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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
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 - *Mandate for negotiations with the European Parliament*

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,

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Regulation (EU) No 648/2012 of the European Parliament and of the Council contributes to the reduction of systemic risk by increasing the transparency of 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) 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, concerns have been expressed repeatedly, including by the European Securities and Markets Authority (ESMA), 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" in January 2021. The risks and effects of excessive exposures to systemic CCPs outside the Union were considered in the report published by ESMA in December 2021 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 refers to intragroup transactions as provided for in Article 3 of Regulation (EU) No 648/2012, that Article 382 should also be amended accordingly.

(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, 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 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 lack of cooperation for tax purposes are not necessarily the only factors that can influence risk, including counterparty credit risk and legal risk, associated with derivative contracts. Other factors, such as the supervisory framework, also play a role. The Commission should therefore be empowered to adopt delegated acts to identify the third countries whose entities may not benefit from those exemptions despite not being identified in those lists. Considering 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, 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 includedin that calculation.

(9a) The use of post-trade services to mitigate risks in the system is essential for the functioning of Union capital markets. Post-trade risk reduction (PTRR) services, which are non-price forming transactions aiming at reducing risks such as counterparty, credit and operational risk, without changing the market risk of the portfolios, are a prominent example of such services. Historically, portfolio compression services have been the only PTRR service, but a wider range of services, such as rebalancing and optimisation services, are offered by service providers today often using complex financial instruments to ensure that the transactions resulting from the PTRR exercises, on portfolios of OTC derivatives transactions, are not subject to the clearing obligation. This limits the usability and accessibility of PTRR services to advanced financial markets participants as well as increases risk in the financial system by the use of complex products. To ensure Regulation (EU) No 648/2012 promotes safe and efficient post-trade processes, an exemption to the clearing obligation should therefore be introduced for PTRR transactions 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 with a minimum level of activity 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 to a level where such clearing is no longer of substantial systemic importance. In light of recent market developments, it is also appropriate that the requirement only applies to 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, financial 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 entities of 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. 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 an account at EU CCPs that is permanently functional. The active accounts should also 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.

In addition, a 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.

(10c) ESMA has an important role in the assessment of the substantial systemic importance of third-country CCPs and their clearing services. Where ESMA has concluded that the risk exposures of Union counterparties at a Tier 2 CCP or risks to the financial stability of the Union or one of its Member States have not substantially reduced, ESMA should be able to provide the Commission with an opinion on any action it considers appropriate, including recommendation for the establishment of new requirements when the legislative framework proves insufficient. The Commission may adopt a legislative proposal to address those issues. In addition, it is important to ensure that the competent authorities of financial and non-financial counterparties receive the information necessary to assess compliance with the requirement, have appropriate powers and can take appropriate action to ensure the requirement is duly met.

(11)

(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.

(14)

(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, where such data is not available, 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 and proportionality should be ensured by taking into account existing reporting channels.

(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 andto actively evaluate and assess the level of exposure in OTC derivative contracts at entity and group level.

(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 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 based on other aspects such as 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 have to 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.

(17a) Given that in some major jurisdictions the exchange of variation and initial margin for single-stock options and equity index options is not subject to equivalent margin requirements, in order to avoid market fragmentation and ensure a level playing field, those products should be exempted from risk-management procedures regarding the timely, accurate and appropriately segregated exchange of collateral for 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 in single-stock options and equity index options not cleared by a CCP by counterparties subject to Regulation (EU) No 648/2012, and shall report to the Commission on the results of that monitoring every three years. Where the report submitted by ESMA identifies that the exemption endangers financial stability in the Union or in one or more of its Member States or that international developments have led to more convergence in the treatment of equity options, and therefore that the exemption of single-stock options and equity index options is no longer justified, the Commission should be empowered to adopt a delegated act specifying that following an adaptation period, the exemption should be removed.

(17b) 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 initial margin models, such as the standard initial margin model (SIMM) developed by the International Swaps and Derivatives Association (ISDA). The design of those models is centrally decided and can hardly be significantly affected by the preference of every single user or by the different assessments of every single competent authority validating the use of those models by 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 the general elements of such industry-wide models. In its role as central validator, EBA should validate the general aspects of those models, such as their calibration, design, and instruments and assets class coverage. To assist its work, EBA should collect feedback from competent authorities, ESMA and EIOPA, and coordinate their views. Given that competent authorities would continue to be responsible for validating the implementation of those models at the supervised entity level, EBA should assists 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 ensuring a more effective EU influence on the design of those models. Competent authorities will remain responsible for validating the implementation of those models at the supervised entity level.

(18) EBA, in cooperation with ESMA and EIOPA, should develop guidelines or recommendations to ensure a uniform application of the risk-management procedures requiring the timely, accurate and appropriately segregated exchange of collateral with respect to OTC derivative contracts entered into by financial counterparties and non-financial counterparties.

(18a) 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 those procedures.

(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. Those challenges and difficulties can notably be explained by certain provisions of Regulation (EU) No 648/2012 that render some authorisation procedures too long, complex and uncertain in their outcome. 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 referred to in Article 18 of Regulation (EU) No 648/2012. First, to avoid significant, and potentially indefinite, delays when competent authorities assess the completeness of an application for an authorisation, the competent authority should swiftly acknowledge receipt of that application and thereafter, within the set deadline, verify whether the CCP has provided the documents and information required for the assessment. If this is not the case, the application could be rejected. This does not preclude requests for further information or documents identified as missing during the period for assessment of the content of the 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 developing those standards, ESMA should take into account existing practices, where relevant, and define the level of detail while ensuring that is commensurate with the complexity of the changes to be assessed, 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 where they should be shared instantaneously with the CCP's competent authority, ESMA and the college. This central database should be built on ESMA's existing infrastructures and, as a result, the establishment of the central database should not impact Member States budgetary contributions. 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. An extension of an authorisation is required where an applicant CCP would like to offer clearing services or activities for which it is not already authorised. No such extension is therefore needed where the CCP is already authorised to provide such service or activity. To ensure proportionality, when the proposed additional service or activity not covered by a CCP's existing authorisation does not increase the risks for the CCP, it is necessary to lay down that applications in those cases should not undergo the full assessment procedure. For that reason and in order to ensure supervisory convergence, it should be further specified by ESMA which additional clearing services and activities should be considered as non-material, and thus do not increase the risks for a Union CCP, and may be approved through an expedited procedure by that CCP's competent authority instead of the lengthier procedure currently used for all extensions of a CCP's authorisation. A CCP should be able to ask its competent authority for the expedited procedure to apply where that CCP considers that the proposed additional service or activity would not increase its risks, in particular where the new clearing service or activity is similar to the services the CCP is already authorised to provide. The expedited 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 in the assessment whether the extension qualifies to fall under the expedited procedure.

(22) To foster a cooperative supervision of CCPs on an ongoing basis, the college should issue an opinion where a competent authority considers withdrawing a CCP's authorisation, except where a decision is required urgently, meaning within a period of time shorter than the period allocated for ESMA and the college to provide its opinions, and when a competent authority conducts the annual review and evaluation of that CCP.

(23)

(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, also issue an opinion to the CCP's competent authority about a CCP's withdrawal of its authorisation and margin requirements. When issuing an opinion, ESMA should assess a CCP's compliance with the applicable requirements, focusing on identified cross- border risks or risks to the financial stability of the Union. It is also necessary to further enhance supervisory convergence. ESMA should therefore inform the Board of Supervisors, where a competent authority does not comply or does not intend to comply with ESMA's opinion or 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.

(25) It is necessary to ensure that the CCP complies with Regulation (EU) No 648/2012 on an ongoing basis, including after an expedited procedure approving the provision of additional clearing services or activities, or after an expedited procedure for the validation of a model change in which cases ESMA and the college do not issue a separate opinion. The review conducted by the competent authority of the CCP at least on an annual basis should therefore in particular consider such new clearing services or activities and any model changes. To ensure supervisory convergence and that Union CCPs are safe, robust and competitive in providing their services throughout the Union, the report of the competent authority should be subject to an opinion by ESMA and the college and should be submitted every year.

(26) ESMA should have the means to identify potential risks to the Union's financial stability. ESMA should therefore, in cooperation with the 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, identify the interconnections and interdependencies between different CCPs and legal persons, including 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 to 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.

(28)

(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, the 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, 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,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. ESMA should therefore be empowered to act in an emergency situation likely to affect more than one CCP. A CCP can be affected by an emergency situation in many ways, including by volatility in market for the instruments it clears or through its clearing members, trading venues or other entities or operational functions shared between CCPs, where, for example, difficulties in a CCP could have contagion risks for other CCPs. 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 market participants which is necessary for ESMA to perform its coordination function in those situations and to be able to issue recommendations to the competent authority.

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 where 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 these 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, 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.

(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 asto 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.

(38) To mitigate potential risks for the financial stability of the Union, or of one or more of its Member States, CCPs and clearing houses should not be allowed to be clearing members of other CCPs nor should CCPs be able to accept to have other CCPs as clearing members or indirect clearing members. This ban should not impact interoperability arrangements, which are regulated under Title V of Regulation (EU) 648/2012 in accordance with international standards.

(38a) As CCPs will not be able to be clearing members of other CCPs nor will CCPs be able to accept to have other CCPs as clearing members or indirect clearing members, market participants currently operating under such arrangements will have to find other ways to centrally clear. To provide sufficient time for adaptation, existing arrangements should be phased out within 2 years from the date of entry into force of this Regulation. Market participants and authorities should explore different solutions, including setting up interoperability arrangements.

(38b) 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.

(39) The 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 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.

(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.

(41) To ensure that margin models reflect current market conditions, CCPs should continuously and not only regularly 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 the liquidity risk is accurately defined, the entities whose default a CCP should take into account to determine such risk should be expanded to cover not only the default of clearing members but also of other liquidity service providers.

(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. 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.

(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. It should be clarified which changes to the CCPs´ models and parameters are significant. To ensure supervisory convergence, ESMA should specify the criteria for changes that should be considered as significant and should therefore contain, for example, robust quantitative thresholds or other qualifications.

The criteria for significant changes to the models and parameters should only cover situations which always require a validation. This should be the case where certain conditions would be met referring to different aspects of the CCP's financial position and overall risk level. 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) 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 expedited 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. Today non-significant changes of models and parameters either fall under the full validation procedure or fall outside the scope this validation. Non-significant changes to models and parameters that do not increase the risks for a Union CCP should be able to be approved through an expedited procedure by that CCP's competent authority and ESMA. Where a CCP intends to adopt a change to its models and parameters that is likely a non-significant change, the CCP may request the expedited procedure to apply to the model change validation. The CCP should be informed, in a swift manner within the defined timeline, on whether the CCP's competent authority and ESMA both agree with the CCP that the model change is non-significant and on whether the CCP's competent authority has validated the change.

(45) Regulation (EU) No 648/2012 should be reviewed no later than 5 years after the date of entry into force of this Regulation. This should allow 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, that 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 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 of Regulation (EU) 2017/1131 of the European Parliament and of the Council with 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), when 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 accordance with that Regulation, to provide clearing services to clearing members and their clients.

(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, 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 proportion of activity in the relevant derivative contracts that should be held in active accounts at Union CCPs and the calculation methodology to be used to calculate that proportion; 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. 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 the list of third countries whose entities may not benefit from those exemptions despite not being identified in those lists 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 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 of the 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. 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

(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:

(0) Article 1 paragraph 3 is deleted.

(1) Article 3 is replaced by the following:

‘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 the following conditions are met:

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

(ii) that counterparty is established in the Union or in a third country that is not listed pursuant to paragraphs 4 and 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 in a third country that is not listed pursuant to paragraphs 4 and 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;

(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 both 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 an appropriate centralised risk evaluation, measurement and appropriate control procedures;

(ii) the non-financial counterparty is established in the Union or in a third-country that is not listed under paragraphs 4 and 5.

3. For the purposes of this Article, counterparties shall be considered included in the same consolidation when they are both 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 Directive 2013/36/EU.

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 listed as a high-risk third country that has strategic deficiencies in its regime on anti-money laundering and counter terrorist financing, in accordance with Article 9 of Directive (EU) 2015/849 of the European Parliament and of the Council[*1];

(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[*2].

5. Where appropriate due to identified issues in the legal, supervisory and enforcement arrangements of a third country and where this results 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 may not benefit from any of the exemptions for intragroup transactions despite not being listed pursuant to paragraph 4.

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*1 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).'

*2 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 does not apply to contracts concluded in situations as referred to in the first subparagraph, point (a)(iv), between, on 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 entering into positions in OTC derivative contracts may calculate its aggregate month-end average positions for the previous 12 months in accordance with paragraph 3.

Where a financial counterparty does not calculate its aggregate month-end average positions for the previous 12 months in accordance with paragraph 3, or where the result of that calculation exceeds any of the clearing thresholds specified pursuant to Article 10(4), point (b), or where any aggregate activity clearing threshold specified pursuant to Article 10(4), point (c), is exceeded, the 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.'

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

'In calculating the aggregate month-end average positions for the previous 12 months referred to in paragraph 1, 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.';

(3a) the following Article [4b] is inserted:

‘Article 4b

Post-trade Risk Reduction Services

1. Without prejudice to risk-mitigation techniques under Article 11, Article 4(1) shall not apply to OTC derivative contracts that are formed and established as the result of eligible post-trade risk reduction services (‘PTRR services’).

2. The transactions resulting from a PTRR exercise may only be exempted from the clearing obligation where both the following conditions are met:

(a) the PTRR service provider complies with the requirements set out under paragraphs 3 and 4;

(b) each participant to a PTRR exercise complies with the requirements under paragraph 3, points (f) and (g).

3. A PTRR exercise shall:

(a) be performed by an entity independent of the counterparties to the OTC derivative contracts included in the 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;

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

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

(h) be open for participation only to the entities initially submitting a portfolio to the exercise.

4. A PTRR service provider shall:

(a) be authorised in accordance with Article 7 of Directive 2014/65/EU;

(b) carry out PTRR services under pre-agreed rules, methods and algorithms in prescheduled cycles and in a reasonable, transparent and non-discriminatory manner;

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

(d) undertake regularcompression exercises where PTRR exercises resultin new PTRR transactions;

(e) keep complete and accurate records of the transactions executed pursuant to a PTRR exercise, including information on transaction entered into the exercise, transactions resulting from the exercise either as modified transactions or as new transactions, and the overall change in the risk of the different portfolios included in the exercise;

(f) promptly make available the records referred to in point (e) to the relevant competent authority or ESMA upon request.

The competent authority which has authorised under Article 7 of Directive 2014/65/EU the entity providing the PTRR services shall notify ESMA about its assessment of how the conditions set forth in paragraphs 3 and 4 are met. ESMA shall transmit this assessment to the authorities of each Member State with supervisory powers in relation to the clearing obligations set forth in Article 4 of this Regulation.

Such competent authority shall, on a yearly basis, confirm that the provider complies with the requirements set out in this Article and inform ESMA. ESMA shall transmit this information to the authorities of each Member State with supervisory powers in relation to the clearing obligations set forth in Article 4 of this Regulation. The competent authority shall also communicate the list of the entities it has authorised under Article 7 of Directive 2014/65/EU and that are offering PTRR services, and any updates thereto, on a yearly basis to ESMA, which shall publish that list.

5. ESMA shall develop draft regulatory technical standards to further specify the elements and conditions set out in paragraphs 3 and 4 and any other conditions or characteristics of PTRR services, including aspects such as market neutrality in the PTRR exercise, the required risk reduction in submitted portfolios, the possible inclusion of mixed portfolios containing both cleared and uncleared transactions in the same exercise and the conditions under which this would be allowed, requirements of the management of the PTRR exercise, requirements for different types of PTRR services and how to monitor the correct application of the exemption granted, ensuring the clearing obligation is not circumvented. ESMA shall submit those draft regulatory technical standards to the Commission by [12 months after entry force of this amending Regulation].

(4) the following Articles 7a and 7b 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 [OP: please insert date of entry into force of this 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 shall hold, for these derivative contracts referred to in paragraph 2, at least one active account at a CCPs 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 financial 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 financial counterparty or by other entities within the group to which that financial 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 the active account meets all of the following conditions:

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, which will be further specified by ESMA in accordance to paragraph 3:

i. the different classes of derivative contracts;

ii. the maturity of the trades;

iii. 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) shall be fulfilled by the counterparty within 6 months of becoming subject to the obligation set out in paragraph 1 and 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 at least one trade in each of the most relevant subcategories per class of derivative contract. The most relevant subcategories will be defined by the number of trades cleared for each subcategory in a clearing service of substantial systemic importance pursuant to Article 25(2c) during the reference period.

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

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.

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 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 the 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 of most relevant subcategories per class of derivative contracts to be represented in the active account during the reference period, which shall not be higher than five. 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 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. ESMA and the Joint Monitoring Mechanism shall monitor the activities and risk exposures in the categories of derivative contracts referred to in paragraph 2. Within 24 months after the entry into force of this Regulation, and every 12 months thereafter, ESMA shall report to the Commission, the European Parliament and the Council on the volumes cleared in clearing services of substantial systemic importance pursuant to Article 25(2c) and in CCPs authorized under article 14, by Union financial and non-financial counterparties and on their risk exposures, for the categories of derivative contracts referred to in paragraph 2.

Where ESMA deems that the risk exposures of Union counterparties at a Tier 2 CCP or that the risks to the financial stability of the Union or one of its Member States have not been substantially reduced, ESMA may, on the basis of a comprehensive cost benefit analysis, review the regulatory technical standards referred to in paragraph 3. and where the review of the regulatory technical standards is considered by ESMA insufficient to reduce such risks, provide the Commission with an opinion on any action it considers appropriate .

ESMA shall submit those draft regulatory technical standards and , if appropriate, the opinion on any action it considers appropriate to the Commission within 12 months after the submission of the relevant report referred to in this paragraph.

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

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 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 about the possibility to clear their contracts at the CCP authorised under Article 14 where the offer is available.

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

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

(ii) at least on a quarterly basis

2. Clearing members and clients that are established in the Union or are part of a group subject to consolidated supervision in the Union and that clear in a CCP recognised under Article 25, shall report to their competent authority the scope of their clearing activity in such CCP on an annual basis, specifying all of the following:

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

(b) the average values cleared over 1 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.

3. 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 2, taking into account the existing reporting channels and which information is already available to ESMA under the existing reporting framework, including Article 9 of this Regulation.

ESMA shall submit those draft regulatory technical standards to the Commission by … [PO: please insert the date = 12 months after 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.

4. 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 … [PO: please insert the date = 12 months after the date of entry into force of this 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) In Article 9, paragraph 1a, fourth subparagraph is amended as follows:

(a) 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"

(b) point (b) is deleted.

(6) in Article 10, paragraphs 2a to 5 are replaced by the following:

'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 positions referred to in paragraph 1, the non-financial counterparty shall include all the 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 it belongs to.

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 all OTC derivatives that are not cleared in a CCP authorised under Article 14 or recognised under Article 25, which are determined taking into account the new calculation methodology, the systemic relevance of the sum of net positions and exposures per counterparty and per class of OTC derivatives; ;

(c) the value of any aggregate activity clearing threshold applicable to financial counterparties referred to in Article 4a(1);

(d) the mechanisms triggering a review of the values of the clearing thresholds following significant price fluctuations in the underlying class of OTC derivatives.

In developing the draft regulatory technical standards, ESMA shall determine whether to specify a value of the aggregate activity clearing threshold under point (c) of the first subparagraph, taking into account the extent to which such a threshold is necessary to ensure a prudent coverage of financial counterparties under the clearing obligation.

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.

ESMA shall regularly review, in consultation with the ESRB, the clearing thresholds referred to in the first subparagraph, points (b) and (c), taking into account, in particular, the interconnectedness of financial counterparties and the need to determine whether to specify or adjust the threshold under point (c), taking into account the extent to which such a threshold is necessary 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 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.

At least every 2 years, 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.';

(7) Article 11 is amended as follows:

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

'A non-financial counterparty becoming subject to 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:

‘Notwithstanding the first subparagraph, 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.

ESMA, in cooperation with EBA and EIOPA, shall monitor regulatory developments in other jurisdictions and, at least every three years, regularly report to the Commission. ESMA, in cooperation with EBA and EIOPA, shall also monitor and report on the evolution of the exposure in single-stock options and equity index options not cleared by a CCP by counterparties subject to this Regulation. Where the report submitted by ESMA identifies that the exemption endangers financial stability in the Union or in one or more of its Member States or, that international developments have led to more convergence in the treatment of single stock options and index options, and therefore that the exemption is no longer justified, the Commission may adopt a delegated act specifying that following an adaptation period, the exemption shall be removed. The adaptation period shall not exceed two years and may only be extended once by an additional period of six months where the reasons for granting an adaptation period still exist.

The delegated act shall be adopted in accordance with Article 82.

‘A non-financial counterparty becoming subject to 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.

EBA may issue guidelines or recommendations with a view to ensure a uniform application 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.

EBA shall develop drafts of those guidelines or recommendations in cooperation with the ESAs.’;

(ba) a new paragraph 12a is inserted:

‘12a. EBA shall set up a central validation function for industry-wide models used for the purpose of complying with the requirements set out in paragraph 3. In its role as central validator, EBA shall validate the general aspects of those models, such as their calibration, design, and instruments and assets class coverage. EBA shall collect feedback from competent authorities, ESMA and EIOPA, , and within the aim of developing a common view on the general aspects of those models shall serve as a single point of discussion with the industry. EBA shall also assist competent authorities in their approval processes regarding the general aspects of the implementation of those models. Competent authorities shall be solely responsible for validating the implementation of those models at the supervised entity level.

EBA shall charge a fee to counterparties using industry-wide models referred to in the first subparagraph. The fee shall be proportionate to the monthly average notional amount of non centraly cleared OTC derivatives of the counterparties concerned and shall cover all costs incurred by EBA for the performance of its tasks in accordance with the first subparagraph.';

(c) paragraph 15 is amended as follows

(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 In specifying the scope of application of the obligation under this paragraph, only counterparties that are considered particularly active in uncleared OTC derivatives markets shall be subject to these risk management procedures. To this respect these will be credit institutions or investment firms belonging to a group that has a monthly average outstanding notional amount of non-centrally cleared OTC derivatives, computed in accordance with Article 28 of Delegated Regulation (EU) 2016/2251, higher than or equal to EUR 750 billion.

(ii) 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 [PO: please insert the date =12 months from the date of entry into force of this Regulation].

(8) Article 13 is replaced by the following:

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 this Regulation under Article 11;

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

(c) are being effectively applied 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)

3. 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 established in, or subject to the equivalent requirements of, that third country.

(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 activities linked to clearing and shall specify the services or activities which the CCP is authorised to provide or perform including the classes of financial instruments covered by such authorisation.

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

(b) the following paragraphs 6 and 7 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 shall accompany an application for authorisation referred to in paragraph 1 and specifying the information that such documents shall 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 … [PO: please insert the date =12 months after 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 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 the authorisation referred to in 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 … [PO: please insert the date = 12 months after the date of entry into force of this 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 wishing to extend its business to additional services or activities not covered by the existing authorisation shall submit a request for extension of that authorisation to its competent authority ,also including where an authorised CCP intends to clear classes of non financial instruments suitable for central clearing. The offering of clearing services or activities for which the CCP has not already been authorised shall be considered to be an extension of that authorisation.

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.

(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 … [PO: please insert the date = 12 months after 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.’;

(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 to the central database referred to in Article 17c.

ESMA shall submit those draft implementing technical standards to the Commission by … [PO: please insert the date = 12 months after the date of entry into force of this 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 of the Article is replaced by the following:

‘Procedure for granting and refusing an application for authorisation or for an extension of authorisation’

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

1.The applicant CCP shall submit an application for authorisation referred to in Article 14(1) or an application for an extension of the existing authorisation referred to in Article 15(1) in an electronic format via the central database referred to in Article 17c . The applicant CCP shall provide all information necessary to demonstrate that it has established, at the time of authorisation or extension of the existing authorisation, all the necessary arrangements to meet the requirements laid down in this Regulation. The application shall be immediately shared through that central database with the CCP's competent authority, ESMA and the college referred to in Article 18(1).

The central database shall, within 2 working days after such application has been received, acknowledge receipt of the application

2.The CCP's competent authority shall thereafter assess and confirm to the applicant CCP, whether the application contains the documents and information required;

a) pursuant to Article 14(6) and (7), within 30 working days from the acknowledgment of the receipt as referred to in the second subparagraph of paragraph 1, where the applicant CCP has applied for an authorisation pursuant to Article 14(1); or

b) pursuant to Article 15(3) and (4), within 20 working days from the acknowledgment of the receipt as referred to in the second subparagraph of paragraph 1, where the applicant CCP has applied for an extension of the existing authorisation pursuant to Article 15(1).

Where the CCP's competent authority determines 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 it has identified as missing within a set deadline, pursuant to Article 14(6) and (7) or Article 15(3) and (4), as applicable, e. In that case, the stated time referred to in the first subparagraph, points (a) and (b), may be extended by a maximum of 15 working days in total for all their requests. Where the CCP's competent authority concludes that the applicant CCP has failed to comply with any such request, the CCP's competent authority may reject the application and shall inform the CCP thereof.

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 following period ("the risk assessment period"), where an application is made under:

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

(b) Article 15(1), within 50 working days of the confirmation set out in point (b) of paragraph 2

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 via the central database referred to in Article 17c.

Following receipt of the draft decision and report referred to in the second subparagraph, and on the basis of the findings therein:

(a) 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 Articles 23a and 24a(7) and transmit it to the CCP's competent authority and the college.;

(b) the college shall within 20 working days adopt an opinion determining whether the applicant CCP complies with the requirements laid down in this Regulation pursuant to Article 19 and transmit it to the CCP's competent authority and ESMA.

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.

For the purposes of point (a) 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. For the purposes of point (b), the college may include in its opinion any conditions or recommendations it considers necessary to mitigate any shortcomings in the CCP's risk management.

(d) the following paragraphs 3a and 3b are inserted:

3a. 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 applicant CCP does not respond to the questions referred to in the first subparagraph, points (a) and (b), of this paragraph within the time period set by the CCP's competent authority, the CCP's competent authority, shall, after consulting the requesting authority, either decide to, transmit its draft decision and report referred to in paragraph 3 or decide to extend once the risk assessment period by a maximum of 10 working days in total, if, in its view, any of the the questions is material for the assessment.

The competent authority and the CCP shall make every effort to ensure that responses to questions from ESMA or any other member of the college that are asked after the end of the assessment period can be answered before the opinions of ESMA and the college are adopted, taking into account, in any case, the relevance and materiality of such questions to the final decision to be taken.

3b. Within 10 working days of receipt of both the ESMA opinion and the college opinion, the CCP's competent authority shall adopt its decision and transmit it to ESMA and the college.

Where the CCP's competent authority does not agree with an opinion of ESMA or the college, including any conditions or recommendations contained therein, its decision shall contain full reasons and an 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. ';

(e) paragraph 4 is replaced by the following:

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, grant authorisation as referred to in Articles 14 and Article 15(1), second subparagraph, only where it is fully satisfied that:

(a) the applicant CCP 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) the systems which the applicant CCP operates are notified as systems pursuant to Directive 98/26/EC.

The applicant CCP shall not be authorised where all the members of the college, 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 considers that the requirements laid down in this Regulation or other Union law are not met.

Where a joint opinion by mutual agreement as referred to in the second subparagraph of this paragraph has not been reached and a majority of two-thirds of the college have expressed a negative opinion, any of the competent authorities concerned, based on that majority of two-thirds of the college, 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 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, 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 inform the applicant CCP in writing via the central database referred to Article 17c, with a fully reasoned explanation, whether authorisation has been granted or refused.';

(f) paragraph 7 is deleted

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

'Article 17a

Expedited procedure for granting a request for extension of activities or services

1. The expedited procedure shall, in accordance with paragraph 3, apply to a CCP intending to extend its business to additional services or activities not covered by the existing authorisation and where such extension does not fulfil any of the following conditions:

(a) it results in the CCP needing to adapt significantly its operational structure, at any point in the contract cycle;

(b) it includes offering contracts that cannot be liquidated in the same manner as , or together with contracts already cleared by the CCP;

(c) it results in the CCP needing to take into account material new contract specifications,

(d) it results in the introduction of material new risks or significantly increases the CCP´s risk profile,

(e) it includes 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 requests the use of the expedited procedure for its application for an extension of its existing authorisation shall demonstrate why the proposed extension qualifies to be assessed under the expedited procedure and shall provide the documents and information as required pursuant to Article 15(3) and (4).

The CCP shall submit its application for the extension in an electronic format via the central database referred to in Article 17c and shall provide all information 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.

3. Within 25 working days of receipt of an application pursuant toparagraph 2, the CCP's competent authority shall, after considering the input from ESMA and the college, decide whether the application qualifies to be assessed under the expedited procedure set out in this Article and shall:

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

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

Where the competent authority concludes that the extension of authorisation does not qualify to be assessed under the expedited procedure, it shall reject the CCP's application, and inform it of the possibility to submit a new application according to the procedure established in Article 17.

4. The CCPs competent authority shall inform the applicant CCP in writing of its decision within the timeline stated in paragraph 3.

5. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards further specifying the conditions listed under 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 conditions 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 met. 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 expedited procedure set out in this Article as well as typical cases that do not qualify as an extension of activities and services and should therefore neither be subject to the Article 17 procedure nor to the Article 17a procedure since the changes do not have or are unlikely to have a material impact on the CCP's risk profile.ESMA shall submit those draft regulatory technical standards to the Commission by … [PO: please insert the date = 12 months after 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 of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 17b

Procedure for seeking the opinion from ESMA and the college

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, 29, 30, 31, 32, 33, 35, 36, 41, and 54 and Article 20, except where, for the latter, a decision is required urgently;

(b) by the college pursuant to Article 18, where the competent authority intends to adopt a decision, report or other measure in relation to Article 30, 31, 32, 35, 41, 49, 51, 54 and Article 20, except where, for the latter, a decision is required urgently.

That request for an opinion shall be shared immediately with the registered recipients.

Unless otherwise specified under the relevant Article, the CCP's competent authority shall assess the CCP's compliance with the respective requirements. By the end of the assessment period the CCP's competent authority shall transmit its draft decision , report, or other measure to ESMA and the college.

Unless otherwise specified under the relevant Article, following the receipt of both the request for an opinion referred to in paragraph 1 of this Article and the draft decision, report, opinion or other measure referred to in paragraph 2 of this Article;

(a)ESMA shall adopt an opinion in accordance with Articles 23a and 24a(7), first subparagraph, point (bc), assessing the CCP's compliance with the respective requirements, 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;

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

ESMA and the college shall each adopt their opinion within the deadline provided by the CCP's competent authority, that shall be at least 20 working days following the receipt of the relevant documents referred to in the second subparagraph of paragraph 2 of this Article.

3. Within 10 working days, or within the relevant period if otherwise specified in this Regulation, of receipt of the ESMA opinion and, where required, the college opinion, the CCP's competent authority shall, after duly considering the opinions of ESMA and the college, including any conditions or recommendations contained therein, adopt its decision, where required, or take any other measures as required under the relevant Article and transmit it to ESMA and the college.

Where the CCP's competent authority does not agree with an opinion of ESMA or the college, including any conditions or recommendations contained therein, its decision shall contain full reasons and an 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 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. ';

(NEW) Article 17c Central database

ESMA shall maintain a central database providing access to the CCP's competent authority, ESMA, and the members of the college for that CCP ('registered recipients'), to all documents registered within the database for the applicant CCP. The applicant CCP shall submit the application referred to in Article 14, Article 15(1), second subparagraph, Article 49 and Article 49a via the database and be provided with access to the central database as regards the documents that are submitted by the applicant CCP or transmitted to that CCP by any of the registered recipients. The competent authority shall submit its request for an opinion referred to in Article 17b via the database.

The CCP shall upload promptly all documents it is required to provide under the authorisation or validation process. The registered recipients shall upload promptly all documents they receive from the applicant CCP in relation to an application pursuant to paragraph 1, unless the CCP has already uploaded such documents, and the central database shall automatically inform the registered recipients when changes have been made to its content. Acknowledgement of receipt of the information uploaded to the database will also be given. The central database shall contain all documents provided by an applicant CCP under paragraph 1 and all other documents relevant for the assessment by the CCP's competent authority, ESMA and the college. 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, paragraph 2, points (c) and (d)(ii), where justified based on confidentiality concerns.

(13) Article 18 is amended as follows:

(a) paragraph 1 is replaced by the following:

1. Within 30 calendar days of the submission of a complete application in accordance with Article 17, the CCP's competent authority shall establish, manage and chair a college to facilitate the exercise of the tasks referred to in Articles 15, 17, 2030, 31, 32, 35, 41, 49, 51 and 54.'

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

(a) the Chair or any of the independent members of the CCP Supervisory Committee referred to in Article 24a(2), points (a) and (b);

(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, and if no joint opinion is reached in accordance with the first subparagraph, the college shall adopt a majority opinion within the same period.’;

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

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

(c) paragraph 4 is deleted;

(15) in Article 20, paragraphs 3 to 7 are replaced by the following:

‘3. The CCP’s competent authority shall consult ESMA and the members of the college, in accordance with paragraph 6, on the necessity to withdraw the authorisation of the CCP, except where a decision is required urgently.

4. ESMA or any member of the college 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. The CCP's competent authority may limit the withdrawal to a particular service, activity, or class of financial instruments or non-financial instruments.

6. Before the CCP's competent authority takes a decision to withdraw the authorisation for a particular service, activity, or class of financial instruments or non-financial instruments, it shall request the opinions of ESMA and the college in accordance with Article 17b, except where a decision is required urgently.

7. Where a CCP's competent authority takes a decision on the withdrawal of authorisation in full or in relation to a particular service, activity, or class of financial instruments or non-financial instruments, that decision shall take effect throughout the Union and the CCP's competent authority shall inform the CCP of its decision without undue delay ';

(16) Article 21 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. The competent authorities referred to in Article 22 shall do all of the following:

(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 expedited 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.’;

(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. Competent authorities may invite , ESMA and the members of the college to participate in on-site inspections.

The competent authority shall forward to ESMA and the members of the college any relevant information received from the CCPs during or in relation to on-site inspections.

4 The competent authorities shall regularly, and at least annually, submit a report to the college on the results of the review and evaluation as referred to in paragraph 1, including whether the competent authority has taken any remedial action or imposed penalties. The competent authorities shall communicate the report covering a calendar year to ESMA by 30 March of the following calendar year. []

(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, especially 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 and, Articles 29 to 33, and Articles 35, 36, 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).';

(18) the following Article 23c is inserted:

Article 23cJoint Monitoring Mechanism1. 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 Commission, the ESRB, the central banks of issue of the currencies of denomination of the derivative contracts referred to in Article 7a(2) 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.

(d) on a voluntary basis, the National Competent Authorities supervising the obligation under Article 7a limited to one per Member State.

ESMA shall manage and chair the meetings of the Joint Monitoring Mechanism. The Chair of the Joint Monitoring Mechanism, upon request of the other members of the Joint Monitoring Mechanism or on his own initiative, may 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 the aggregate EU 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 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 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 and national competent authorities shall cooperate and share the information necessary to carry out the activities referred to in the first subparagraph.

The relevant competent authorities of authorised CCPs, their clearing members and their clients shall provide the necessary information enabling ESMA and the other bodies participating to Joint Monitoring Mechanism to perform the assessment referred to in the first subparagraph.

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.

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.

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 to 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.

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

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

(b) it 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 7a(4), setting, where necessary, an appropriate adaptation period which shall not exceed 12 months.';

(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, and other relevant authorities without undue delay of any emergency situation relating to a CCP, including all of the following:

(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.

Where information is required to be shared under Articles 9(8), 18(6) or 19(1) of Regulation (EU) 2021/23 and where that information:

(a) covers the same information as required to be shared under the first subparagraph of this Article; and

(b) has the same recipients as under the first subparagraph of this Article,

the entity, subject to the obligation to share such information under this Article, shall only be obliged to provide such information under the Regulation (EU) 2021/23.

In an emergency situation, information should 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. The obligation of professional secrecy in accordance with Article 83 shall apply to those bodies receiving that information.

2. In case of emergency situations where more than one CCP is likely to be affected, ESMA shall coordinate competent authorities in providing responses to such emergency situations and ensure effective information sharing among competent authorities, colleges and resolution authorities.P.

3. In an emergency situation, covered by paragraph 2 of this Article 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 responses:

(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 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 supervisory college of the CCP, that is not already covered by the points (a) to (d)

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

5. ESMA may require relevant competent authorities to provide it with the necessary information to enable it 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.

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 forward it to ESMA without undue delay.

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.

6. Without prejudice to the right of the competent authority to adopt any decision it deems necessary, ESMA may, upon the proposal of the CCP Supervisory Committee, issue emergency 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 emergency 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 and necessary, 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 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(1) and (2), prepare decisions and carry out the tasks entrusted to ESMA in Article 23a(3) of this Regulation and in the following points:’;

(ii) the following points (ba), (bb) and (bc) 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 the 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 conclusions 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).';

(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) in the first subparagraph.';

(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 (a) of the first subparagraph, it shall be conducted in accordance with paragraphs 2 to 4. Where the review is undertaken in accordance with point (b) of the first subparagraph, it shall also be conducted in accordance with paragraphs 2 to 4, however 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.';

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

‘Where 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 7a, 7b and 7c 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.

(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;

(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, 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 on a monthly basis between ESMA, the central banks of issue referred to 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;

(iii) 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.';

(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 ESMA is able to supervise those CCPs' compliance with the requirements referred to in Article 25(2b), point (a).';

(23) in Article 25p(1), 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.';

(24)

(25) in Article 26(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 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.’;

(26) Article 31 is amended as follows:

(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)(bc) issued in accordance with the procedure set out in Article 17b.’;

(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, the criteria shall ensure that CCPs cannot be clearing members, directly or indirectly, of the CCP.';

(b) the following paragraph 1a is inserted:

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

The competent authority of a CCP accepting non-financial counterparties shall regularly review such arrangements and shall annually report to the college on the products cleared by those counterparties, the overall exposure and any identified risks.

A non-financial counterparty acting as a clearing member shall not be permitted to offer client clearing services and shall only keep accounts at the CCP for assets and positions held for its own account with the exception for clearing services offered to or assets and positions held for other non-financial counterparties belonging to the same group as the clearing member.

(c) the following paragraph 7 is added:

‘7. ESMA shall, after having consulted the EBA, develop draft regulatory technical standards further specifying the elements to be considered when laying down the admission criteria referred to in paragraph 1.When developing those draft regulatory technical standards, ESMA shall take into account the modalities and specificities through which non- financial counterparties may access clearing services, including as direct clearing members in sponsored models.When developing the draft regulatory standards, ESMA shall facilitate prudentially sound direct access of non-financial counterparties to CCP clearing services and shall take due account of the principle of proportionality and current market practices of CCPs, so as to not impair the objetive to promote clearing and access to CCPs.

ESMA shall submit those draft regulatory technical standards to the Commission by … [PO please enter 12 months after 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".

(30) Article 38 is amended as follows:

(a) paragraph 7 is replaced by the following:

'7. A CCP shall provide its clearing members with information on the initial margin models it uses. That information shall:

(a) clearly explain the design of the initial margin model and how it operates, including in stress situations;

(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.

‘Clearing members providing clearing services and clients providing clearing services shall inform their clients in a clear and transparent manner of the way margin models of the CCP work, including in stress situations, and provide them with a simulation of the margin requirements they may be subject to . The results of the simulation shall not be binding but as accurate as possible. This shall include both the margins required by the CCP and any additional margins required by the clearing members and the clients providing clearing services themselves.’;

(b) paragraph 8 is replaced by the following:

‘8. 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.’;

(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 estimates will occur 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 material impacts of its intraday margin collections and payments on the liquidity position of its participants. A CCP shall strive, where appropriate, to the best of its ability not to hold intraday variation margin calls after all payments due have been received.';

(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 that are clearing members or liquidity providers, excluding central banks, to which it has the largest exposures, .';

(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 or public bank 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 only accept commercial bank guarantees, public bank guarantees and public guarantees 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 are provided to a CCP, that CCP shall take them into account when calculating its exposure to the bank that is also a clearing member. The CCP shall apply adequate haircuts to asset values and guarantees to reflect the potential for their value to decline over the interval between their last revaluation and the time by which they can reasonably be assumed to be liquidated. It shall take into account the liquidity risk following the default of a market participant and the concentration risk on certain assets that may result in establishing the acceptable collateral and the relevant haircuts. When revising the level of the haircuts it applies to the assets it accepts as collateral, the CCP shall take into account any potential procyclicality effects of such revisions.’;

(b) paragraph 3) is replaced by the following:

‘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 bank guarantees may be accepted as collateral under paragraph 1.

When specifying the conditions under which commercial bank guarantees may be accepted as collateral under paragraph 1, ESMA shall 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.

ESMA shall submit those draft regulatory technical standards to the Commission by [PO: please insert date =12 months after 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.’;

(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 the models and parameters referred to in the first subparagraph, it shall either apply for validation under this Article, where the proposed change to a CCPs models and parameters is likely to have an adverse or structural effect on the overall risk to the CCP and is therefore considered a significant change by the CCP, and be subject to the assessment under this Article, or under Article 49a. All changes to models and parameters not assessed under Article 49a shall be assessed under this Article.

Amendments to parameters, that are the result of applying the parameters that are 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 Article 49 and 49a of this Regulation.

The adopted models, 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 significant change to the models and parameters referred to in paragraph 1, it shall apply for validation of such change in an electronic format via the central database referred to in Article 17c where it 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.

The central database shall within two working days after such application has been received, acknowledge receipt of the application.,

1b. The CCP's competent authority and ESMA shall each assess, within 20 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 Article 49(5). Where one of them concludes that not all documents or information required have been submitted, the CCP's competent authority shall ask the applicant CCP to submit additional documents or information that it or ESMA has identified as missing within a set deadline. The stated time in the first subparagraph of paragraph 1b may in that case be extended by a maximum of 15 working days. Where the CCP's competent authority or ESMA concludes that the CCP has failed to comply with any such request, the CCP's competent authority shall reject the application and shall inform the CCP thereof.

1c. Within 40 working days of the date referred to in paragraph 1b:

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

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

Within 15 working days of the receipt of the reports referred to in point (a) and (b) of paragraph 1c, 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 shall not adopt a decision granting or refusing the validation of significant changes to models and parameters until such an opinion has been adopted by the college, unless the college has not adopted that opinion within the deadline.

1d. Within 15 working days of receipt of the college opinion, or the deadline for the college opinion to be provided, whichever comes earlier, both the CCP's competent authority and ESMA shall each:

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

(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.

1e. The CCP's competent authority should inform the CCP, within the deadline referred to in paragraph 1d, including a fully reasoned explanation, whether the validation has been granted or refused.

(b) the following paragraph 1f is inserted:

1f. The CCP may not adopt any significant change to the models and parameters referred to in paragraph 1, before obtaining the validations by both its competent authority and ESMA. Where requested by the CCP, the competent authority, in agreement with ESMA, may allow for a provisional adoption of a significant change of those models and parameters prior to their validations where duly justified . Such a temporary change to the models and parameters 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 .

(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 specifying the list of required documents that shall accompany an application for validation pursuant to paragraph 1a and Article 49a. In addition, the draft regulatory technical standards shall specify 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.ESMA shall submit those draft regulatory technical standards to the Commission by … [PO: please insert date =12 months after 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.’;

(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… [PO: please insert date = 12 months after the date of entry into force of this 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.’;

e) the following paragraph 7 is added:

‘7. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards further specifying the changes to models and parameters that are likely to have an adverse or structural effect on the overall risk to the CCP and would therefore constitute a significant change.

In further specifying such changes ESMA shall set the methodology to use and the parameters to apply for deciding when a change to a model and parameter shall be considered as a significant change to a model or parameter. ESMA shall also analyse whether there might be other cases that could be considered out of scope of the validation procedure and therefore not subject to the procedures estabished in article 49 or 49a.

In undertaking this work ESMA shall notably consider the following;

a) whether the change leads to a decrease or increase of the total pre-funded financial resources, including margin requirements, default fund and skin-in-the-game;

b) whether the structure, structural elements or the margin parameters of the margin model are changed or a margin module is introduced, removed, or amended in a manner which leads to a decrease or increase of this margin module;

c) whether the methodology used to compute portfolio offsets is changed leading to a decrease or increase of the total margin requirements for the financial instruments;

d) whether the methodology for defining and calibrating stress test scenarios for the purpose of determining default fund exposures is changed;

e) whether the methodology applied to assess liquidity risk and monitor concentration risk is changed;

f) whether the methodology applied to value collateral, calibrate collateral haircut or set concentration limits is changed;

g) whether the proposed change to the model and parameters could lead to a material increase in risk of the CCP.

ESMA shall submit those draft regulatory technical standards to the Commission by … [PO: please insert the date = 12 months after 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 of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010. ’;

(34a) the following Article 49a is inserted:

Expedited procedure for non-significant changes to the CCP´s models and parameters

1. Without prejudice to the third subparagraph of Article 49(1), the expedited procedure shall apply to a proposed change to models and parameters where:

a) the CCP has requested a validation of a change to its model and parameters to be assessed under this Article; and

b) the NCA and ESMA have each concluded that the proposed change is not significant.

1a. The CCP shall submit its application including all documents and information required pursuant to Article 49(5), 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 shall be deemed non-significant and therefore qualifies to be assessed under the expedited procedure.
A CCP that applies for an expedited procedure set out in this Article may not start applying the proposed change before obtaining the validation by its competent authority. The competent authority, in agreement with ESMA, may allow for a provisional adoption of a proposed change of those models or parameters prior to their validations where duly justified.

2. Within 10 working days of the receipt of an application pursuant to paragraph 1a, both the CCP´s competent authority and ESMA shall individually conclude whether the proposed change is not significant.

Where the competent authority and ESMA concludes that the change is not significant, the CCP's competent authority, within 10 working days of that conclusion, , shall:

(i) where the CCP complies with this regulation, grant the validation; or

(ii) where the CCP does not comply with this regulation, refuse the validation.

Where the competent authority or ESMA concludes that the change is significant, the validation according to this Article shall be refused.

3. The CCP´s competent authority shall inform the applicant CCP in writing of its decision, including a fully reasoned explanation, within 5 working days of the decision made under the second subparagraph of paragraph 2.

(35) Article 54 is amended as follows:

() paragraph 1 is replaced by the following:

‘1. Any interoperability arrangement or any material change to an established interoperability arrangement that was established before [OP insert the date of entry into force of this amending Regulation] 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.’;

(ii) the following paragraph 5 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 to adequately manage the risks arising from interoperability arrangements. For that purpose, ESMA shall take into account the existing guidelines issued under paragraph 4 of Regulation (EU) 648/2012 and assess whether the provisions included therein are appropriate in the case of interoperability arrangements covering new 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 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.

(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(5)], Article 11(3), 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(5)], Article 11(3), 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.

(37) Article 85 is amended as follows;

(a) paragraph 1 is replaced by the following:

‘1. By [PO: please insert the date =5 years after the date of entry into force of this 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 1b is inserted:

‘1b. By [PO: please insert the date = 1 year after the entry into force of this 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.’;

(c) the following paragraph 1c is inserted:

‘1c. By [PO: please insert the date = 2 years after the entry into force of this 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.’;

(d) the following paragraph 1d is inserted:

‘1d. By [5 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 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 paragraph is inserted:

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 Regulation], it shall become subject to Article 26, paragraph 1, second subparagraph, on [2 years after the date of entry into force of this Regulation]. Where CCP has established admission criteria which allow another CCP or a clearing house to be a clearing member, directly or indirectly, before [date of entry into force of this Regulation], it shall become subject to Article 37, paragraph 1 on [2 years after the date of entry into force of this Regulation].

(38) Article 90 is amended as follows:

"By [PO please insert the date = please insert 3 years after the date of entry into force of this 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:

(0) in paragraph 4, point (aa) 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 partof the same group provided that:

(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.’

(1) in paragraph 4, 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 [4c] 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) 2017/1131Regulation (EU) 2017/1131 is amended as follows:

(1) in Article 2, the following point (24) is added

‘(24) ‘CCP’ means a legal personas referred to in Article 2 (1) of Regulation (EU) No 648/2012.’;

(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.’;

(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 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.

Done at Brussels,

For the Commission

The President
Ursula VON DER LEYEN