards referred to in Article 10 paragraph (4) of this Regulation.

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

2022/0404 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directives 2009/65/EU, 2013/36/EU and (EU) 2019/2034 as regards the treatment of concentration risk towards central counterparties and the counterparty risk on centrally cleared derivative transactions

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

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

Acting in accordance with the ordinary legislative procedure ([2]),

Whereas:

(1) To ensure consistency with Regulation (EU) No 648/2012 and to ensure the proper functioning of the internal market, it is necessary to lay down in Directive 2009/65/EU a uniform set of rules to address counterparty risk in derivative transactions performed by undertakings for collective investment in transferable securities (UCITS), where the transactions have been cleared by a ***central counterparty (CCP)*** that is authorised or recognised under that Regulation. Directive 2009/65/EU imposes regulatory limits on counterparty risk only ***in respect of over-the-counter (OTC)*** derivative transactions, irrespective of whether the derivatives have been centrally cleared. As central clearing arrangements mitigate ***the*** counterparty risk that is inherent in derivative contracts, it is necessary to take into consideration whether a derivative has been centrally cleared by a CCP that is authorised or recognised under ▌ Regulation ***(EU) No 648/2012*** and to establish a level playing-field between exchange traded and OTC derivatives, when determining the applicable counterparty risk limits. It is also necessary**,** for regulatory and harmonisation purposes, to ***increase*** counterparty risk limits only when the counterparties use CCPs that are authorised in a Member State or recognised, in accordance with Regulation (EU) No 648/2012, to provide clearing services to clearing members and their clients.

(2) To contribute to the objectives of the capital markets union it is necessary, for the efficient use of CCPs, to address certain impediments to the use of central clearing in Directive 2009/65/EU and to provide clarifications in Directives 2013/36/EU ▌ and (EU) 2019/2034. The excessive reliance of the Union financial system on systemically important third-country CCPs (Tier 2 CCPs) could pose financial stability concerns that ***need*** to be addressed appropriately. To ensure ▌ financial stability in the Union and adequately mitigate potential risks of contagion across the Union financial system, appropriate measures should therefore be introduced to foster the identification, management and monitoring of concentration risk arising from exposures towards CCPs. In that context, Directives 2013/36/EU and (EU) 2019/2034 should be amended to encourage institutions and investment firms to take the necessary steps to adapt their business model to ensure ▌ consistency with the new requirements for clearing introduced by the revision of Regulation (EU) No 648/2012 and to ▌ enhance ***overall*** their risk management practices, also considering the nature, scope and complexity of their market activities. Whilst competent authorities ***already have a comprehensive set of supervisory measures and powers to address deficiencies in the risk management practices of institutions and investment firms, including the requirement to have*** additional own funds ▌ for risks that are not or not adequately covered by the existing capital requirements, ***those measures and powers*** should be ***enhanced*** with additional, more ***specific*** tools and powers under ▌ Pillar 2 ***in the context of excessive concentration risk arising from exposures towards CCPs***.

▌

(3) Directives 2009/65/EU, 2013/36/EU and (EU) 2019/2034 should therefore be amended accordingly.

(4) Since the objectives of this Directive, namely ensuring that credit institutions, investment firms and their competent authorities adequately monitor and mitigate the concentration risk arising from exposures towards Tier 2 CCPs which offer services of substantial systemic importance and eliminating counterparty risk limits for derivative transactions that are centrally cleared by a CCP authorised or recognised in accordance with Regulation (EU) No 648/2012**,** cannot be sufficiently achieved by the Member States but can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality ▌ as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2009/65/EC

Directive 2009/65/EC is amended as follows:

(1) in Article 2(1), the following point ▌ is added:

‘(u) ‘central counterparty’ (‘CCP’) means a CCP as defined in Article 2, point (1), of Regulation (EU) No 648/2012 of the European Parliament and of the Council[*2].

_____

[*2] 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 (OJ L 201, 27.7.2012, p. 1).;’

(2) Article 52 is amended as follows:

(a) in paragraph 1, second subparagraph, the introductory wording is replaced by the following:

‘ The risk exposure to a counterparty of the UCITS in a derivative transaction that is not centrally cleared through a CCP authorised in accordance with Article 14 of Regulation (EU) No 648/2012 or recognised in accordance with Article 25 of that Regulation, shall not exceed either: ▌

(b) paragraph 2 is amended as follows***:***

(i) the first subparagraph is replaced by the following:

‘ Member States may raise the 5 % limit laid down in ***paragraph 1,*** first subparagraph***, to*** a maximum of 10 %. If they do so, however, the total value of the transferable securities and the money market instruments held by the UCITS in the issuing bodies in each of which it invests more than 5 % of its assets shall not exceed 40 % of the value of its assets. That limitation shall not apply to deposits or derivative transactions made with financial institutions subject to prudential supervision. ▌

(ii) in the second subparagraph, point (c) is replaced by the following:

‘(c) exposures arising from derivative transactions ***undertaken with that body*** that are not centrally cleared through a CCP authorised in accordance with Article 14 of Regulation (EU) No 648/2012 or recognised in accordance with Article 25 of that Regulation ▌.’

Article 2

Amendments to Directive 2013/36/EU

Directive 2013/36/EU is amended as follows:

(1) in Article 74(1), [point (b)] is replaced by the following:

‘(b) effective processes to identify, manage, monitor and report the risks ***that*** they are or might be exposed to***, including environmental, social and governance risks in the short, medium and long term***, as well as concentration risk arising from exposures towards central counterparties, taking into account the conditions set out in Article 7a of Regulation (EU) No 648/2012 of the European Parliament and of the Council[*1],;”

[*1] 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 (OJ L 201, 27.7.2012, p. 1).’;’

(2) in Article 76(2), the following subparagraph is added:

‘ ***‘***Member States shall ensure that the management body develops specific plans and quantifiable targets in accordance with the ***requirements laid down in*** Article 7a of Regulation (EU) No 648/2012 to monitor and address the concentration risk arising from exposures towards central counterparties offering services of substantial systemic importance for the Union or one or more of its Member States.***’***;’

(3) in Article 81, the following paragraph is added:

‘ Competent authorities shall assess and monitor developments ***the practices*** of institutions ▌ concerning the management of their concentration risk arising from exposures towards central counterparties, including the plans developed in accordance with Article 76(2) of this Directive, as well as the progress made in adapting ***their*** business models to the ▌ requirements ***laid down*** in Article 7a of Regulation (EU) No 648/2012;’

(4) in Article 100, the following paragraph ▌ is added:

‘ [5]. EBA, in ***cooperation with ESMA, shall develop guidelines*** in accordance with Article 16 of Regulation (EU) ***No 1093/2010 to specify*** a consistent methodology for integrating the concentration risk arising from exposures towards central counterparties in the supervisory stress testing.***'***;

EBA shall issue those guidelines by ... [18 months from the date of entry into force of this amending Directive].";"

(5) Article ***104(1)*** is amended as follows:

(a) the introductory wording is replaced by the following:

‘ For the purposes of Article 97, Article 98(1), ***(4), (5), (9) and (10)***, Article 101(4) and Article 102 of this Directive and of the application of Regulation (EU) No 575/2013, competent authorities shall have at least the power to: ▌

(b) the following point ▌ is added:

‘ [(n)] require institutions***, where the competent authority considers that there is excessive concentration risk towards a central counterparty,*** to reduce exposures towards ***that*** central counterparty or to realign exposures across their clearing accounts in accordance with Article 7a of Regulation (EU) No 648/2012 ▌ .;’

Article 3

Amendments to Directive (EU) 2019/2034

Directive (EU) 2019/2034 is amended as follows:

(1) in Article 26(1), point (b) is replaced by the following:

“(b) effective processes to identify, manage, monitor and report the risks that investment firms are or might be exposed to, or the risks that they pose or might pose to others, including concentration risk arising from exposures towards central counterparties, taking into account the conditions set out in Article 7a of Regulation (EU) No 648/2012.”

(2) Article ***29(1)*** is amended as follows:

(a) the following point ▌ is added:

‘(e) material sources and effects of concentration risk arising from exposures towards central counterparties and any material impact on own funds.;’

(b) the following subparagraph is added:

‘ ***‘***For the purpose of the first subparagraph, point (e), Member States shall ensure that the management body develops specific plans and quantifiable targets in accordance with the ***requirements laid down in*** Article 7a of Regulation (EU) No 648/2012 to monitor and address the concentration risk arising from exposures towards central counterparties offering services of substantial systemic importance for the Union or one or more of its Member States.***”.”***

(3) in Article 36(1), the following subparagraph is added:

‘ ***‘***For the purpose of the first subparagraph, point (a), competent authorities shall assess and monitor developments ***in the practices*** of investment firms ▌ concerning the management of their concentration risk arising from exposures towards central counterparties, including the plans developed in accordance with Article 29(1), point (e), of this Directive as well as the progress made in adapting ***their*** business models to the ▌ requirements ***laid down*** in Article 7a of Regulation (EU) No 648/2012.***’***;’

(4) Article 39(2) is amended as follows:

(a) the introductory wording is replaced by the following:

‘ For the purposes of Article 29, ▌ Article 36, Article 37(3) and Article ***38*** of this Directive and of the application of Regulation (EU) ***2019/2033***, competent authorities shall have at least the power to:;’

(b) the following point ▌ is added:

‘(n) require ***investment firms*** to reduce exposures towards a central counterparty or to realign exposures across their clearing accounts in accordance with Article 7a of Regulation (EU) No 648/2012, where the competent authority considers ***that*** there is excessive concentration risk towards that central counterparty.;’

Article 4

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by … [▌ months ***from*** the date of entry into force of the EMIR Review Regulation] at the latest. They shall ***immediately*** communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or ***shall*** be accompanied by such a reference on the occasion of their official publication. ***The methods of making*** such reference ***shall be laid down by Member States***.

2. Member States shall communicate to the Commission the text of the main ***measures*** of national law which they adopt in the field covered by this Directive.

Article 5

Entry into force

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

Article 6

Addressees

This Directive is addressed to Member States.

Done at Brussels,