



European Securities and
Markets Authority

Final Report

Draft technical standards under the Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC Derivatives, CCPs and Trade Repositories

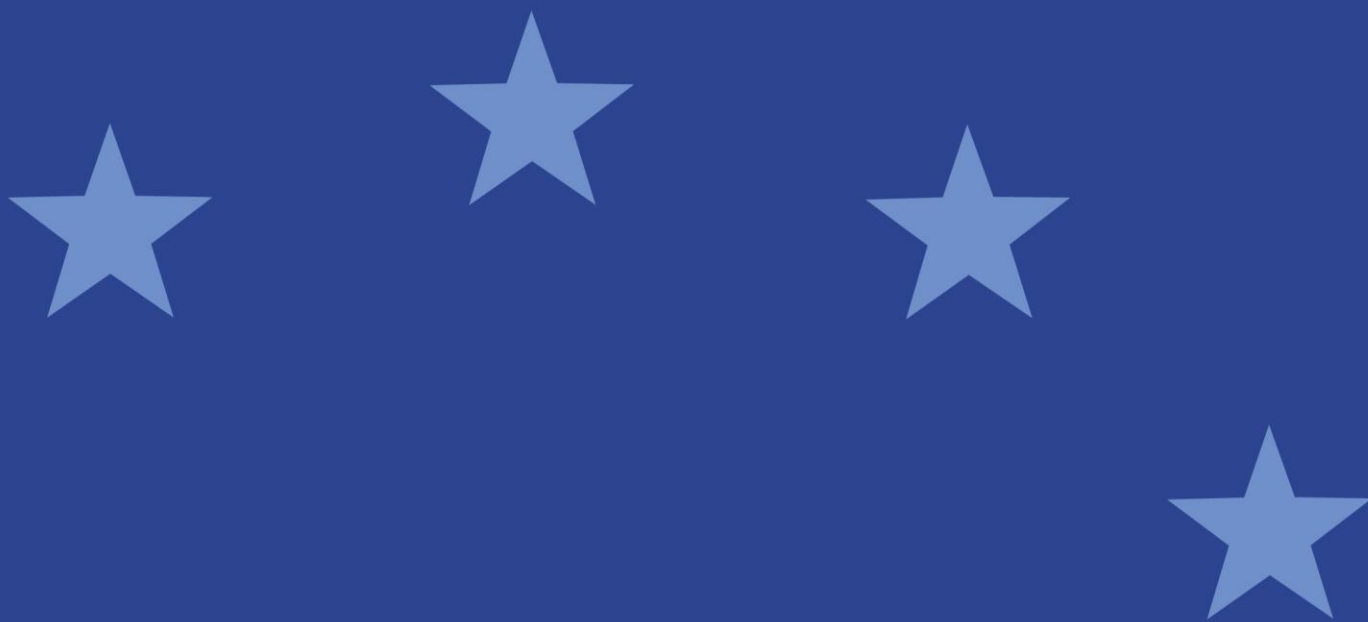


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Acronyms Used

ACER	Agency for the Cooperation of Energy Regulators
ARM	Approved Reporting Mechanism
BCBS	Basel Committee on Banking Supervision
BIS	Bank for International Settlements
CA	Competent Authority
CCPs	Central Counterparties
CPSS	Committee on Payment and Settlement Systems
CP	Consultation Paper
CM	Clearing Members
DP	Discussion Paper
EMIR	European Market Infrastructures Regulation – Regulation (EU) 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories – also referred to as “the Regulation”.
EBA	European Banking Authority
EIOPA	European Insurance and Occupational Pension Authority
ESAs	European Supervisory Authorities
ESCB	European System of Central Banks
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
FC	Financial Counterparty
FMI	Financial Markets Infrastructures
FSB	Financial Stability Board
GAAP	Generally Accepted Accounting Principles
IFRS	International Financial Reporting Standards
IOSCO	International Organisation of Securities Commissions
ITS	Implementing Technical Standards
LEI	Legal Entity Identifier
MIFID	Markets in Financial Instruments Directive
NFC	Non-financial counterparty



ODRF	OTC Derivatives Regulators Forum
OTC	Over the Counter
RTS	Regulatory Technical Standards
SIG	Skin-in-the-Game
STP	Straight Through Processing
TRs	Trade Repositories
UCITS	Undertakings for Collective Investments in Transferable Securities
UPI	Unique Product Identifier
UTI	Unique Trade Identifier

I. Executive Summary

Reasons for publication

Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC Derivatives, CCPs and Trade Repositories (EMIR) requires ESMA to develop draft regulatory (RTS) and implementing technical standards (ITS) in relation to several provisions of EMIR.

In relation to the draft technical standards ESMA consulted stakeholders on two occasions: the first consultation on a Discussion Paper (DP) was conducted from 16 February to 19 March 2012. The second consultation which included the proposed draft RTS and ITS was conducted from 26 June to 5 August. The Securities and Markets Stakeholder Group (SMSG) established under the Regulation (EU) No 1095/2010 establishing the European Supervisory Authority (ESMA Regulation) was also requested to provide an opinion in accordance with Articles 10 and 15 of that regulation. In addition, ESMA consulted the European Banking Authority (EBA), the European Systemic Risk Board (ESRB), the Agency for the Cooperation of Energy Regulators (ACER) and the European System of Central Banks (ESCB) on the relevant technical standards where consultation is required under EMIR. In particular, ESMA developed all the RTS and ITS related to CCP requirements in close co-operation with the members of the ESCB, forming a joint task force. The members of the ESCB have also been continuously consulted during the development phase of the technical standards on trade repositories (TRs), participating as observers in the relevant task force.

Contents

This final report includes the feedback from the second consultation and the proposed changes made by ESMA. It follows the structure of EMIR, with the first section focusing on OTC derivatives and in particular indirect clearing arrangements, the clearing obligation, access to trading venues, non-financial counterparties, risk mitigation techniques for contracts not cleared by a CCP and intragroup exemptions. The second part focuses on CCP requirements, where a number of provisions need to be specified through technical standards. The third part deals with TRs and in particular the content and format of the information to be reported to TRs, the content of the application for registration to ESMA and the information to be made available to the relevant authorities. For each section, a reference is made to the relevant Article in EMIR and to the relevant technical standards included in the Annexes of this final report.

Next steps

This final report will be submitted to the European Commission by 30 September 2012. The Commission has three months to decide whether to endorse ESMA's draft technical standards.

II. Introduction

1. On 27 July 2012, the Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties (CCPs) and trade repositories (TRs)

(EMIR) was published in the Official Journal of the European Union. EMIR entered into force on 16 August 2012, however a number of provisions in EMIR require ESMA to develop draft regulatory (RTS) and implementing (ITS) technical standards (see Annex I for the legal mandate). Therefore these provisions will only fully apply following the entry into force of the Commission Regulations endorsing the draft RTS and ITS developed by ESMA.

2. The Regulation introduces provisions to improve transparency and reduce the risks associated with the OTC derivatives market and establishes common rules for CCPs and for TRs. In the case of CCPs, common rules are required in view of the shift of risk management from a bilateral to a central clearing process for OTC derivatives. In the case of TRs, common rules are required because of the increase in information that needs to be reported to them.
3. Before the submission of this final report to the Commission, ESMA publicly consulted on two occasions:
 - a. from 16 February to 19 March 2012. On the basis of the political agreement on EMIR reached on 9 February 2012, ESMA released a discussion paper¹ (DP) presenting preliminary views and possible options for the development of the draft technical standards ESMA is required to develop. ESMA received 135 responses, 28 of which were confidential. On 6 March, ESMA also hosted a public hearing on the DP which was well attended with around 100 participants physically present and around 80 connected via conference call.
 - b. from 26 June to 5 August 2012, ESMA published a consultation paper² (CP), which included the actual draft technical standards. ESMA received 165 responses, 32 of which were confidential. On 12 July ESMA organised a second public hearing on the CP to which 217 stakeholders attended.
4. In addition to the consultations above, ESMA consulted: i) the Post-Trading Consultative Working Group which was asked in September 2011 to respond to a call for input; ii) the Securities and Markets Stakeholder Group (SMSG), which provided advice on both the DP and the CP; iii) the authorities that ESMA is required to consult under the different articles of EMIR. In particular, ESMA consulted with the European Banking Authority (EBA), the European Systemic Risk Board (ESRB), the Agency for the Cooperation of Energy Regulators (ACER) and the European System of Central Banks (ESCB) on the relevant technical standards. As for the ESCB, ESMA developed all the RTS and ITS related to CCP requirements in close co-operation with the members of the ESCB, forming a joint task force. The members of the ESCB have also been continuously consulted during the development phase of the technical standards on TRs, participating as observers in the relevant task force.
5. Besides the draft RTS and ITS included in the final report, ESMA is expected to issue: i) guidelines or recommendations on interoperability between CCPs by 31 December 2012; and ii) draft RTS on contracts that are considered to have a direct substantial and foreseeable effect in the Union or cases where it is necessary or appropriate to prevent the evasion of any provision of EMIR. Furthermore, iii) ESMA, together with European Banking Authority (EBA) and European Insurance and Occupational Pensions Authority (EIOPA), is also required under EMIR to develop joint regulatory technical standards on risk mitigation techniques for OTC derivatives that are not

¹ <http://www.esma.europa.eu/system/files/2012-95.pdf>

² <http://www.esma.europa.eu/system/files/2012-379.pdf>

cleared by a CCP, notably on capital requirements and exchange of collateral (margins for bilateral transactions) to cover the exposures arising from those transactions and on operational processes for the exchange of collateral, minimum transfer amount and certain details on intra-group exemptions. All these measures are not included in this final report. The European Commission will have to set a new deadline for the delivery of the draft technical standards mentioned under ii) and iii) above.

6. One essential element for the drafting of the technical standards is the analysis of the cost and benefits that the proposed measures might entail. This final report includes an impact assessment in Annex VIII. The limited amount of information available and collected on the basis of the responses to the DP and CP did not allow ESMA to perform an in-depth quantitative cost-benefit analysis on all the technical standards. Notwithstanding the lack of data and evidence supplied by respondents to the CP, the cost-benefit analysis included in this final report contains quantitative elements on many of the technical standards, in particular those that introduce prescriptive measures. The impact of criteria based technical standards could only be assessed on a qualitative basis.
7. Another important element signalled by stakeholders in responding to the two consultations is linked to the time needed for market participants to adapt to the new requirements. ESMA has considered these concerns and has postponed the date of application of the relevant draft technical standards.
8. This final report contains a summary of responses to the CP received by ESMA and the rationale for keeping or changing the standards following the consultation process.

Feedback from stakeholders and changes to the draft technical standards

III. OTC Derivatives

9. In developing the draft technical standards on OTC Derivatives, ESMA has considered reports prepared by international bodies including the Recommendations of the FSB report on Implementing OTC Derivatives Market Reforms, the draft requirements for Mandatory Clearing of IOSCO, and the Supervisory Guidance for assessing bank's financial instrument fair value practices of the Basel Committee on Banking Supervision (BCBS).
10. In addition, intensive bilateral and multilateral discussions took place with third country competent authorities in order to ensure, to the extent possible, convergence in the approaches adopted with the objective of preserving the global nature of the OTC derivatives market.
11. These reports have provided a solid basis for ESMA which has conducted further analysis and work to develop draft technical standards aimed at ensuring the global compatibility of the EU requirements, thus permitting EU market participants active on OTC derivative markets to operate on a global basis.
12. Stakeholders' answers to the DP and to the CP, as well as relevant authorities' answers, allowed ESMA to gather relevant information to further develop the draft RTS. ESMA has analysed answers received to the CP and revised the draft RTS taking into account the comments provided by stakeholders and relevant authorities.

III.I Clearing obligation

Types of indirect clearing arrangements (Article 4 of EMIR)(Annex II, Chapter II)

13. Article 4 of Regulation (EU) 648/2012 (EMIR) establishes that counterparties can comply with the clearing obligation either by becoming a clearing member (CM) of a CCP authorised to clear the contracts covered by the obligation, by becoming a client of a CM, or by ‘establishing an indirect clearing arrangement with a clearing member’. These arrangements must not increase counterparty risk and must ensure that the assets and positions of the counterparty (i.e. the indirect client) benefit from protection with equivalent effect to the client segregation and portability requirements in Articles 39 and 48 of EMIR. ESMA is required to draft RTS specifying the types of indirect clearing arrangements that satisfy these tests.
14. The CP outlined ESMA’s interpretation of indirect client clearing arrangements and proposed a set of requirements on each of the parties involved – CCPs, CMs, direct clients and indirect clients. The proposals were predicated on the idea that many of the provisions in EMIR regarding client clearing should ‘slide down’ one level to cover indirect clearing arrangements. This principle underpins the requirement in Article 4 of the draft RTS for CMs to offer (via clients) indirect clients the option to have their assets and positions recorded in omnibus or individually segregated accounts in the books of the CM. The draft RTS also expected CMs to implement robust procedures for porting indirect client assets and positions following the failure of a direct client, with a requirement for the CM to manage indirect clients’ positions directly for at least 30 days if they cannot be ported in the usual way. The latter provision was introduced to provide a higher level of assurance that indirect clients would maintain access to the CCP following the failure of a direct client.
15. The draft RTS elicited a very large volume of responses from a wide range of stakeholders. A number of respondents explicitly welcomed the concept of indirect clearing, but the overwhelming consensus was that some of the proposed requirements would be unworkable in practice and potentially counterproductive. ESMA has consequently made substantial revisions to the RTS in response to feedback received and further analysis of policy options.
16. The consultation responses identified four primary areas of concern:
 - a. The obligation for clearing members to provide indirect clearing services on reasonable commercial terms that are publicly disclosed;
 - b. The procedure for agreeing contractual arrangements between CM, direct client and indirect client and the structure of guarantees between them;
 - c. The extent to which the segregation/portability requirements of EMIR could be replicated at CM level within the confines of national insolvency regimes; and
 - d. The requirement for CMs to commit to manage directly indirect client positions for at least 30 days following the failure of a direct client.
17. Several responses also explicitly requested from ESMA a flexible, non-prescriptive approach to specifying requirements for indirect clearing arrangements, recognising that these arrangements are still under development. This view needs to be balanced against the need to ensure that the draft RTS satisfies the mandate in the Level 1 text and places appropriate restrictions on tiered participation arrangements that could otherwise introduce additional systemic risks. A recital to



the revised draft RTS clarifies that ESMA will monitor the development of indirect clearing arrangements through this lens.

(a) Obligation to provide indirect clearing services

18. A large number of responses challenged point a) above. There were two broad objections: that a requirement for CMs to facilitate indirect clearing services is beyond the scope of the mandate established by EMIR; and that denying a CM the option to decline indirect clients would inappropriately constrain risk management. ESMA emphasises the practical need (in line with the Level 1 text) of ensuring that indirect clearing services are available on reasonable commercial terms, but accepts that a mandatory requirement for CMs to facilitate such services could have unintended consequences. The revised draft RTS therefore requires CMs that are prepared to facilitate indirect clearing arrangements to do so on reasonable commercial terms.

19. A number of responses also object to the requirement for CMs to disclose the terms on which indirect clearing services would be provided, noting the case for commercial flexibility. ESMA appreciates this concern, while also recognising the need for an appropriate degree of transparency towards clients and indirect clients negotiating the terms of an indirect clearing arrangement. The revised draft RTS seeks to strike an appropriate balance between these considerations.

(b) Contractual arrangements between CM, direct client and indirect client

20. Some responses (mostly from CMs) challenged the provision that would allow clients to define the contractual terms of an indirect clearing arrangement. ESMA notes that there is an implicit understanding that clients would consult with indirect clients in drawing up the contracts, but equally that it is less obvious that clearing members would be involved. Several responses noted that it would be necessary for CMs at least to have full visibility over the contractual agreements and ideally retain scope to specify minimum requirements as a risk management tool. These views are reflected in the revised draft RTS.

21. A number of responses also raised concerns over the scope of the guarantees between CMs, direct clients and indirect clients implied by the draft RTS. One specific concern was that CMs could be required to honour all obligations between client and indirect client, even when outside the scope of the indirect clearing arrangement. ESMA has adjusted the draft RTS to reflect more faithfully the 'slide down' principle by requiring clients to guarantee the obligations of indirect clients towards CMs. The revised draft RTS further clarifies that the scope of this requirement is limited to obligations arising from the indirect clearing arrangement.

(c) Segregation and portability

22. Most responses highlighted serious concerns over the legal feasibility of the proposed approach to port the assets and positions of indirect clients following the failure of the client. The responses also offered a range of possible solutions, from a common EU insolvency regime to extending CCPs' protections from national insolvency law to CMs that facilitate indirect clearing arrangements. ESMA recognises that these options have some attractions, but also that neither is within the mandate for the draft RTS. Rather, ESMA is required to establish how indirect clients can benefit from equivalent protection to that provided for clients under Articles 39 and 48 of EMIR.

23. After further analysis of policy options, ESMA has concluded that the most appropriate approach is for the RTS to specify the intended outcome – a credible arrangement for transferring indirect

clients' assets and positions of indirect clients to an alternative provider of indirect clearing services on request. Article 3(4) of the revised draft RTS places a requirement on CMs to establish such arrangements, as well as robust procedures to liquidate indirect clients' assets and positions where porting is not possible. Some responses provide preliminary proposals for the structure of these arrangements.

(d) 30-day requirement

24. Most responses strongly criticised the requirement in the draft RTS for CMs to manage directly the positions of indirect clients for at least 30 days following the failure of a client. A key consideration was that this requirement would effectively provide indirect clients with a 'super-equivalent' level of protection relative to clients of CMs, which would be inconsistent with the requirements of EMIR. The responses also highlighted that the contingent obligation to accept principal risk against indirect clients would require CMs to invest in risk management procedures that broadly replicate arrangements for direct clients. Uncertainty over the capital treatment of the contingent exposures was also a major concern.
25. The responses strongly suggested these considerations would discourage CMs from facilitating indirect clearing services or would make the cost of such services prohibitively high for potential users. Some responses further highlighted the possibility that only a handful of CMs would be willing or able to offer indirect clearing services on the terms required by the draft RTS, leading to a significant concentration of systemic risk. Besides, very few respondents (from sectors different to CMs) supported the proposed rule in the consulted text or considered it essential.
26. ESMA notes that the 30-day requirement proposed in the draft RTS was conceived as a mechanism for ensuring that indirect clients would retain access to a CCP (and thus be able to satisfy the clearing obligation) following the failure of a client. But ESMA is also persuaded that the risk of losing access should reside with indirect clients themselves rather than intermediaries further up the transaction chain. On this basis, the revised draft RTS removes the 30-day requirement.

III.II Clearing obligation procedure

27. Under the clearing obligation procedure, ESMA will analyse the characteristics of certain classes of OTC derivatives in order to assess the application of the clearing obligation. In order for ESMA to identify the relevant class of OTC derivatives, EMIR provides for a bottom up approach according to which, when a competent authority authorises a CCP to clear a class of OTC derivatives, it will notify ESMA. For the determination of the classes of OTC derivatives, ESMA will, in a first stage, use as a basis the classes of derivatives defined by the CCP and the competent authorities. Following the analysis of the notification received, ESMA may adopt a more granular approach within that class of OTC derivatives. EMIR also provides for a top-down approach according to which ESMA has to identify the classes of OTC derivatives that meet the same criteria specified below, but for which no CCP has received an authorisation. The purpose of this second approach is to ensure the development of clearing solutions for particular classes of OTC derivatives. No CCP will be forced to clear contracts that it is not able to manage and the clearing obligation will actually enter into force following the bottom-up approach.

Notification from the competent authority to ESMA (Article 5.1 of EMIR) (Annex II, Chapter III)

28. According to EMIR, a competent authority shall notify ESMA when it authorises a CCP to clear a class of OTC derivatives. This notification will include the information specified in the draft RTS.

Although the information will flow from the competent authority of the CCP to ESMA, it is the CCP, having requested the authorisation, who will initially provide the required information to the competent authorities, which may be then complemented as appropriate.

29. The CP included the details of the information that the notification should include for the purpose of assessing whether a class of OTC derivatives should be subject to the clearing obligation, the date or dates from which the clearing obligation takes effect, including any phase-in, and the categories of counterparties to which the clearing obligation applies, as well as the minimum remaining maturity of the OTC derivative contracts entered into after the notification but before the entry into force of the clearing obligation.
30. Most stakeholders welcomed ESMA's approach outlined in the CP and insisted that the notification received by ESMA should be made public as soon as possible in order to allow market participants to prepare for a potential clearing obligation. They also asked that when ESMA concludes that a class of OTC derivative contracts does not meet the criteria for being subject to the clearing obligation, the decision be made public. Finally, some respondents requested that when information provided in the notification is based on estimations, the assumption used should be clearly indicated.
31. ESMA understands that market participants need to be informed of notifications submitted by competent authorities to ESMA in order to make informed decisions and prepare for compliance with a potential clearing obligation. Indeed, the clearing obligation will affect contracts entered into as of the date of the notification and therefore market participants should be informed about the future potential effects of the clearing obligation on these contracts. In the CP, ESMA shared its intention to adequately inform market participants about the notification received. However, in view of stakeholders' comments, ESMA agrees to publish information related to the notification on its website as part of the public register. The details of the information to be published are provided in the draft technical standards related to the public register (Article 7). Regarding the publication of a negative assessment, it is important to stress that ESMA shall develop draft technical standards within 6 months of receiving the notification, when it considers that the criteria related to the clearing obligation would be met. It means that in the absence of public consultation and publication of draft regulatory technical standards within that period of time, the assessment is negative. In view of information available in the ESMA public register and the above explained procedure, stakeholders will know that the assessment is negative.
32. ESMA acknowledges that clarity about assumptions used is necessary when the information provided in the notification is based on estimates. ESMA explains in the recitals which are related to the details of the notification that the assumptions are required.
33. Against this background, ESMA considers that a few changes were needed from the approach described in the CP. They are reflected in the draft RTS.

Criteria to be assessed by ESMA under the clearing obligation procedure (Article 5(4) of EMIR) (Annex II, Chapter IV)

34. In developing the draft technical standards related to the class of derivatives that should be subject to the clearing obligation, ESMA shall take into consideration the criteria defined in Article 5(4) of EMIR:

- a. the degree of standardisation of the contractual terms and operational processes for the relevant class of OTC derivatives;
 - b. the volume and the liquidity of the relevant contracts within the relevant class of OTC derivatives;
 - c. the availability of fair, reliable and generally accepted pricing information.
35. The above mentioned criteria shall be further specified through draft RTS. ESMA developed its views in this respect and included them in the CP.
36. In assessing standardisation, ESMA would consider, for the contractual terms, the use of common legal documentation, including master netting agreements, definitions and confirmations which set forth contract specifications commonly used by counterparties and, for operational processes standardisation, the extent to which product trade processing and lifecycle events are managed in a common manner to a widely agreed-upon timetable.
37. In assessing liquidity, ESMA would consider whether the margins would be proportionate to the risk that the clearing obligation intends to mitigate, the historical stability of the liquidity through time and the likelihood that liquidity would remain sufficient in case of default of a CM. The reason for linking liquidity to the level of margins applied by the CCP is that a CCP can potentially clear highly illiquid products applying disproportionate margins. In such a situation, it would not be appropriate to apply a clearing obligation as it would not fulfil the overarching objective of reducing systemic risk.
38. Finally, ESMA would assess whether the relevant information to correctly price the contracts within the relevant class of OTC derivatives is easily accessible to counterparties on a reasonable commercial basis including once the clearing obligation is in force.
39. Regarding standardisation, stakeholders generally agreed with the approach ESMA proposed. Some respondents stressed that it should be referred to the standardisation of the economic terms of the class of OTC derivatives and raised a concern on the length of the look-back period to assess the availability of reliable prices.
40. ESMA acknowledges that standardisation of the economic terms of the class of the OTC derivatives is relevant information. However, standardisation of the economic terms of a class of contracts is a pre-requisite for standardisation of the contractual terms and operational processes of that class of OTC derivatives. As a result, the information related to the standardisation of the contractual terms and operational process also captures information on the standardisation of the economic terms of the class of OTC derivatives. It is therefore not necessary to amend the related draft RTS. On the look-back period, ESMA agrees that a longer look-back period could provide relevant information. The draft RTS has been amended to extend the period of time with reliable reference prices from '12 months' to 'at least 12 months'.
41. In order to assess the date from which the clearing obligation should take effect, ESMA will assess several criteria. These criteria relate to the CCP such as the expected volumes, the ability of the CCP to manage the volumes and related risks, and to the clients of the CCP such as the tasks to be completed in order to start clearing with the CCP, the counterparties active within that market, their risk management, legal and operational capacity. ESMA considers it is relevant to specify



that the ability of the CCP to handle the expected volume and to manage risks extends to the activity through clients' and indirect clients' clearing arrangements.

III.III Public register

(Article 6 (4) of EMIR) (Annex II, Chapter V)

42. ESMA shall make available on its website a public register to identify the classes of OTC derivatives subject to the clearing obligation.
43. In the CP, ESMA presented its view that for the identification of the class of OTC derivatives subject to the clearing obligation, the public register referred to in Article 6 of EMIR should include the asset class of OTC derivative contracts, the type of OTC derivative contracts, the underlying, with the indication on whether it is on a single financial instrument or issuer or on an index or portfolio, the currency, the range of maturities, the settlement conditions, the range of payment frequencies, the calculation and business day conventions and any other characteristic required to identify one contract in the relevant class of OTC derivatives from another. For the identification of the CCPs authorised or recognised to clear the classes of OTC derivatives subject to the clearing obligation, ESMA considered that the public register should include an identification code (aligned with the relevant draft ITS on TRs), the full name, the country of establishment and the competent authority designated in accordance with Article 22 of EMIR. Finally, ESMA also considered that the public register should include the date from which the clearing obligation takes effect, any possible phase-in by categories of counterparties, the reference of the Commission Regulation adopting draft RTS according to which the clearing obligation was established as well as any additional condition.
44. Generally, stakeholders welcomed the approach of ESMA regarding the details to be included in the public register.
45. On the level of details to determine the classes of OTC derivatives, some answers pointed to the need to be accurate and precise on the definition of the classes of OTC derivatives subject to the clearing obligation, especially for commodities, in order to prevent circumvention while not encompassing products that would not be subject to the clearing obligation. Some considered that the public register would be too detailed and others thought it would not be sufficiently detailed. As already indicated above, some respondents asked that the notification from the competent authority to ESMA, when it authorises a CCP to clear a class of OTC derivatives, be published as soon as possible.
46. In view of these comments, ESMA considers that the level of detail to be included in the public register depends on the relevance of the criteria for each class of OTC derivatives. Indeed, the level of details in the public register shall ensure proper identification of a class of OTC derivatives subject to the clearing obligation without encompassing products that are not included. ESMA agrees to delete the reference to the calculation and business day convention and to add a reference to the settlement currency of the OTC derivative contract. Indeed, for the first item, it could be an easy way to circumvent the clearing obligation while for the second item, it may be relevant information for the determination of the class of OTC derivatives.
47. With reference to the use of the public register to include information related to the notifications received by ESMA, as described under the section above related to notification, ESMA understands the need of stakeholders of being informed about possible future clearing obligations

at an early stage. As a result, as part of the information related to the CCP notified to ESMA by the competent authorities, ESMA will publish, on the public register, information related to the notification including its date, the asset class of OTC derivatives, the type of OTC derivatives and the relevant competent authority. ESMA will publish this information in a way preventing any confusion with the public register of classes of OTC derivative contracts subject to the clearing obligation.

48. Some respondents commented that the structure of the public register would prevent phase-in on another basis than just the categories of counterparties e.g. phase-in on the basis of the sub-categories of products. In this respect, ESMA stresses that this provision of the draft RTS is aligned with the drafting of Article 5(2)(b) of EMIR which refers to “any phase in and the categories of counterparties” and considers that the set-up of the public register allows application of phase-in as will be appropriate in view of the framework set by EMIR.

III.IV Access to a trading venue

(Article 8 of EMIR) (Annex II, Chapter VI)

49. Article 8 of EMIR requires trading venues to provide access to their trade feeds on a non-discriminatory and transparent basis to CCPs authorised to clear OTC derivatives. However, access may only be granted where it would not require interoperability or threaten the smooth and orderly functioning of markets in particular due to liquidity fragmentation. ESMA is asked to specify in the draft RTS the notion of liquidity fragmentation.
50. As explained in the CP, ESMA believes that the key risk which liquidity fragmentation could pose in this context would be of one market participant being prevented from trading with another because no clearing arrangement was available to which both had access. This would be of particular importance when the clearing obligation is in place. As such, the standard focuses on ensuring that access by a new CCP should not prevent any two participants in the market from trading with each other because of a lack of access to a common clearing arrangement.
51. Respondents’ views on the standards were reasonably balanced. Some, in particular exchanges, their associations and the Securities and Markets Stakeholder Group, were concerned that the definition of liquidity fragmentation was too narrow. In particular they argued that liquidity fragmentation should be considered not only at the level of the trading venue but also at the level of the CCP, arguing that fragmentation at the CCP level could lead to a loss of netting benefits or an increase in systemic risk through greater interconnectedness.
52. Others, in particular those representing the buy side and investment firms, argued that the definition was too broad. They strongly supported the objective of facilitating competition among CCPs, arguing that it would bring lower cost and greater choice, and were concerned that a broad definition of liquidity fragmentation could be used as a justification for protecting incumbent CCPs against competition. Still, others argued that the definition was too binary, and that it should define not only situations where liquidity fragmentation existed or did not exist, but also gradations in between.
53. A final point which came up regularly was concern over the potential implications for interoperability for derivatives. Derivatives interoperability is a complex issue, and ESMA was keen to avoid any implication in this draft RTS that it should be permitted or required or indeed that it should be prevented. Furthermore it is clear from EMIR that access should not be permitted

if it requires interoperability. ESMA understands this as the ability to deny an access request if its precondition is to impose interoperability between the incumbent and the requesting CCPs. However, if derivatives interoperability were to be already permitted by competent authorities for a particular pair or group of CCPs, ESMA believes it would be wrong for the draft RTS to rule it out as a possible approach to avoid liquidity fragmentation.

54. In response to these comments, ESMA decided not to make any substantial changes to the test for liquidity fragmentation. The comments calling for broader definitions were offset by those calling for narrower definitions. On the call for a less binary definition, ESMA feels that, given the test is intended to determine whether or not liquidity fragmentation is a sufficient justification to deny access, a binary definition is necessary. With respect to the notion of liquidity fragmentation at the clearing level, ESMA understands that it is inherent to the access by a second or third CCP to a trading venue and its existence could not be the basis to deny an access request since this would make void the Level 1 provision. To respond to concerns that the application of the standard in respect of derivatives interoperability was unclear, ESMA has added a recital and amended the text in the article. This is intended purely as a clarification. The intended effect of the draft RTS in this area remains as explained in the paragraph above.

III.V Non-financial counterparties

(Article 10 of EMIR) (Annex II, Chapter VII)

55. EMIR recognises that non-financial counterparties (NFCs) use OTC derivatives to protect themselves against commercial risks directly linked to their commercial activities or treasury financing activities. As a result, these OTC derivative contracts that protect the NFCs against risks directly related to their commercial activities and treasury financing activities as well as those that, for different purposes, do not exceed the clearing thresholds are not subject to the clearing obligation. However, it is well established that when the clearing thresholds would be exceeded, the clearing obligation would apply to all future OTC derivatives concluded by the NFC after it has exceeded the clearing thresholds, no matter which purpose they have.

56. In order to calculate whether it exceeds the clearing thresholds, a NFC does not include in its calculation the OTC derivative contracts which are objectively measurable as reducing risks directly related to its commercial activity or treasury financing activity or that of its group.

57. ESMA has consulted in particular the ESRB and ACER on a) the draft technical standards related to the criteria for establishing which derivative contracts are objectively measurable as reducing risks directly related to the commercial activity or treasury financing and b) the clearing thresholds, as provided in EMIR (Article 10(4) and Recital 29).

Hedging definition

58. In the CP, ESMA considered that an OTC derivative contract entered into by a NFC is deemed to be objectively measurable as reducing risks directly related to the commercial activity or treasury financing activity of that NFC or of that group, when, whether individually or in combination with other derivative contracts, its objective is to reduce the potential change in the value of assets, services, inputs, products, commodities, liabilities that it owns, produces, manufactures, processes, provides, purchases, leases, sells or incurs in the ordinary course of its business, or the

potential change in the value of assets, services, inputs, products, commodities or liabilities referred to above, resulting from fluctuation of interest rates, inflation or foreign exchange rates. ESMA had extended the criteria of activities in the scope of the definition of OTC derivative contracts that would reduce commercial risks to include proxy hedging. Indeed, in some circumstances, it may not be possible to enter into an OTC derivative contract directly related to the exact risk to be covered but a closely correlated instrument may achieve the objective of risk reduction.

59. ESMA also considered that an OTC derivative contract, entered into by a NFC, is deemed to be objectively measurable as reducing risks, when the accounting treatment of the derivative contract is that of a hedging contract pursuant to International Financial Reporting Standards (IFRS) principles on hedge accounting as endorsed by the European Commission.
60. Nevertheless, ESMA considered in the CP that an OTC derivative contract which is used for a purpose in the nature of speculation, investing, or trading should not be an OTC derivative contract objectively measurable as reducing risks directly related to the commercial activity or treasury financing activity.
61. Some stakeholders commented that the definition of contracts that would be considered as hedging should be extended to portfolio hedging, to OTC derivative contracts concluded to offset a superfluous hedging contract, and should include other activities such as stock options, acquisitions or credit risks. Some respondents have insisted on local generally accepted accounting principles (GAAP) to be used as a reference to consider that an OTC derivative contract would reduce risks directly related to commercial or treasury financing activity.
62. The ESRB broadly agreed with the definition of commercial and treasury financing activities proposed by ESMA. However, the ESRB considered that the treasury financing activities may be further detailed and that the reference to IFRS rules may not be perfectly matched with the objectives of the definition. They suggested linking the definition of commercial activities to capital and operational expenditure of the NFC and the definition of treasury activity to its cash flow statement. They also suggested setting a cap to the maximum amount which could be used in order to prevent abuses.
63. ESMA recognises that some counterparties perform hedging at macro level. Portfolio hedging is therefore intended to be captured by the draft RTS related to hedging. It is nevertheless necessary to add that these contracts will fall in the scope of the definition of hedging as long as they meet the criteria to reduce risks directly related to commercial activity and treasury financing activity. In respect of OTC derivative contracts entered into in order to offset OTC derivative contracts which are no more necessary for hedging purposes, and would have become superfluous, ESMA considers they would also qualify as hedging. The draft RTS does intend to capture the combination of OTC derivative contracts that constitute hedging all together. ESMA has amended the recitals in order to clarify that portfolio hedging is permitted and that OTC derivative contracts offsetting hedging contracts would also qualify as hedging.
64. Following stakeholders comments, ESMA further considered whether OTC derivative contracts related to employee benefits such as stock options should be included in the scope of the hedging activity. ESMA understands that in order to satisfy its commitments related to employee benefits, the NFC incurs a liability related to the expected cash flow or the delivery of shares, of which risks could be covered by an OTC derivative contract and which is part of the NFC's normal activity. Therefore, ESMA agrees that these OTC derivative contracts may be considered in the scope of the

hedging definition and they would be covered by the general definition of hedging as falling under the ‘normal’ activity of the NFC.

65. ESMA considers that it is in the purpose of a company to develop its activities. This business development may be performed through different means e.g. the acquisition of patents, products, assets but also the acquisition of another company. As a result, OTC derivative contracts reducing risks related to the acquisition of a company by a NFC would be considered as part of the “normal” course of business of that NFC and may be considered as reducing risks directly related to the commercial or treasury financing activity of such NFC.
66. ESMA acknowledges that credit risk of a counterparty may be directly related to its commercial or treasury financing activity. ESMA therefore agrees that credit risk is covered in the scope of the hedging definition. For clarification purposes, ESMA has amended the draft RTS to explicitly cater for credit risk in the definition of OTC derivative contracts reducing risks directly related to commercial or treasury financing activity of a counterparty.
67. The reference to the accounting rules is to the IFRS rules as endorsed by the European Commission. In ESMA’s view, it would not be appropriate to refer to local accounting rules as such local rules could differ from one country to another and would not allow achieving the level of convergence required in the Union. However, as mentioned in Recital 16 of the draft RTS on OTC derivatives, ESMA expects that most of the contracts classified as hedging under local accounting rules would fall within the general definition of contracts reducing risks directly related to commercial activity or treasury financing activity.
68. It should be noted that the two criteria set out in the draft RTS which are needed in order to qualify for the definition of hedging are alternative and not cumulative criteria. Therefore when one of the criteria is met, the OTC derivative contract is excluded from the computation of the clearing threshold. ESMA is of the view that although the ESRB suggestions to use the capital and operational expenditure of the company, as well as its cash flow statements to set the criteria defining commercial and treasury financing hedging would technically improve the definition, they would also add complexity in the implementation of the rules that may be difficult to manage for small and medium NFCs. It is also important to consider that a NFC must consider not only its own non-hedging OTC derivative contracts but also those of other NFCs within its group. This approach would require NFCs to develop more sophisticated solutions for monitoring purposes. In order to adopt a proportionate solution and limit costs, ESMA considers that the reference to the IFRS rules, combined with the second criteria, identifies contracts reducing risks directly relating to the commercial activity or treasury financing activity is an efficient alternative which considers the burden of implementation in particular for the small and medium NFCs.
69. As highlighted in the impact assessment attached to this Report, one of the relevant cost component involved in the application of the exemption for NFCs is related to the monitoring cost for NFCs to verify whether they are above or below the clearing threshold. The application of IFRS rules will already exclude a significant number of companies from the application of the relevant provisions in EMIR. Therefore, abandoning this approach would expose NFCs to big uncertainties and significant monitoring costs both for the NFCs and the relevant competent authorities.
70. Some respondents have stressed that the reference to “investing” and “trading” is a terminology that can be used for hedging purposes and should therefore not be used as a substitute for “speculation”. Some stakeholders stressed that the reference to the “ordinary course of business”

of the counterparty would be restrictive as it refers to day-to-day activity and would not include activities which may be performed less frequently in the scope of hedging activity.

71. ESMA agrees that the use of the terms “investing” and “trading” may create some misunderstanding. Furthermore, ESMA considers that the definition may be streamlined and has amended the draft RTS, withdrawing the provision specifying what is not under the hedging activity. On the second point, ESMA does not intend to limit the scope of the definition to those activities performed on a daily basis only, but to capture those activities that are in the normal course of business instead. As a result, ESMA has amended the draft RTS replacing the “ordinary course of business” with the “normal course of business”.
72. Some stakeholders noted that, as for OTC derivatives reducing risks, intragroup OTC derivatives and voluntarily cleared OTC derivative contracts should be excluded from the scope of the calculation of the clearing threshold. Also some responses stressed that the calculation of the clearing threshold should not consider OTC derivative contracts entered into at the group level but only at the level of the legal entity. In this respect, ESMA stresses that these issues are related to provisions in the Level 1 text and the mandate granted by EMIR does not extend to these aspects and cannot be answered in the scope of this report.

Clearing Thresholds

73. In the CP, ESMA considered that the clearing thresholds used to determine which NFCs should be subject to the clearing obligation should be set per asset class. For the purpose of the clearing thresholds, 5 asset classes were considered i.e. credit derivatives, equity derivatives, interest rate, foreign exchange and, finally, commodity and others. ESMA indicated that it would set a threshold of EUR 1 billion in gross notional value of OTC derivative contracts for each of the credit and equity derivative contracts and of EUR 3 billion in gross notional value of OTC derivative contracts for each of the interest rate, foreign exchange, and commodity or others derivative contracts. In this respect, when one of the clearing thresholds for an asset class is reached as determined in EMIR, the counterparty is considered as exceeding the clearing thresholds and therefore is subject to the relevant EMIR requirement for all classes of OTC derivative contracts and not only for those pertaining to the class of OTC derivatives where the clearing threshold is exceeded. The clearing obligation would apply to all OTC derivatives contracts concluded after the clearing threshold was exceeded, irrespective of the asset class to which these OTC derivative contracts belong to. ESMA also considered that the clearing threshold should be simple to implement by NFCs. As a result, for the purpose of setting the clearing thresholds, ESMA considered referring to the gross notional value of OTC derivative contracts concluded by NFCs.
74. Some stakeholders welcomed the relatively high value of the clearing thresholds proposed by ESMA and the simplicity of the approach. Some other respondents claimed that the thresholds should be expressed as a net amount of the mark-to-market value of the OTC derivative contracts. They generally referred to the net value of the OTC derivative contracts across classes of OTC derivatives and across counterparties. They argued that the market value of the OTC derivative contracts would be a better measure of the risk. Some respondents, especially commodity firms, strongly opposed that exceeding the clearing threshold for one class of OTC derivative contracts should trigger application of the clearing obligation or of the risk mitigation techniques for all classes of OTC derivative contracts. They argued that their treasury financing activities should not be “contaminated” by their commodities trading unit.

75. The ESRB supported ESMA's view that the application of the clearing threshold should not be complex. They agreed with the determination of a clearing threshold for each of the five asset classes of derivatives and the setting of the value by reference to a gross amount. However, as some stakeholders, they considered that the amount should be set in market value instead of notional value. The ESRB proposed a two-step formulae to determine the value of the clearing thresholds applicable to each NFC.
76. In view of the limited information and data provided by stakeholders in answer to the DP and the CP, ESMA has relied on data published by the Bank for International Settlements (BIS)³, by NFCs and provided by competent authorities, in order to set up the value of the clearing thresholds. Although ESMA has performed an analysis to assess the impact of its approach on NFCs, the level of granularity and completeness of data available is not sufficient to have a detailed view on the OTC derivative markets and the use of these instruments per asset class by NFCs. In this respect, it is important to note that the clearing thresholds will be reviewed on a regular basis. It is also expected that the reporting to TRs will significantly improve the data set to monitor and review the clearing thresholds.
77. EMIR provides that the values of the clearing thresholds shall be determined taking into account the systemic relevance of the sum of net positions and exposures per counterparty and per class of OTC derivatives. It is important to note that this is different from the net exposure across counterparties and across asset class that stakeholders generally refer to in their answer to the CP. ESMA has taken into account the relation between full netting, counterparty netting and gross figures. The result of the sum of net positions and exposures per counterparty and per class of OTC derivatives would be higher than the fully netted amount referred to by stakeholders. Furthermore, the business structure of most of the small or medium NFCs would mean that OTC derivative contracts are generally in the same direction meaning that the netting effect would be limited. Finally, and most importantly, ESMA considers that the gross notional amount is a figure which is simpler to calculate and monitor, and which is an important feature for NFCs. The absence of reliable data on the net positions and exposures per counterparty and per class of OTC derivatives (no stakeholders have provided such data in the consultation process), has led ESMA to conclude that the use of the gross value as a proxy of the systemic relevance of the risk is reasonable and practical.
78. Although ESMA agrees that generally market values are a better measure of the risk than the notional values, ESMA notes that EMIR only requires FCs and NFCs exceeding the clearing threshold to mark-to-market their OTC derivative contracts on a daily basis. NFCs below the clearing threshold are not subject to the daily mark-to-market requirement. It would be paradoxical and to some extent circular to use the market value to set the clearing threshold when this measure is used for requiring daily mark-to-market. Using marking-to-market would also expose NFCs to external factors in the application of the clearing threshold. An increase in market price could lead a company to exceed the clearing threshold although it would not have concluded additional contracts. The use of the notional value of the OTC derivative contracts allows some stability in the figures considered to monitor the clearing threshold which is particularly relevant for small and medium companies and would avoid the burden and costs to implement a complex system and process for monitoring purpose. ESMA has therefore taken this approach.

³ Statistical release: OTC derivatives statistics.

79. On the triggering of the clearing thresholds, following analysis of arguments raised by some respondents, and given that the calculation of the clearing threshold excludes OTC derivatives that reduce risks and only contains “speculation”, ESMA considers that when a clearing threshold value is reached, the clearing threshold is exceeded in the terms contained in EMIR, and the obligations attached to this should cover all OTC derivatives and not only those of that particular class. This is linked to the consideration of systemic relevance expressed in EMIR, which would be reached as soon as a threshold is reached and would be retained for the overall activity of that entity. Besides these considerations, given that passing a threshold should have consequences only in relation to that asset class, it would also have consequences in terms of uneven risk mitigation techniques and mark-to-market obligations that would have to be applied differently for different asset classes, depending on whether their particular threshold was or was not passed. Finally, it should be noted that most of EMIR requirements are meant to reduce counterparty risk, which is linked to the creditworthiness of a counterparty and it is not asset class specific.
80. The ESRB proposed to set the value of the clearing thresholds by applying a two-step approach. In a first step, the NFC would apply a formulae to determine the group it would belong to. In a second step, depending on its group and the result of the application of the previous formulae, the NFC would apply a second formulae to determine the value of the clearing threshold it would need to apply. Each NFC would apply a different value for the clearing threshold. Although ESMA agrees that this approach allows a refined calculation of the value of the clearing threshold, in view of the specificities of the company, it does not take into consideration that the calculation of the clearing threshold includes OTC derivative contracts concluded at group level. Furthermore, the complexity of the approach would be difficult to manage for small and medium NFCs that, for most of them, are not used to such a regulatory framework. Finally, as the applicable clearing thresholds would differ for each NFC, and in view of the substantial gaps in the disclosure of data, the supervision of the application of the clearing threshold would be complex and heavy to manage by the competent authority. As a result, ESMA considers that a more simple approach, relying on a value that is known in advance by all stakeholders (and therefore fully transparent), should prevail.

III.VI Risk mitigation for OTC derivative contracts not cleared by a CCP

(Article 11 (14) of EMIR) (Annex II, Chapter VIII)

81. FC and NFCs that enter into OTC derivative contracts which are not subject to the clearing obligation shall mitigate risks by using different techniques. The risk mitigation techniques shall be further specified through technical standards to be developed in part by ESMA but also jointly by ESMA, EBA and EIOPA. The draft RTS related to intragroup transactions is developed by ESMA in part and jointly by the European Supervisory Authorities (ESAs) for another part.
82. This report relates to the risk mitigation techniques to be specified through ESMA’s technical standards only. Some other risk management techniques to be developed jointly by the three ESAs will be part of a different process and will be released at a future date.

Timely confirmation

83. In order to specify what would be a timely confirmation, ESMA made the distinction between, on the one hand OTC derivative contracts concluded by FCs and NFCs exceeding the clearing

thresholds with each other and, on the other hand, OTC derivative contracts concluded by NFCs below the clearing thresholds. ESMA proposed a timeframe for the confirmation ranging from the same business day for the first category of counterparties, to the next business day for the second category of counterparties. The timing was extended by one business day when FCs or NFCs above the clearing threshold executed the transaction after 4.00pm or when their counterparty was located in a different time zone which did not allow confirmation by the end of the same business day.

84. ESMA also considered that FCs should report monthly to the competent authority the number of unconfirmed OTC derivative transactions that have been outstanding for more than five business days.
85. Although some stakeholders supported the proposal, others raised concerns on the timing and that they considered is still too demanding. They asked that market practice be given due consideration, that the timing of the confirmation is differentiated per product and that a phase-in period applies. Some respondents recommended that the extended timing applying to transactions concluded after 4.00pm or with a counterparty in a time zone which does not allow to comply with the timeframe, should also apply to NFCs. Finally, some stakeholders argued that the timeframe of the confirmation should not distinguish between NFCs below the clearing threshold and those above the clearing threshold.
86. In view of the answers to the CP, ESMA stresses that it is important that the contract be confirmed as quickly as possible. Nevertheless, ESMA recognises that the above proposal is ambitious and entails a modification of the current practice related to execution of transactions on the OTC derivative markets. As a result, ESMA is maintaining ambitious but realistic timing taking into account the progress that counterparties should be able to achieve.
87. ESMA distinguishes between, on the one hand the FCs and NFCs above the clearing threshold and, on the other hand, the NFCs below the clearing threshold. Within each of these categories, ESMA distinguishes between some categories of products i.e. on the one hand CDS and IRS and on the other hand equity, FX, commodities and others. Several interim objectives are set for periods ranging from the entry into force of the draft RTS, to August 2013, February 2014 and August 2014, which will allow interim enhancement of the timeframe before reaching the end-goal timing. The end goal timing is the business day following execution for FCs and NFCs above the clearing threshold and the second business day following execution for NFCs below the clearing threshold. The draft RTS are amended to reflect the approach described above.
88. On the point related to the delegation of the performance of the confirmation, ESMA notes that a counterparty may indeed delegate execution of its tasks or obligation. Nevertheless, the counterparty does remain responsible for compliance.
89. Regarding the comments on the application of the same timeframe to all NFCs without distinction between those above or below the clearing threshold, ESMA considers that the distinction between these categories of counterparties and application of different timeframes to each category is aligned with the approach adopted by the regulation. Indeed, the regulation submits those NFCs exceeding the clearing threshold to different obligations than those NFCs below the clearing threshold.
90. Some stakeholders raised the point that timely confirmation should be complemented with a straight through processing (STP) allowing OTC derivatives subject to the clearing obligation to be confirmed between the counterparties, communicated to the CCP and accepted or rejected by the

CCP within the short timeframe permitted by this technology. This STP process would reduce the counterparty risk for the period between the moment when the OTC derivative contract is entered into and the moment when it is accepted, or rejected for clearing by the CCP. ESMA agrees with the need to advance in this direction and welcomes techniques that reduce counterparty risk and considers that this approach should be seriously explored. However, this technique does not fit in the scope of the draft RTS and ESMA's mandate and cannot be further developed here with binding force.

Reconciliation of non-cleared OTC derivative contracts

91. In the CP, ESMA considered that FCs and NFCs shall agree in writing or in other equivalent electronic means with each of their counterparties on the terms of their portfolio reconciliation, which may be performed by a qualified third party duly mandated to this effect. ESMA proposed that the portfolio reconciliation shall also cover key trade terms identifying a particular derivative transaction and be performed at least each business day when the counterparties have 500 or more derivative contracts with each other, at least once per week for a portfolio between 300 and 499 derivative contracts with a counterparty and, once per month for a portfolio of less than 300 derivative contracts with a counterparty; it being understood that the timing should be appropriate based on the size and volatility of the OTC derivative portfolio between the counterparties.
92. Generally stakeholders considered that portfolio reconciliation was a highly important risk mitigation technique and welcomed the related draft RTS. Nevertheless, some respondents stressed that NFCs should not be subject to the same rules than financials. Certain stakeholders asked for a full exemption for NFCs. They considered that the administrative burden would not be proportionate to the risk, especially as most of the OTC derivatives would qualify as hedging. Answers to the CP also stressed that the proposed frequency for reconciliation is too demanding and should be extended, especially for NFCs. Some respondents requested that sufficient time should be allowed in order to prepare for compliance. Some stakeholders asked that alternative techniques, such as trade matching, should be considered to replace reconciliation. Finally, some stakeholders stressed that the requirements related to reconciliation should converge with other countries' regulation.
93. Following the views expressed by stakeholders, ESMA agrees to differentiate the frequency of the reconciliation for NFCs below the clearing threshold in order to avoid an overly burdensome process and ensure proportionality but still ensuring mitigation of the risks. For FCs and NFCs exceeding the clearing threshold, the categories of portfolios, depending on their size and frequency of reconciliation, are reviewed in order to provide more flexibility for those who have a limited number of OTC derivative contracts with a counterparty. The monthly reconciliation is replaced by a quarterly reconciliation for portfolio of 50 or less OTC derivative contracts with a counterparty. When setting the frequency of the reconciliation for each category, ESMA has taken into account the regulatory approach adopted in other countries although the architecture of the regulation is usually different.
94. ESMA recognises that services such as trade matching used by counterparties improve the management of the OTC derivative portfolio and considers that it can be leveraged in order to comply with the reconciliation requirements. Nevertheless, reconciliation covers a different scope than trade matching which cannot simply replace it.

95. ESMA acknowledges that the requirements related to the reconciliation of portfolios requires adaptations from counterparties such as their processes and IT systems. For this reason, the related requirements would enter into force 6 months after the entry into force of the regulation endorsing the draft RTS.

Portfolio compression

96. In the CP, ESMA considered that portfolio compression was a risk-reducing exercise and proposed that counterparties, FCs and NFCs, having a portfolio of at least 500 or more non- centrally cleared derivative transactions, had procedures to regularly, and at least twice a year, analyse the possibility to conduct a portfolio compression exercise. The procedure should also provide for engaging in such a portfolio compression exercise when considered appropriate by the counterparty. ESMA proposed that, as a result of the portfolio compression exercise, the offset OTC derivative contracts be terminated no later than the day following the execution of the fully offsetting derivative contract.

97. Stakeholders welcomed ESMA's proposal to periodically analyse the possibility to use compression and recognised the importance of this risk mitigation technique in order to reduce counterparty risk. However, some of the respondents stressed that certain portfolios are not suitable for compression. Some respondents also requested that NFCs and intragroup OTC derivative contracts be excluded from the scope of the rules related to compression. Finally, some answers questioned the interaction of the accounting rules with the proposed requirement to offset contracts following compression and stressed that counterparties would need time in order to comply with the requirement related to portfolio compression.

98. ESMA acknowledges that depending on the circumstances, compression might not be a suitable risk mitigation tool. This is reflected in the draft RTS which does not mandate compression but that a counterparty having a portfolio of a certain size analyses whether compression would be appropriate. It is therefore up to the counterparty that meets the requirement to assess whether portfolio compression would be appropriate or not. ESMA considers that there would be no appropriate justification to, a priori, exclude some categories of OTC derivative contracts from the scope of the requirement related to portfolio compression.

99. In order to be able to perform portfolio compression effectively, one of the main criteria to be met relates to the size of the portfolio with a counterparty. The nature of the counterparty is not in itself a sufficient criterion. As a result, and because the draft RTS does not impose that compression be performed when it is not appropriate, ESMA considers that the draft RTS should not distinguish depending on the nature of the counterparty.

100. In order to prevent potential unintended frictions with accounting rules and, in view of the scope of the draft RTS, ESMA agrees that the provision related to the termination of offset contracts should be deleted.

101. ESMA acknowledges that counterparties will need time in order to prepare for compliance with the requirement to set up a procedure for portfolio compression. Therefore, this provision enters into force 6 months after the entry into force of the regulation endorsing the draft RTS.

Dispute resolution

102. In the CP, ESMA proposed that in order to identify and resolve any dispute, FCs and NFCs should have detailed procedures and processes to deal with disputes. The procedures and processes would aim at identifying, recording, and monitoring disputes relating to the recognition, valuation of the contract or to the exchange of collateral, recording the length of time for which the dispute remains outstanding, the counterparty, and the amount which is disputed. These procedures and processes would also relate to the timely resolution of identified disputes and, for those that are not resolved within 5 business days, include specific dispute resolution mechanisms. Finally, ESMA contemplated that FCs should report to the competent authority disputes outstanding for at least 15 business days and for an amount or a value higher than EUR 15m.
103. Stakeholders generally supported the requirement to have procedures and processes related to dispute resolution. However, some respondents considered that the framework proposed by ESMA was too rigid and should allow for some flexibility, in particular on the processes applicable to disputes outstanding for more than 5 business days. Some stakeholders requested that the scope of the dispute resolution be reduced to exclude contract recognition. Finally, some answers considered that the reporting is unnecessary and, if required, delegation for the performance of the obligation should be possible. As for other risk mitigation techniques, some stakeholders also raised the need to allow time for counterparties to prepare for compliance with the dispute resolution requirements.
104. In view of the comments received, ESMA agrees to include some flexibility in the processes to be set up when a dispute is outstanding for more than 5 business days. For this purpose, the draft RTS does not refer anymore to specific processes. However, ESMA believes that the 5 business day period should not be extended. Indeed, this timeframe and the set-up of a specific process intend to raise risk awareness of the counterparty and ensures sufficient efforts are devoted to reach a timely resolution of the dispute. The reporting of the targeted disputes is important to allow the competent authority to be alerted and react in a timely fashion in case an issue would arise, for example in relation with a specific class of OTC derivatives.
105. ESMA considers that a counterparty may delegate the performance of its obligations related to dispute resolution. However, this counterparty retains the responsibility attached to the compliance with the requirement.
106. Concerning the recognition of contracts, this is a step that counterparties perform in order to perform reconciliation and exchange of collateral. Disputes may already arise at that stage if counterparties do not recognise a trade with each other. ESMA therefore considers that it should remain in the scope of the provision related to dispute resolution.
107. ESMA recognises that counterparties may require time in order to implement procedures and processes to be able to comply with the dispute resolution requirements. As a result, ESMA has decided that the related draft RTS enters into force 6 months after the entry into force of the regulation endorsing the draft RTS.

Marking-to-market and marking-to-model

108. ESMA is required to develop draft technical standards specifying the market conditions preventing marking-to-market and the criteria for using marking-to-model.
109. In the CP, ESMA proposed that market conditions would prevent marking-to-market of an OTC derivative when: a) the market is inactive, or b) the range of reasonable fair value estimates is significant and the probabilities of the various estimates cannot be reasonably assessed. In this

respect, a market would be deemed inactive when quoted prices are not readily and regularly available and those prices do not represent actual and regularly occurring market transactions on an arm's length basis. The notion of an inactive market was further explained in the recitals recognising that it may be caused by several reasons and providing for the example where there are no, or only a restricted number of similar contracts leading to the absence of, or to a restrictive number of transactions.

110. In situations where market conditions would prevent marking-to-market, FCs and NFCs exceeding the clearing thresholds must use reliable and prudent marking-to-model. ESMA proposed that the marking-to-model valuation technique should incorporate all factors that counterparties would consider in setting a price, be consistent with accepted economic methodologies for pricing financial instruments, be calibrated and tested for validity using prices from any observable current market transactions in the same financial instrument or based on any available observable market data, be validated and monitored by a unit independent from the risk taking unit, and be duly documented and approved by the board as frequently as necessary and at least annually. ESMA clarified in the recitals that the board may delegate the approval of the model for marking-to-model to a committee.
111. ESMA received general support from some stakeholders on the proposed approach. Nevertheless, some stakeholders considered that the approval of the model by the board would be excessive, that delegation to a committee would not be appropriate or permitted and that the proposed rule would not take into account that models may be developed externally.
112. Regarding the approval of the model used for marking-to-model, ESMA considers that it is important that the model used be duly understood and approved at the highest level in the company. The delegation to a committee is a possibility offered to the counterparty, not a requirement. In addition, the board of directors is always responsible for the approval of the model, i.e. delegation to a committee does not imply delegation of responsibilities.
113. ESMA acknowledges that models may be developed externally. This point is clarified in a recital. However, the fact that a model is developed externally does not allow an exception to the approval process. Indeed, it is of paramount importance that the counterparty fully understands how its risk is evaluated, irrespective of whether the model is developed internally or externally.

Intra-group exemptions

114. For the application of the intragroup exemption, two sets of draft RTS are required:
 - a. in relation to criteria to assess the applicability of the exemption and in particular practical and legal impediments to the prompt transfer of own funds or repayment of liabilities between counterparties;
 - b. in relation to the details of the intragroup OTC derivatives to be included in the notifications to the competent authority, in the notification from the competent authority to ESMA and the details of the information on the exemption to be publicly disclosed by the counterparty of the exempted intragroup transaction.
115. The draft RTS under point 'a' above are expected to be developed jointly by EBA, EIOPA and ESMA and related considerations will be included in a different process at a later stage. Draft RTS

under point 'b' above are under ESMA's sole responsibility and are therefore included in the scope of this report.

116. ESMA proposed that the notification from the counterparty to the competent authority includes the identification and relationship between the counterparties, information on their contractual documentation, on the transactions for which exemption is sought, the category of intragroup exemption sought, as well as supporting documentation such as legal opinions and procedures applicable to decisions made by the competent authorities.
117. ESMA proposed that the notification be provided from the competent authority to ESMA within 1 month and includes information notified by the counterparty to the competent authority, a summary of the reasons why the conditions of the exemption are or are not fulfilled, the indication of the conditions that are not fulfilled in case of a negative decision, and whether the exemption is a full or a partial exemption in case of a positive decision.
118. ESMA proposed that the information related to an intragroup exemption to be publicly disclosed contains identification of and relationship between the counterparties, information on whether the exemption is a full or partial exemption and the notional aggregated amount of the OTC derivative contracts that benefit from the intragroup exemption.
119. ESMA proposal was generally welcomed. Some stakeholders required flexibility on the notification: they asked that the notification covers all intragroup transactions among counterparties or across the group and considered that the head office could make the notification. Some respondents questioned the content of the notification. They argued that the corporate relationship between the counterparties is not required as the competent authority (CA) could know it, that information on the underlyings, notional currencies, range of contracts tenors, settlement type, anticipated size, volumes and frequency of contracts, and credit limits should not be required as this information is too detailed, may not be relevant and would make the process burdensome. Respondents generally were opposed providing legal opinions on a routine basis in view of the associated burden and costs, or risk management procedures as some have none for intragroup OTC derivatives.
120. In view of comments received from stakeholders, ESMA clarifies that the notification is performed per counterparty to the relevant CA and may cover all the intragroup OTC derivative contracts fulfilling the conditions set in the regulation provided the relevant information is clearly provided per counterparty. Although the counterparty is responsible for the notification to the CA, it may delegate the performance of the notification to another entity such as its head office. It is not possible to allow one notification across a group, as the group is made up of different legal entities which may be located in different jurisdictions and may be subject to a different framework. The process of one notification across a group would not allow for the CA assessment.
121. Concerning the content of the notification, the CA should be able to assess whether the conditions set by the regulation are fulfilled in order to decide on whether the counterparty could benefit from the intragroup exemption. For this purpose, the CA relies on information provided in the notification. In this respect, ESMA understands that some counterparties do not have credit limits and that, for those that have credit limits, they are subject to changes on a dynamic basis. As a result, ESMA agrees that the notification does not include information related to intragroup credit limits. ESMA also understands that providing a legal opinion on a routine basis may be costly and burdensome. In order to limit those inconveniences as much as possible, ESMA considers that a

legal opinion should only be provided when requested by the CA. However, the remaining information is necessary for the performance of the assessment by the CA.

122. Regarding the content of what should be disclosed by the counterparty benefiting from the intragroup exemption, stakeholders questioned the disclosure of the notional aggregated amount of OTC derivative contracts benefiting from the intragroup exemption. They argued that commercially sensitive information should not be disclosed.

123. Although ESMA understands the concern expressed by stakeholders, it considers that the information being expressed as an aggregate amount of notional value of the OTC derivative contracts without further details on the OTC derivative contracts, it does not allow to derive information that may be sufficiently commercially sensitive to justify that it is kept confidential. Indeed, on balance, it is beneficial to counterparties and more generally creditors of that company to have a minimum of information on the risk profile of that company including on its intragroup OTC derivative activity.

IV. Central counterparties

124. In developing the draft technical standards on CCPs, ESMA has placed emphasis on the CPSS-IOSCO Principles for Financial Market Infrastructure (PFMIs), which serve as a global benchmark for CCPs standards. Additionally relevant parts of the global regulatory standard on bank capital adequacy and liquidity as agreed by the members of the Basel Committee on Banking Supervision (BCBS) have been considered in defining those regulatory technical standards which address the risk management of a CCP.

125. However, in many cases, these global standards are not specific enough for the level of granularity that the draft technical standards are expected to take according to the EU Regulation. In such circumstances, ESMA has introduced more detailed requirements that are still compatible with the standards and principles agreed at international level, thus ensuring the global compatibility of the EU requirements and permitting EU CCPs to operate on a global basis.

126. While drafting the RTS and ITS on CCP requirements, ESMA has duly consulted members of the ESCB. In particular, for the development of these draft technical standards ESMA set up a joint task force between ESMA and the ESCB, which was co-chaired and had an equal number of representatives from national competent authorities represented in the ESMA Board of Supervisors and from members of the ESCB.

127. In line with recital 68 of EMIR, CPSS-IOSCO draft principles and CGFS recommendations⁴, it should also be noted that in developing draft technical standards on CCP requirements and in particular on margins and collateral, due regard has been given to the procyclical⁵ effects that these requirements could have. This issue also raises particular macro-prudential concerns and needs to be duly addressed in the definition of the standards, to avoid continuous adjustments in a crisis situation that could further aggravate the crisis.

⁴ Committee of Global Financial System. The role of margins requirements and haircut in procyclicality. <https://www.bis.org/publ/cgfs36.pdf>.

⁵ Procyclicality refers to changes in risk management practices that are positively correlated with business or credit cycle fluctuations and that may cause or exacerbate financial instability.



IV.I College

(Article 18 of EMIR) (Annex III)

128. Under Article 18 of EMIR, ESMA has drafted the RTS specifying:

- a. the conditions under which Union currencies should be considered as the most relevant for the participation of central banks of issue in the colleges; and
- b. the practical arrangements for the establishment and functioning of the colleges.

129. As for the most relevant currencies, ESMA proposed in the CP that participation should be determined by reference to the percentage of the overall activity of the CCP undertaken in the relevant currency. A minimum requirement of 10% was proposed with a maximum of three central banks of issue eligible to participate in a college. The majority of respondents were supportive of this proposal therefore the draft RTS remains unchanged.

130. One respondent suggested that in order to avoid too many participants, the share of the underlying products should also be considered to identify the participants to the college. ESMA considers that the requirements already specified are sufficient and that in practice, it is expected that such a limitation will hardly ever be reached.

131. As for the practical arrangements for the establishment of the colleges, the requirements proposed were based on existing guidelines for the Operational Functioning of Colleges as published by the Committee of European Banking Supervisors (now EBA) and the Good Practice Principles on Supervisory Colleges as published by the BCBS. ESMA recognised that it was important to maintain the right degree of balance and flexibility considering the different legal nature of guidelines and technical standards. Against this background, the draft RTS had been written so that the criteria and conditions established will ensure a consistent application and a coherent functioning of colleges across the Union, however maintaining the appropriate degree of flexibility to ensure that experiences can be incorporated as the colleges are established.

132. Overall, the majority of respondents were supportive of the proposals and therefore the draft RTS remains largely unchanged.

133. One respondent requested that if a member of the college refuses to sign the written agreement they should no longer be a member of the college. Similarly, another respondent commented that if a college member is absent from 2 of more consecutive college meetings, their participation should no longer be required in order to reach a quorum. ESMA believes that there is a need to ensure that the college is as effective and efficient as possible and for this reason, ESMA has clarified the process by which the college should establish itself and begin operating.

134. A few respondents asked ESMA to clarify the role of the national central banks in the college. However, membership of the college is set out in Article 18 of EMIR, therefore ESMA does not believe it is necessary or appropriate to specify the individual members' roles.

135. One respondent asked for clarification on how the CCP will be kept informed about the issues discussed and raised during the college meetings. ESMA considers that in accordance with Article 22 of EMIR, supervisory messages and decisions will be delivered by the CCP's competent authority and therefore it is not necessary to specify this in the draft RTS.

136. Another respondent requested that the draft RTS specify the frequency with which the information provided by the CCP's competent authority should be updated. ESMA believes that certain information needs to be provided to the college without delay, for example in emergency situations. Other information should be provided to the college on a timely basis to ensure the most efficient and effective functioning of the college and therefore the draft RTS has been amended accordingly.

IV.II Recognition of a CCP

(Article 25 of EMIR) (Annex IV, Chapter II)

137. Under the recognition regime as established in Article 25 of EMIR, ESMA may recognise a CCP established in a third country if certain conditions are met. The main condition for the purpose of the draft RTS is to assess whether the CCP is "authorised in the relevant third country and is subject to effective supervision and enforcement ensuring full compliance with the prudential requirements applicable in that third country". The other criteria are more general with respect to the jurisdiction: 1) it must have passed a Commission equivalence assessment and 2) the relevant third country competent authority must have agreed adequate supervisory co-operation arrangements with ESMA.

138. Against this background, the draft RTS included in the CP specified the information which is considered necessary from third country CCPs to facilitate an assessment of how these equivalent rules are implemented in practice. ESMA also needs to assess the effectiveness of the supervisory and enforcement framework. ESMA considers that such information should come from the relevant third country competent authority rather than from the CCP.

139. In general, several CCPs responded stating that they would prefer ESMA to conduct a detailed assessment of compliance of third country CCPs with EMIR and the draft RTS/ITS (policy option 1 in the impact assessment) whilst on the other hand, several trade associations and their members would prefer ESMA to fully rely on the equivalence assessment of the EU Commission and would prefer not to have additional information sent to ESMA. Several respondents also raised questions about the EMIR process stating that it should include an assessment of the relevant reciprocity arrangements.

140. ESMA believes that the conditions set out in EMIR will ensure that recognised third country CCPs do not disrupt the orderly functioning of European markets, do not have a competitive advantage compared with authorised CCPs and will guarantee adequate investor protection. Under EMIR, the assessment of the equivalence of European and third country rules is reserved to the European Commission and it is clear from EMIR that third country CCPs will not be subject to EMIR requirements, but to the equivalent requirements in their third country. ESMA therefore does not feel that it is necessary to change the approach as set out in the draft RTS.

141. One respondent suggested that additional information should be included in the third country application, for example the full name of the legal entity, compliance officer details and details to be included in a public register. ESMA agrees that the full name of the legal entity and the details to be included on the ESMA website should be included and the draft RTS has been amended accordingly. However, ESMA does not believe the details of a compliance officer is necessary as there will not be any direct contact between ESMA and the CCP, rather ESMA will receive the information via the competent authority of a third country CCP.

142. Another respondent suggested that information in relation to segregation and portability of services of third country CCP should be requested by ESMA. ESMA considers that this information will be useful in assessing whether the conditions in EMIR have been met, in particular the overall objective of ensuring an adequate level of investor protection and therefore the draft RTS has been amended accordingly. Other respondents felt that information relating to the CCPs' access requirements, terms for suspension and termination procedures and information on the CCPs' default management procedures should be included. ESMA agrees that this information will be useful and therefore the draft RTS has been amended.

143. Several respondents commented that a more non-prescriptive, outcome based approach should be adopted by ESMA. It should be noted that EMIR gives ESMA a certain degree of discretion in the recognition process given that ESMA "may" recognise a third country CCP that meets the conditions mentioned above. ESMA considers that such discretion has been given in order to avoid a strict legal interpretation of the conditions that may prevent the fulfilment of the overall outcome of ensuring no market disruption, no competitive advantage and adequate investor protection.

IV.III Organisations requirements

(Article 26) (Annex IV, Chapter III)

144. Under Article 26 of EMIR, ESMA is required to draft RTS specifying details on:

- a. governance arrangements;
- b. compliance policy and procedures;
- c. information technology systems;
- d. reporting lines;
- e. remuneration policy;
- f. disclosure of rules and governance arrangements and admission criteria;
- g. audits.

145. In Article 26 of EMIR, reference is also made to business continuity. However, ESMA considers that given that a specific requirement and technical standard is already envisaged under Article 34 of EMIR, it would be better treated consistently under such article.

Governance

146. Many respondents questioned the limitation in the CP on the sharing of resources. In particular, three set of questions were raised on this issue: 1) the banning on sharing the general personnel among entities of the same group, which is a general practice which increases efficiency and reduces the costs for CCPs and was not considered to pose any risk to the CCP; 2) the reference to "dedicated resources" was considered excessive given that there are certain functions that are not related to the core business and it was not considered appropriate for CCPs to have all its human resources to be dedicated to the CCP; 3) some read the provision on board members as to be banned from being

members of different boards of entities within the same group and consequently, considered such a ban disproportionate.

147. ESMA considered all these arguments and clarified in the revised draft RTS the actual provisions. In particular, the minimum dedicated resources that each CCP should maintain are: 1) the chief risk to the commission officer; 2) the chief technology officer and 3) the chief compliance officer. ESMA considered that it is not appropriate for these functions to be performed at group level. These are minimum functions that each CCP should maintain and have dedicated resources responsible to carry out. The revised draft RTS and a specific recital explain this concept.

148. As for the general provision on the dedicated resources, ESMA does not consider that every single human resource working for the CCP should be hired by the CCP. However, ESMA considers that sharing of resources between group entities without a proper arrangement regulating such sharing would not allow for: 1) establishing the amount of time each resource spends in performing activities for the CCP and therefore to assess whether the CCP has the adequate human resources to perform its functions and 2) adequately managing possible conflicts of interests between group entities. Therefore, the sharing of resources between group entities is not banned, but it should be regulated by appropriate outsourcing contracts, which need to follow the requirements established by EMIR on outsourcing.

149. With reference to the board members sitting on different boards, ESMA has never considered banning it. However, it considers that this might give rise to conflicts of interest within or outside the group of the CCP. Therefore, CCPs should adequately monitor such potential conflicts of interest and in the case it materialises, board members should not be allowed to sit on the CCP's board. The revised draft RTS clarifies this provision.

150. Another recurrent issue under governance was related to the role of the risk committee. In particular, clearing members called for a decision making power to be assigned to it. ESMA considers that the role of the risk committee is clearly specified in EMIR and it is advisory only. Therefore, the draft RTS consistently refers to the risk committee under its advisory role, although requesting its advice in a number of provisions.

151. Representatives from the buy side called for their stronger representation in the risk committee and in the board of the CCP. ESMA considers that the composition of the risk committee is already specified in EMIR. As for the composition of the board, EMIR requires two or two thirds of independent board members and does not provide ESMA with any mandate to further specify the board composition. Therefore, it would not be appropriate for ESMA to take these comments on board.

152. A couple of respondents called for the provision related to the two-tiered board system to be extended to all the other provisions of the draft RTS in which the board is mentioned. ESMA revised the provisions, which now explicitly refers to the role and responsibilities of the board as established in EMIR and in the draft RTS to be assigned to the management board and the supervisory board as appropriate.

Reporting lines

153. Some questions were raised regarding the reporting lines and in particular the direct reporting of the risk management function to the board via an independent member. The main argument was

that such line of reporting may be impractical in many circumstances and the chief risk officer should not be prevented to report to the board or to the chief executive officer via other means.

154. ESMA considered these comments together with other comments asking for clarification on the independence of the different functions and clarified in the draft RTS the following: 1) the risk management, compliance and audit functions must be independent from other functions of the CCP, i.e. to business related functions and must report directly to the board; 2) the chief risk officer can report to the board either directly or through the chair of the risk committee, i.e. the relevant independent member of the board.

Compliance

155. Few respondents proposed deleting the requirement to use independent legal opinions during the process of identifying and analysing the soundness of the rules, procedures, and contractual arrangements, and potential conflict of laws issues. One respondent suggested establishing rules that restrict the CCO's (Chief Compliance Officer) position from being held by a lawyer who represents the CCP or its board of directors, such as an in-house legal officer. Another point raised by stakeholders was to ensure that the authority and sole responsibility to designate or remove the CCO, or to materially change its duties and responsibilities, only vests with the independent members of the board and not the full board. Some respondents suggested specifying a minimum consultation period for changes to rules and procedures of a CCP.

156. ESMA considered these and other drafting points raised by some of the respondents to the consultation and concluded that: 1) legal opinions might be good supportive documentation, which is generally used. The draft RTS does not prescribe their use in all circumstances, but only when the CCP considers it appropriate; 2) restricting the function of the CCO to certain individuals having done particular studies was considered overly prescriptive and not appropriate; 3) references to consultation of clearing members (CM) were already included in the CP and have been further clarified in the draft RTS.

Remuneration policy

157. Many CCPs strongly criticised the provisions on remuneration policy. They considered them disproportionate, more restrictive than similar provisions applicable to other regulated entities and they considered that such provisions would significantly compromise CCPs capabilities to attract relevant professionals. Given that risk management was the most essential part of CCPs' business, restricting the possibilities of CCPs to establish attractive remuneration structures for human resources in risk management was considered by CCPs a disproportionate limitation, which could have a negative impact on a CCPs' safety.

158. ESMA considers that CCPs are systemically important institutions and therefore merit a special treatment, which might be more prescriptive than for other regulated entities. Remuneration policies could give rise to severe conflicts of interests and these conflicts must be avoided. ESMA also considers that risk managers could be attracted with adequate remuneration that is independent from the performance of the CCPs. Against this background, the draft RTS was not amended.

Disclosure

159. Some respondents, mainly from the buy side, proposed to align the disclosure requirements with those that apply to the college and others proposed to include in the list of public disclosures the following items:

- a. the details of the ownership of a CCP and links to any other businesses;
- b. a CCP's investment policy and account structure;
- c. all CCP documentation with legal effect including contract specifications, market notices and guidance;
- d. the levels of segregation, their legal implications and costs;
- e. a CCP's mechanism to determine the eligibility of assets as collateral and on the collateral deemed eligible;
- f. CCP's organisational charts;
- g. the results of audits undertaken.
- h. the risks of the various account structures offered to clients, the laws under which they operate, including what happens to assets in the accounts with a CCP in the case of a clearing member or CCP default, the CCP's default rules and the extent to which porting is available and relevant timeframes;
- i. all CCP documentation with legal effect including contract specifications, market notices and guidance.

160. A few CCPs disapproved of the level of granularity of the draft RTS with respect to disclosure requirements. Some stakeholders proposed to limit or avoid public disclosures with reference to the following items:

- a. business continuity – to acknowledge in the standards that confidentiality is critical to the effectiveness of business continuity;
- b. governance arrangements;
- c. key objectives and strategies;
- d. key elements of the remuneration policy.

161. Some respondents indicated that the policy on haircuts and concentration limits should be available more widely (to be distributed also to clients and indirect clients). One respondent suggested allowing a CCP to make a selective disclosure about the items concerning governance arrangements, remuneration policy and strategic objectives or to require disclosure only about key elements.

162. On balance, ESMA believes that the comments received proved that the disclosure framework presented in the CP was appropriate. However, according to the EMIR mandate, the draft technical standards can only cover public disclosure. Therefore, the approach presented in the CP was amended to better reflect the mandate to draft the technical standards. Although disclosure to the public has been increased and now also covers the elements previously included under disclosure to CMs and clients, ESMA has introduced the following changes:

- a. clarified that disclosure of business secrecy or of aspects that could put at risk the safety of the CCP could be waived, if the competent authority agrees. In particular, this could be the case of some business continuity information. In addition, CCPs may disclose such information in a manner that prevents risks of disclosure of business secrecy or for the safety of the CCP. One way to achieve such result would be to limit the disclosure of certain elements to clearing members and clients known to the CCP;
- b. introduced eligible collateral and applicable haircuts in the list of information to be disclosed;
- c. avoided duplications and possible inconsistencies with disclosure requirements already envisaged by EMIR, e.g. of fees.

163. With reference to the alignment of the information to those received by the college, ESMA does not consider this to be appropriate, given the role and the composition of the college and the different nature of public disclosure. As for the other comments above, ESMA considers that EMIR already prescribes the disclosure of many of the aspects requested, therefore there is no need for the draft RTS to repeat those.

IV.IV Record keeping

(Article 29 of EMIR) (Annex IV & V)

164. Record keeping is an essential element for assessing CCP compliance with the relevant regulations and a useful tool to monitor clearing members and, where relevant, clients activities and behaviours. Under Article 29 of EMIR, ESMA is required to draft RTS specifying the details of the records and information to be retained by CCPs and ITS specifying the format of these records and information.

General requirements

165. With reference to record keeping, one of the issues that raised the most concerns by respondents to the CP and in particular by CCPs was related to the provision according to which records should not be manipulated or altered. They argued that: 1) this cannot be guaranteed in all the cases, i.e. that they can have procedures and controls to ensure that alteration is prevented, but it cannot be excluded; 2) in certain circumstances it should be possible to modify the records, e.g. when data was wrongly recorded.

166. ESMA considered these concerns and modified the draft RTS to refer to “appropriate measures to prevent unauthorised alteration of records”. This means that authorised changes would be permitted, however for all the other changes, CCPs should have the mechanisms to prevent them.

The revised draft RTS on record keeping was also modified to group all the general provisions in the draft RTS and in the ITS under the draft RTS.

167. Some respondents called for the protection of strategic or commercially sensitive information and for information to be recorded in a format that does not allow individual client positions, trading strategies or other sensitive proprietary information to be revealed. ESMA considers that it would be inappropriate to limit the record keeping as suggested. The CCP and the competent authorities will need to be able to reconstruct the details of the transactions both in the case of a clearing member or a client transaction. Disclosure to the public, CMs and clients has been covered under the organisational requirements and review of models, stress and back testing standards. Disclosure to competent authorities should not be restricted. Therefore, these suggestions were not taken on board.

Transaction records

168. Some respondents argued that several records were difficult to capture in practice, in particular: i) the date and time of CCP interposition in the contract, because even with a novation process in place, there is no practice for exactly indicating the date and time of CCP interposition; ii) the original terms of the contracts; iii) the give-up, in particular considering that there might be multiple give-ups before the contract is cleared; and iv) the time of termination and settlement. On point iv, it was suggested that the use of the general dates of termination or settlement should be more than sufficient for the identification of the transaction. However, there was also one respondent who argued that industry communication standards are already capable of recording the information requested. ESMA considers that the drafting already caters for a certain amount of flexibility if the information cannot be recorded (e.g. in the case of the original terms of the contracts), but it believes that CCPs should know when they take over the risk for the transactions they clear, as well as the point in time when such exposure terminates. Therefore the time of interposition and of termination should be known to CCPs.

169. Some respondents emphasised that a client should have access to the relevant data of the CCP following the novation. It was argued that after novation has taken place, the records of the CCP are determinative for the whole duration of the contract. According to these comments, therefore, clients should have access to all necessary records, in order to avoid legal uncertainty on the client side. ESMA considers that disclosure to CMs and clients is already adequately covered under the organisational requirements standard. In addition, these comments could not be taken on board because they may create some inconsistency with the need to ensure the safety and confidentiality of records.

Position records

170. Some respondents were concerned about the provision according to which a CCP should make records of the margins, default fund contributions and other financial resources for each recorded position. They argued that, even after considering the sentence “to the extent they are linked to the position in question”, in practice such a link is not possible due to portfolio effects. The total margin requirement on a portfolio will therefore not correspond to the sum of the (theoretical) margins calculated for the individual positions. The relation between an individual position and the default fund is even more remote.

171. ESMA accepted these concerns and considers that there is no additional value in recording the margins and default fund contributions on a trade by trade basis to justify the significant cost that

this change would entail for market participants. Therefore, the draft RTS has been changed to reflect that margins and default fund contributions should be recorded for each CM and client, if known to the CCP.

Business records

172. Some concerns have been raised on the requirement to maintain and make available the records on: f) the minutes of consultation groups with CMs and clients, if any; g) internal and external audit reports; and r) the relevant documents describing the development of new business initiatives. The justification was that these documents are internal, correspond to a CCP initiative, can be commercially sensitive and thus the disclosure shall not be mandatory. ESMA considers that such information is important, and the relevant disclosure to the competent authorities is made in accordance with the provisions on safety and confidentiality of the data.

Direct data feed

173. Some respondents argued that the requirement for a direct data feed may go beyond the ESMA mandate to draft technical standards specifying the details of the records and information to be retained. ESMA agrees that the direct data feed is not a detail of a record. However, it is a format in which the information is made available to the competent authority. Therefore, such requirements have been moved to the draft ITS. In addition, it has been clarified that the requirement for a direct data feed would only apply when requested by the competent authority and after 6 months from the request, in order to give CCPs sufficient time to develop such a direct communication channel with the competent authority.

Implementing technical standards

174. Comments on the specific fields have been considered together with the comments on trade repositories and consistency between the different tables has been ensured.

175. Few respondents argued that it seemed unnecessarily costly and labour-intensive to require existing databases and storage solutions to be re-engineered to match the prescribed formats. Considering that a CCP retains at least the equivalent data and can produce reports or files in a suitable format, ESMA considers that to the extent that the records should be provided in a consistent manner by all CCPs and in accordance with the format specified in the draft ITS, there is no need for CCPs to re-engineer their system.

IV.V Business continuity

(Article 34 or EMIR) (Annex IV, Chapter V)

176. Under business continuity, ESMA is required to develop draft technical standards indicating the minimum content and requirements of the business continuity policy and disaster recovery plan and the requirements that should be specified.

177. The framework proposed in the CP replicated the one already described in the DP and envisaged 2 hours maximum recovery time. This requirement is in line with CPSS-IOSCO PFMI and according to a survey carried out by ESMA, it is the common practice among European CCPs.

178. Most of the CCPs in responding to the CP raised concerns on the prescriptive requirement of 2 hours recovery time, which does not take into account special emergency situations where such requirement cannot be met. They therefore suggest that the 2 hours recovery time is drafted as an objective to be included in the business continuity policy rather than a prescriptive requirement for the CCP to adhere to, as there may be cases in which such an objective could not be met. Other market participants stressed that although the 2 hours recovery time may be proportionate for systemically relevant market infrastructures, if such a target is reached through purely technological means, this would turn-out to be a disproportionate requirement.

179. ESMA considers that the responses from CCPs show little commitment by CCPs to implement the PFMI according to which the maximum recovery time for critical functions should be 2 hours. ESMA has concerns that if the requirement is redrafted as an objective, rather than as an actual requirement, it will remain only on paper and it would not materialise in the necessary technical developments by CCPs to achieve this target. In case of extreme situations where the requirement is not respected, it will be for the competent authority to judge whether the situation justified a departure from the 2 hours requirement or whether corrective measures are necessary. For this reason, the 2 hours maximum recovery time has to be included in the business continuity policy of the CCP, which the CCP should respect. ESMA slightly redrafted the draft RTS in this respect.

IV.VI Margins

(Article 41 of EMIR) (Annex IV, Chapter VI)

180. Under the draft RTS for margins, ESMA is required to define: a) the appropriate percentage above the minimum 99 % confidence interval that margins are required to cover; b) the time horizon for the liquidation period; and c) the time horizon for the lookback period, i.e. the period over which the appropriate percentage should be covered, which is necessary to properly calibrate the model. These three elements should be considered for the different classes of financial instruments cleared by the CCP and take into account the objective to limit procyclicality. Finally ESMA is required to define the conditions under which portfolio margining practices can be implemented.

Confidence interval

181. The majority of respondents criticised: 1) the distinction between OTC derivatives and other financial instruments; 2) the level of 99,5% for the OTC derivatives. Also the respondents that were in favour of higher confidence intervals when responding to the DP criticised the mixed approach presented in the CP. Many respondents considered the draft RTS to be too prescriptive and this might lead to a moral hazard issue where CCPs would simply apply the minimum requirements instead of actually assessing the risks characteristics of the instruments cleared.

182. In relation to the distinction between OTC derivatives and other financial instruments, many argue that: a) such distinction was artificial; b) the risk characteristics of an instrument were not linked to the execution venue; c) exactly the same products can be traded OTC or on a regulated market and the CCP should be able to clear these products using the same risk model, otherwise the netting effects that a CCP can bring might be lost; d) it would be detrimental to European CCPs compared to third country CCPs e) it would discriminate against MTFs and OTFs. It should be noted, however, that many of the respondents that criticised the differentiation between OTC derivatives and other products when referring to the confidence interval, were in favour of such a differentiation with reference to the liquidation period (see below).

183. In relation to the higher confidence interval, the concerns were related to: a) the departure from international standards; b) the inconsistency with bilateral margining that are expected to be margined at 99% and this might disincentivise central clearing; c) the fact that higher confidence intervals do not necessarily increase the safety of CCPs; d) the limited mutualised resources that the proposal would determine; e) the fact that fixed confidence intervals do not square with all risk models and the proposal would incentivise the use of statistical models based on the assumption that the market follows a normal distribution; f) the expected higher impact on end users.

184. Most of the responses, therefore, believe that the minimum should be fixed at 99%, in line with international standards, and the draft RTS should only include qualitative criteria that CCPs should take into account when defining its model.

185. For the reasons already reported in the CP, ESMA believes that the distinction between OTC derivatives and other financial instruments is appropriate and consistent with international standards. The CPSS-IOSCO PFMI's recognise that OTC derivatives have risk elements that might vary from listed ones. OTC derivatives are generally characterised by less reliable pricing and shorter runs of historical data on which to base exposure estimations. A higher confidence interval is therefore justified.

186. ESMA has, however, considered the comments received and the different characteristics that OTC derivatives might have. It acknowledges that some OTC derivatives can be more liquid than some thinly-traded on-exchange derivatives. It also acknowledges that it would be detrimental to the risk management of a CCP to make distinctions between twin products depending on how they were originally traded. It has, therefore, introduced some flexibility in the draft RTS to allow CCPs to prove to the competent authority that if the OTC contracts cleared have the same risk characteristics of listed products and if risks are properly mitigated, a lower confidence interval than 99,5% can be adopted.

Look-back period

187. With reference to the look-back period, although most of the respondents to the DP were in favour of a mixed approach which would have included both current and stressed market conditions, when reacting to the concrete proposal on this mixed approach as presented in the CP, they were opposed to such a methodology.

188. The concerns raised were mainly that: a) the approach is too prescriptive and potentially procyclical; b) it gives too much emphasis to stressed periods and therefore makes stress tests and back tests useless; c) it imposes a VaR approach; d) 6 month or 6+6 months observations are not statistically significant to derive a 99,5% confidence interval; e) certain models do not weight the historical volatility, so the calculation would not be appropriate as it is not risk sensitive; f) introducing stressed market conditions in the margins calculation is not appropriate as margins are not supposed to cover extreme but plausible conditions for which other resources are calculated.

189. For the reasons explained in the DP and in the CP, ESMA considers it essential that, for the purpose of limiting procyclical effects, margins are calculated in a conservative manner, thus including stressed market conditions.

190. Some CCPs also suggested that although they welcome the flexibility introduced in paragraph 2 of Article 2 MAR of the CP, the practical consequence of that provision would be that the CCP would always design its model to cover both the 6+6 months period and any other different period.

Therefore, they considered such an approach unfeasible. In general, respondents were in favour of a 1 or 2 year look-back period or a purely criteria based approach. However, no respondent provided a valid alternative suggestion on how to introduce stressed market conditions in the look-back period.

191. ESMA has considered the comments above and has refined its quantitative impact assessment (attached to this report). It shows that a 6 months + 6 months equally weighted look-back period would have led to an increase of 30 to 60% compared to current margin requirements. It has come to the conclusion that the proposed approach contained some of the weaknesses pointed out by respondents. ESMA has therefore set the minimum look-back period at one year, to the extent that a full range of market conditions, including stressed periods are considered to define the observable period. However, the weight of the different observations in the model is left to the CCPs.
192. Given that the main objective of ensuring conservative margin calculations was to cater for procyclicality, ESMA has introduced three options that CCPs should implement to cater for procyclicality. In particular, CCPs can:
 - a. implement a buffer of 25% to its minimum margin requirements, which can be used in stressed market conditions to avoid continuous margin calls;
 - b. assign a weight of at least 25% to the stress observations considered in the calculated look-back period;
 - c. ensure that the margins are no lower than those calculated considering a 10 year look-back period.

Liquidation period

193. Comments on the liquidation period were scattered. Many banks and buy-side firms questioned the 2 day liquidation period for listed products, given the current market practice and CFTC's requirements that set such parameter at 1 day. They basically argued that listed derivatives are highly liquid instruments that can be liquidated quickly without any market disruption. Many respondents opposed the distinctions between OTC and other products for the same reasons explained under the confidence interval section above. Some respondents suggested on the contrary that for OTC derivatives the default management can be more complex and even a longer liquidation period could be considered, i.e. 10 days, in line with possible international standards for bilateral collateralisation. CCPs generally considered that the distinction between OTC derivatives and other products was not appropriate and suggested 2 days liquidation period for all financial instruments, with one CCP suggesting the higher of 1 or 2 days, given that under extreme cases, a 1 day liquidation period may produce higher margin requirements. Another CCP also suggested that the longer period to port client positions should be taken into account.
194. ESMA considers that the 1 day liquidation period would be insufficient in many circumstances even for highly liquid financial instruments. Given that, at the moment the default is called, the clearing member is likely to have already some exposure not covered by variation margin, a 1-day liquidation period would not even provide a full day in which to liquidate. If a default occurs toward the close of the market in mid-week, the issue would be exacerbated. In addition, practical experience does not support reliably the hypothesis that a large exchange traded derivative portfolio could be fully liquidated within one day of the default. Therefore ESMA does not believe that a 1-day liquidation period would be consistent with the assumed purpose of initial margin – to be sufficient to cover exposures which could develop within the confidence interval over the time it would

reasonably take to liquidate the defaulting member's portfolio. In addition, the responses from most of the CCPs that suggest a 2-day liquidation period for all financial instruments confirm the validity of such a conservative approach.

195. With reference to the 5 day liquidation period for OTC derivatives, ESMA believes that a 10-day time span would be too long to apply across the board considering that cleared OTC derivatives are generally more liquid, standardised and benefit from established default procedures, which it is not necessarily the case for non-cleared OTC derivatives. CCPs would be required to assess the appropriate liquidation periods for all products they clear. For more complex, less liquid products this should result in higher liquidation periods.

196. Consistently with the requirements on the confidence interval, to allow CCPs to use the same model when clearing transactions on listed and OTC products that share the same characteristics, some flexibility has been introduced in the draft RTS.

Portfolio margining

197. Most of the respondents opposed the limitations introduced by the portfolio margining draft RTS. They argued that those limitations would significantly limit the trading activity and the possibility to adopt certain hedging strategies, without any proven benefit. Some described cases of full offset without any risk for the CCP that would still determine a 20% margin call. In addition, many argued that the proposed approach would not square with risk sensitive margins models adopted by many CCPs, therefore the simple reference to correlations and the 70% limit was not appropriate.

198. ESMA's intention has never been to restrict full offsets or combinations that do not expose the CCP to any material risk (e.g. in case of perfect correlation). However, ESMA considers that introducing a haircut on offsets is appropriate where such offset is determined by model calculations or it relies on assumptions about future correlations, as such offsets introduce extra risks to the CCPs and these need to be adequately mitigated.

199. Given the 20% haircut, and in view of the comments received, ESMA considers that other restrictions on the way the offsets are calculated are not necessary and would unnecessarily restrict CCPs' possibilities to innovate and ensure an efficient use of collateral, with negative macroeconomic consequences on collateral availability. For the same reasons and to allow different models to be adopted, references to correlations have been replaced.

200. Many respondents also questioned the restriction on the offsets to be limited to those financial instruments covered by the same default fund. ESMA reconsidered such a limitation and introduced an exemption to the extent that the CCP is able to demonstrate in advance to the competent authority and to its CMs on how it would allocate losses among different default funds.

201. Finally, some respondents asked for clarifications on whether portfolio margining was limited to one CCP or could apply also across CCPs. This aspect is clearly spelled out in EMIR and the reference is to portfolio margining within a CCP.

IV.VII Default fund

(Article 42 of EMIR) (Annex IV, Chapter VII)

202. Article 42 of Regulation (EU) 648/2012 (EMIR) requires ESMA, in close cooperation with the ESCB and after consulting the EBA, to develop draft RTS specifying the framework for defining extreme but plausible market conditions that should be used when defining the size of the default fund and the other financial resources referred to in Article 43 of EMIR.

203. The draft RTS included in the CP specified that a CCP should establish a framework for defining extreme but plausible market conditions, which should be discussed by the risk committee, approved by the board and subject to at least an annual review (Article 29). It was proposed that the framework should identify all the market risks to which a CCP would be exposed following the default of one or more CMs. For each identified market the CCP should specify extreme but plausible conditions based, at least, on historical scenarios and potential future scenarios. The framework should also consider the extent to which extreme price movements could occur in multiple markets simultaneously (Article 30). The procedures should be subject to continuous review. The set of historical and hypothetical scenarios should be reviewed by the risk committee at least every three months, with material changes reported to the board (Article 31).

204. Responses to the draft RTS were broadly supportive, with few substantive proposals for amendments. ESMA has consequently made only minor revisions to the draft RTS. These revisions include some minor drafting adjustments to ensure consistency with EMIR and to recognise more clearly the cross-border dimension of a CCP's risk profile.

205. A significant number of responses noted that it should not be necessary for the risk committee to review stress-test results every quarter unless there had been a significant change in market conditions. Although stress tests should, in principle, be independent of the prevailing market environment, ESMA accepts that quarterly reviews will not always be necessary or appropriate. The draft RTS has therefore been amended as follows:

- a. the CCP itself conducts at least annual reviews of the historical and hypothetical scenarios used in its stress tests, consulting with the risk committee where appropriate; and
- b. these scenarios are reviewed more frequently in response to changes in market conditions or a material change in the set of contracts cleared by the CCP.

206. Some responses further noted that the risk committee should be required to approve the framework used by a CCP to define extreme but plausible market conditions. ESMA has not incorporated this proposal in the draft RTS since the Level 1 text establishes that the risk committee must act in an advisory capacity only.

IV.VIII Liquidity risk controls

(Article 44 of EMIR) (Annex IV, Chapter VIII)

207. With reference to liquidity risk controls, ESMA is required to develop draft RTS specifying the framework for managing liquidity risk. Respondents generally supported the criteria based approach adopted in the CP.

208. A few CCPs found the requirement to maintain liquid resources commensurate with its liquidity requirements "in each relevant currency" too prescriptive and suggested that the requirement would

be an unnecessary burden on CCPs, in particular in case of the holding of non-significant currencies. ESMA considers that: i) non-significant currencies would not be captured by the requirement which applies only to relevant currencies; ii) the draft RTS already provides for different liquid resources, therefore it would be for the CCP to choose the most appropriate currency in which to perform its payment obligations.

209. Some respondents also claimed that CCPs should be allowed to count pre-arranged credit agreements with non-defaulting CMs as liquid resources. The argument being that these funding agreements are supported in Article 44(1) of EMIR which establishes that a CCP "shall obtain the necessary credit lines or similar arrangements to cover its liquidity needs in case the financial resources at its disposal are not immediately available". In these cases, it would be for CCPs to be able to demonstrate that "the liquidity is readily available, on a same-day basis and that these funding agreements are highly reliable, providing the same degree of security as the other mentioned alternatives, including in stressed market conditions". Considering that the conditions above should always be respected, ESMA amended the draft RTS to include: "committed lines of credit or equivalent arrangements with non-defaulting CMs".

210. Representatives for the fund industry and a couple of CCPs found the exclusion of money market funds as unnecessary, inflexible and not compatible with the CPSS-IOSCO principles. They suggested that ESMA should instead specify the conditions which would need to be satisfied for money market funds to be regarded as liquid financial resources. The argument being that one cannot rule out the possibility of any money market fund ever being suitable. ESMA has considered these arguments, but believes that given the liquidity of money market funds will depend on the fund manager, and it is not a remote possibility for fund managers to suspend redemptions, it would not be appropriate to include money market funds as an eligible liquid resource, even if listed on regulated markets, since although liquidity would not simply depend on the fund manager, it would strongly be influenced by its behaviour.

211. Some respondents from CCPs, regulated markets and CMs, pointed out the need for a better differentiation between daily liquidity management in normal times and liquidity risk control in stressed situations. This differentiation is necessary for reporting purposes. In this respect, ESMA changed the draft RTS to reflect different reporting times, depending on the elements of the liquidity plan.

212. A few CCPs also requested clarification with respect to the term "same day liquidity". This term was used to refer to a CCP's variation margin flow or settlement needs at the start of the day and was not intended to refer to intraday margin calls. ESMA has clarified the reference by changing it to "payment and settlement obligations in all relevant currencies as they fall due, including where appropriate intraday".

213. One respondent stated that liquidity requirements are not materially influenced by market movements but rather by settlement processes and timely payments by CMs, and therefore suggested deleting the requirement to monitor liquidity needs "across a range of market scenarios". This might be the case, however market movements can influence potential liquidity needs and the text should therefore be kept.

214. One respondent suggested that there should be restrictions defined by limiting exposures stemming from one source to an appropriate threshold. Another respondent requested an explicit statement in the final draft RTS to confirm that Article 44 of EMIR does not relate to intraday



liquidity requirements for CCPs clearing cash securities. As the 25% concentration limit on credit lines is a provision in EMIR, there is no exemption possible.

Feedback from EBA

215. Under Article 44 of EMIR, ESMA has to consult EBA before finalising the draft RTS.
216. EBA suggested that, under the coordination of ESMA, CCPs should develop a benchmark against best practices. ESMA might consider this suggestion in its future co-ordination role across colleges or in possible future guidelines, however it considers that it would not be appropriate to introduce such a reference in the draft RTS.
217. With respect to committed credit lines, EBA proposed that consideration be given to the creditworthiness of the guarantor, and also proposed that the committed credit line should not be provided by a CM. As regards the issue of creditworthiness, it could be required that the CCP should apply the same criteria for choosing a liquidity provider as for Article 47 on “highly secured arrangements for maintaining cash”. ESMA understands the concerns of wrong-way risk that EBA highlighted. However, not allowing CMs to provide committed credit lines could have very negative consequences for the availability of such credit lines, given that the most creditworthy banks are likely to be CMs. ESMA, however, considers that the concentration limits would adequately limit the risks highlighted by EBA.

IV.IX Default waterfall

(Article 45 of EMIR) (Annex IV, Chapter IX)

218. Under the draft RTS on the default waterfall, ESMA is required to specify the methodology for calculation and maintenance of a CCP’s own resources to be used in a default situation before the resources of the non-defaulting clearing members can be mutualised, i.e. so called “skin in the game” (SIG). The CP considered an amount of SIG equal to 50% of the capital requirements. In general, the majority of respondents opposed such requirement, considering the parameter too high.
219. The main recurring objection was that such a large percentage of capital dedicated to the SIG might threaten the financial viability of the CCP itself or result in a breach of its minimum capital requirements should a large CM default. Furthermore, such a level of the SIG might lead to a situation where CCPs are encouraged to hold as little capital as possible and, consequently, to a situation where CMs are less incentivised to participate in a close-out auction as they know that a significant part of any loss would be borne by the CCP.
220. Some concerns arose among respondents also on the proposed methodology of calculation. It has been argued that linking the SIG to the capital resources of CCPs does not reflect the likelihood and impact of a clearing member default (also EBA raised similar concerns). In this sense it has been proposed to cap the SIG either to the same level as the largest member’s contribution (representing the highest potential default risk) or to the 75th percentile’s CMs default fund contribution for the particular class of cleared product.

221. Some respondents, with the aim of reaching a reasonable balance and also to stimulate better risk management incentives, proposed to split the SIG into tranches, one (the bigger portion) to be used before that of non-defaulting members, and a second (the remaining SIG) to be used after the non-defaulting members default contribution.
222. Some respondents further suggested that ESMA, in collaboration with other relevant supervisory bodies, such as EBA, should supply a more robust basis for the proposed SIG method of calculation. Respondents did not, however, provide evidence and data to facilitate such impact analysis.
223. CCPs almost unanimously proposed that SIG be set at 10% of a CCP's minimum capital requirements, considering that as an affordable and effective incentive for CCPs to properly size their risk management framework. Although CCPs and other market participants called for more robust analysis before the final figure on SIG is defined, they did not provide any evidence of the actual impact that a 10% SIG would have resulted in.
224. Some submitters also contested that SIG should be indicated separately in the balance sheet of a CCP while others requested clarifications of the actual basis for the capital requirement, i.e. minimum versus actual capital requirements or capital requirements as referred to in Article 16(2) of EMIR, which seemed to rule out use of the 7.5 million euro required by EMIR.
225. ESMA's intention has never been to disincentivise CCPs from being more capitalised than the level required in EMIR. In this respect, the draft RTS has been modified to explicitly refer to the minimum capital requirements as being those calculated in accordance with Article 16 of EMIR. This means that for those CCPs which have a capital requirement lower than 7.5 million following the calculation required in the EBA draft RTS, the 7.5 million minimum required by EMIR would be the basis for calculating SIG. As for the separate indication in the balance sheet, ESMA considers it essential for the SIG to serve its purpose.
226. With reference to the actual percentage, ESMA has considered: 1) the comments received; 2) the revised draft RTS by EBA; 3) the results of its impact assessment and has set the percentage for the SIG at 25% of a CCP's minimum capital requirement.
227. The initial 50% proposed by ESMA was based on the assumption that the EBA draft RTS was based on either "the higher of" approach or "the sum approach" with 6 months operational expenses as suggested by ESMA in its response to EBA. It is also noted that CCPs largely proposed 10% SIG on a minimum capital requirement of 12 months operational expenses, plus the other components on which EBA consulted and that EBA final draft RTS is expected to result in higher capital requirements than what was proposed in the EBA's DP and higher than what ESMA proposed in responding to the EBA's CP, but lower than what EBA proposed in their second consultation. Taking into account all this, it is therefore appropriate to set the final percentage for the SIG in an interval between 10% and 50%. Following the results of the ESMA impact assessment, a percentage of 25% seems appropriate and still effective in providing adequate incentives for CCPs to properly structure their risk management.
228. Finally some respondents questioned the requirement according to which a CCP would be required to restore their SIG within three months once used. They mentioned that in stressed market conditions, where a CCP had already used its SIG, then it would not be appropriate to allow CCPs to continue their business for so long without meeting the capital requirements. ESMA considered these comments, but needs to clarify the following: 1) SIG is not a component of the CCP's minimum capital requirement, but a component of the default waterfall that has the primary

purpose of incentivising proper risk management rather than the protection of mutualised resources in times of stress; 2) raising capital in period of stress can be extremely difficult and may further contribute to procyclicality. Against this background, it is considered that CCPs should be allowed some time before restoring their SIG. However, three months was considered too long a period and ESMA has reduced this time to one month.

IV.X Collateral requirements

(Article 46 of EMIR) (Annex IV, Chapter X)

229. Article 46 of EMIR requires ESMA to develop draft RTS specifying the types of collateral that could be considered highly liquid, the haircuts applied to collateral and the conditions under which commercial bank guarantees may be accepted as collateral (from NFCs). In the CP, ESMA also proposed a criteria based approach for cash, financial instruments, bank guarantees and gold to be considered “highly liquid” and therefore accepted as eligible collateral. ESMA has also proposed a framework for determining haircuts and collateral concentration limits to mitigate risks.

Range of eligible collateral

230. Most of the respondents called for extending the list of eligible collateral, in particular to: a) commodities other than gold; b) units of funds namely money market funds, UCITS and alternative funds; c) real estate securities; d) all collateral accepted by central banks; e) all collateral with a minimum credit rating. Along the same lines other respondents, in particular CCPs, suggested that the list should only be indicative giving the CCP the flexibility to accept other types of collateral. Finally, many respondents asked for shares that are underlying of derivatives contracts to be included as acceptable collateral.

231. ESMA recognises the relevance of striking the right balance between safety of the CCP and overall availability of collateral, which is a very relevant trade-off. As for shares that are the underlying of derivative contracts, EMIR already allows for that, therefore the draft RTS cannot contradict the text in level 1. For the sake of clarity and to avoid any doubt, the draft RTS explicitly mentions that the provisions are “without prejudice to” Article 46(2) of EMIR. In addition the draft RTS clarifies that the relevant financial instruments should be: 1) those admitted as investments for the CCP; 2) transferable securities and money-market instruments. This would allow shares meeting the criteria in the draft RTS to be eligible even if not the underlying of the derivative contracts being covered by such collateral. However, units of funds have not been included as eligible collateral. The reason being that the liquidity of units of funds depends on the discretion of the fund manager, therefore it would not be appropriate to allow for the acceptance of such collateral. This is in line with current market practices. It should be noted, however, that such restriction would not apply for money market funds listed and traded in exchanges, where the liquidity can also depend on the secondary market (selling the fund units to other market participants, instead of requiring the redemption). In this case, however, they will fall under the definition of transferable securities and will be covered by the provisions on collateral. Therefore, if they meet all the other conditions, they can be accepted.

232. As for the limitation on real estate instruments, such limitation was initially conceived to cater for wrong-way risk. However, ESMA considers that wrong-way risk is already covered by the reference to “entities providing services critical to the functioning of the CCP” and therefore it is not considered necessary to further restrict eligibility to real estate securities. As for explicit references

to credit ratings, ESMA considers that this would go against the agreed G20 policy to reduce overreliance on ratings. With reference to flexibility, ESMA considers that the criteria based approach already provides CCPs with sufficient flexibility.

233. As for cash collateral, some CCPs argued that the provisions were complex and difficult to implement. The conditions for cash are mutually exclusive, i.e. CCPs can meet only one of the two conditions, which allows for flexibility. It is considered that CCPs should at least be able to demonstrate that they can manage the currency risk of an accepted currency, and if that it is not the case then only the cash needed to cover the exposure in a particular currency should be accepted.

Bank guarantees

234. Most respondents called for the requirement that bank guarantees be backed with financial instruments of the same quality as those eligible as collateral to be removed, citing that it would prevent the use of bank guarantees and arguing that if such collateral was available in the first place, NFCs would not need the bank guarantee.

235. ESMA understands these concerns, the peculiarities of some commodities markets in certain countries and the need to avoid abrupt changes in their structure due to collateral scarcity. However, it considers that allowing fully uncollateralised commercial bank guarantees could mean an undue source of risk for CCPs. Accordingly, ESMA has modified the requirements in the draft RTS to allow for other types of backing for bank guarantees to the extent that a) the collateral backing the guarantee is calculated in a conservative manner as to limit any potential wrong-way risk to the credit standing of both the guarantor and the non-financial CM ; b) the CCP can promptly access the collateral backing the guarantee with no restriction in case of the simultaneous default of the non-financial CM and the guarantor. The limitations in terms of the liquidity or quality of the collateral, apart from the above conditions, have been lifted. In addition, in view of the impact that this provision might have in certain markets and the time needed to adapt to it, ESMA has introduced a delayed date of application (3 years) of this provision for bank guarantees provided as collateral to cover exposures arising from bank guarantees.

236. Other respondents, in particular from banks and the fund management industry, called for bank guarantees to be extended to small financial CMs. Such provision would be contrary to EMIR which clearly limits the use of commercial bank guarantees to non-financial CMs. It would, therefore not be possible to introduce this in the draft RTS.

Concentration limits

237. On concentration limits, comments ranged from: a) the 10% limit being too low for small CCPs; b) concerns about the concentration limits for commercial bank guarantees; c) requests for a higher concentration for sovereign bonds; d) opposition to the calculation of limits at the level of each CM (on the basis of significant operational costs); and e) requests for clarification on whether credit ratings are sufficient to fulfil the requirement for a CCP to undertake a credit risk assessment.

238. ESMA redrafted the RTS to improve its clarity, but has substantially maintained the provisions as proposed in the CP. With reference to the above, ESMA believes that:

- a. the size of the CCP does not influence the collateral availability or the concentration limits;

- b. on the contrary, for bank guarantees it could be difficult for NFCs to find different banks providing such financing, for this reason a higher concentration limit is allowed in markets characterised by a large presence of NFCs. A specific recital has been added in this respect;
- c. as for the sovereign bonds, concentration risk may come from them as well, so it would not be appropriate to introduce exceptions for such a case;
- d. it is necessary to avoid concentration at each clearing member so as to: 1) avoid that CCPs end up with only one type of collateral to be liquidated following a CM default, which would then expose the CCP to concentration risk when the collateral needs to be used; 2) ensure a level playing field among CMs;
- e. the revised draft clarifies that CCPs cannot fully rely on credit ratings, in view of the G20 policy mentioned above.

EBA contribution

239. EBA generally supported the criteria based approach outlined in the CP and raised the following concerns: a) the draft RTS should include a provision according to which sufficient collateral is available at market level; b) in the liquidity regulations for banks, banks guarantees are not considered highly liquid collateral.

240. ESMA understands the EBA concerns. On the market availability of collateral ESMA believes that it would not be appropriate to include a provision which might turn out to restrict even further collateral availability. However, a recital has been added to ensure that CCPs consider the macro-economic impact of their policies on global collateral availability. With reference to bank guarantees, we understand the different perspectives of banking and CCP regulation. However, such inclusion for CCPs was explicitly introduced in EMIR.

ESRB contribution

241. The ESRB raised a number of issues related to the collateral draft RTS. In particular:

- a. Country risk should not be explicitly mentioned as it is normally already considered in the credit risk assessment. ESMA considers that given there is no certainty that such risk is always considered, it is appropriate to explicitly mention it.
- b. Collateral should not be subject to competing rights or voidable by insolvency laws. ESMA considers that the Financial Collateral and Settlement Finality Directives already provide CCPs with adequate protection against the cases mentioned by the ESRB. In any case, to avoid any doubts, in particular in cross-border transactions, the draft RTS have been modified to also include the avoidance of “third party claims” on the collateral.
- c. CCPs should have appropriate legal and operational safeguards to ensure that cross-border collateral can be used in a timely manner. ESMA agrees with that, for this reason it introduced a reference to “freely transferable and without any regulatory or legal constraint”. All criteria should apply to domestic as well as cross-border collateral.

- d. Limiting cross-collateralisation. ESMA considered the ESRB proposal in this respect and understands the ESRB's concerns about cross-collateralisation. In this respect a specific recital was already included in the CP. However, ESMA considers that financial instruments issued by CMs with the purpose of being posted as collateral would not meet most of the criteria established by the draft RTS, in particular the liquidity test. Limiting or penalising even further collateral issued by other CMs, would negatively impact global collateral availability (an issue also raised by the ESRB) and given that risks on cross-collateralisation should be captured already by the standards, ESMA does not consider it appropriate to further penalise this type of collateral.
- e. CCPs should only accept securities that are listed and publicly traded. Given that many government and other bonds are neither listed nor publicly traded, ESMA believes that this restriction would significantly impact on collateral availability. To the extent that the financial instruments are liquid, ESMA does not believe that discriminating on the execution method would be appropriate.
- f. The re-use of collateral by CCPs and the acceptability of re-hypothecated collateral should be clarified. ESMA clarified this in the investment policy draft RTS. However, ESMA believes that re-use by CCPs should be allowed only in order to perform payment obligations or in a default procedure.
- g. On haircuts, the ESRB supported ESMA's requirements for conservative haircuts to limit procyclicality and called for avoidance of overreliance on external ratings. On the latter, as already mentioned, ESMA has modified the provision.
- h. With reference to commercial bank guarantees, the ESRB considered that: a) there should be a lower concentration ratio; b) there should be a reliable third party holding the collateral that backs the bank guarantee. On a) ESMA has explained above why a higher concentration limit is necessary for bank guarantees. On b) ESMA believes that given the concerns expressed by market participants, such an additional requirement would significantly limit the use of bank guarantees.

IV.XI Investment policy

(Article 47 of EMIR) (Annex IV, Chapter XI)

242. Under the draft RTS for investment policy, ESMA is required to define highly liquid financial instruments with minimal market and credit risk, highly secure arrangements for the deposit of cash and other assets and the concentration limits for individual obligors.
243. With regards to the criteria used for assessing whether a financial instrument is sufficiently liquid with minimal market and credit risk, some respondents advocated for certain of the criteria to be relaxed. For example it was proposed to extend the range of eligible investments to include instruments such as covered bonds, money market funds and financial instruments issued by or guaranteed by a wider range of issuers or guarantors.
244. The underlying rationale for applying more restrictive eligibility criteria than for acceptable collateral for CMs to post margins and default fund contributions is the importance of capital

preservation and liquidity. ESMA has considered the suggested types of financial instrument but considers that the range of permissible financial instruments for investment purposes strikes an appropriate balance between prudence and the need for availability of eligible investment instruments.

245. Several respondents commented on the method proposed for measuring credit risk with one respondent proposing that CCPs be required to use credit ratings and credit spreads to measure credit risk and one respondent proposing that ESMA specify a minimum credit quality for a CCP's investments. One respondent proposed that ESMA should be more generic with regards to how CCPs are permitted to measure credit risk.

246. As mentioned above, the limitation of reference to use of credit ratings in financial regulations is an intentionally adopted principle. It is intended to reduce the hardwiring of credit ratings in regulation. ESMA notes that the use of external credit ratings or credit spreads is not prohibited by the draft RTS, but CCPs should complement such an assessment. With regards to the other comments, ESMA considers that by requiring the CCP to demonstrate low credit risk, an appropriate balance is struck between specificity and flexibility.

247. A few respondents suggested that the requirement to demonstrate low inflation risk is difficult to prove and should be deleted. A requirement to consider inflation risk was originally included because the underlying value of a debt instrument may change depending on the direction of interest rates. Given the difficulty for CCPs to quantify inflation risk, and recognising that the value of debt instruments will be picked up through the monitoring of market risk and volatility, ESMA has removed this particular criterion.

248. A number of respondents proposed that ESMA extend the average time-to-maturity requirement for the CCP's portfolio of debt instrument investments. It was argued that the majority of debt instruments issued by eligible institutions are for terms greater than two years.

249. The time-to-maturity of a portfolio determines the level of price sensitivity to which the CCP is exposed. In response to the feedback received, ESMA notes that the draft RTS prescribes an 'average' time-to-maturity and not an absolute time-to-maturity. It is therefore possible for a CCP to invest in individual debt instruments with a time-to-maturity of greater than two years. In light of this, and considering that the time-to-maturity of a portfolio impacts upon the value at which the CCP can liquidate its investments, ESMA has not extended the time-to-maturity requirement. However, ESMA has explicitly excluded such a requirement for repo transactions, as it would have a severe negative effect on the availability of the collateral to secure cash.

250. One respondent requested further clarity on the definition of a multilateral development bank. The term 'multilateral development bank' is a defined term in European law (Commission Directive 94/7/EC of 15 March 1994 adapting Council Directive 89/647/EEC on a solvency ratio for credit institutions). An appropriate cross-reference has been included.

251. Several respondents advocated the removal of the requirement that a CCP should not invest to maximise its profit. The arguments made included suggestions that in the case of CCPs which are commercial entities, there is a justifiable aim of profitability, imprudent investments will be impermissible under the draft RTS and suggestions that a CCP will always have capital protection as its main goal. Despite these arguments, ESMA remains of the expectation that CCPs should not seek to use their treasury function as a profit centre but instead invest only to protect their financial

resources. The wording of the draft RTS has however been amended to explain this intention in a way which is more appropriate for a regulatory provision, thus including it in a recital.

252. A number of respondents commented on the provision regarding the use of derivatives. Those CCPs which responded, along with some other respondents, submitted that derivatives are an integral part of a CCP's risk management process and therefore CCPs should be permitted to use them for any hedging purpose. Whereas representatives of the CM community submitted that CCPs should not be permitted to engage in derivative transactions at all.

253. In the CP, ESMA proposed that CCPs should be permitted to use derivative contracts in the course of macro-hedging the portfolio of a defaulted CM. ESMA considers that the majority of risks faced by a CCP arise from the collateral that the CCP accepts and can be sufficiently managed through the CCP's collateral policy or through haircuts and therefore does not consider it necessary for a CCP to use derivatives to manage such risks. ESMA does however acknowledge that there are some risks which a CCP might encounter which are unrelated to either the collateral accepted by the CCP or which cannot be macro-hedged at a portfolio level.

254. In order to allow for additional specific circumstances in which derivatives could be an appropriate part of a CCP's risk management framework, ESMA has removed the restriction that CCPs only be permitted to "macro-hedge" the portfolio of a defaulted CM and has permitted the use of derivative contracts to manage currency risk arising from a CCP's liquidity management framework.

255. A couple of respondents proposed that CCPs should not be required to obtain the approval of their board before every derivative transaction. ESMA agrees that such a requirement might unnecessarily inhibit the prompt employment of a CCP's risk management framework and has therefore included a provision such that a CCP may use derivative contracts where its board has previously approved a policy for the use of such derivative contracts.

256. Some respondents proposed amendments to the provisions regarding highly secured arrangements for the deposit of financial instruments. These were largely proposals to further clarify the text of the EMIR Regulation for which ESMA does not have a mandate. One respondent requested amendment to the requirement that arrangements prevent any losses to the CCP due to the default or insolvency of an authorised financial institution. This phrase is taken from the Rules of the BCBS. In the interest of international consistency, ESMA does not consider it appropriate to clarify this text further.

257. With regards to the provisions regarding highly secured arrangements for maintaining cash, a number of proposals were advanced by respondents. These included a requirement that most or all cash be deposited with the ECB or an ESMA approved central bank (for which ESMA does not have a mandate) but largely focussed on the requirement that a minimum of 98 % of cash be secured.

258. The majority of the respondents questioned the level at which the percentage has been set. Respondents also pointed out that unavoidable deviation from a fixed percentage would result not only in unnecessary administrative burden on CCPs and regulators, but also in complexities with respect to the calculation of capital.

259. ESMA considers that the shortcomings identified in its proposal can be addressed through amendments to the fixed percentage requirement to make it an average over a period of time rather than a threshold which must be met on a daily basis. This will address the issue of unavoidable

deviations from the fixed percentage. As mentioned above, ESMA also acknowledges the arguments made regarding the difficulty which might be faced by CCPs in identifying eligible collateral for repurchase transactions given the time-to-maturity requirement in Article 45 and has removed such a restriction. Finally, as suggested by the SMSG and other stakeholders, the percentage has been slightly revised to allow a bit more flexibility in the CCPs cash management and has been set at 95%.

260. Some respondents proposed the inclusion of additional provisions regarding the ban on re-use/re-hypothecation of financial instruments posted as margins or default fund contributions through title transfer. ESMA agrees with the concerns expressed on the re-use/re-hypothecation and has included a provision according to which such practice should be allowed only in the cases already specified by EMIR and to allow CCPs to perform their payments obligations, the management of a default, or the execution of an interoperable arrangement.

IV.XII Review of models, stress testing and back testing

(Article 49 of EMIR) (Annex IV, Chapter XII)

Model Validation and the Risk Committee

261. Some respondents have highlighted their concern regarding the need for CCPs to obtain independent validation prior to the application of material changes to its models, their methodologies and liquidity risk management framework. Although ESMA understands this issue, this requirement comes directly from EMIR.

262. Many respondents (mainly from CCPs) proposed that the risk committee should play a key role in terms of oversight and some even suggested that it should have decision making powers. It was also suggested that the risk committee be considered a qualified and independent party. ESMA believes that strengthening the risk committee's advisory role adds value to the governance process so has incorporated some amendments accordingly in Article 50. However, the risk committee, as set out in EMIR, was not designed to be a decision making body so it would not be possible to change its nature in the draft RTS. Additionally, ESMA believes that it would be inappropriate to explicitly state that the risk committee should be deemed a qualified independent party as conflicts of interest could exist.

263. ESMA has also made amendments to Article 50(6) to avoid arbitrage through the use of valuation models where prices are available and reliable.

264. It was suggested by one respondent that the portfolio margining methodology, procedures and systems are independently validated on at least an annual basis. ESMA believes that Article 49 of EMIR and Article 50 of the draft RTS refer to all models and methodologies, thus including also the models and methodologies to determine the margins levels in case of portfolio margining. Specifying this particular case would not help clarifying the text as it would add confusion on the possible other cases not explicitly mentioned. Therefore ESMA considers that a general text applying to all models and methodologies adopted by the CCP is preferable.

Back tests

265. It was highlighted that the draft RTS does not explicitly require CCPs to back test current rather than historical positions and that on-going accumulation of historical statistics on the adequacy of historical margins on historical positions does not provide comfort that current margin is adequate for current positions. ESMA's intention is indeed to ensure that CCPs are required to back test

yesterday's or today's (if performed at the end of the day) positions and not "historical" positions from a long time ago. This was clear from the requirement on the daily calculation of the back test. The reference to the historical time horizons is only necessary to give the necessary statistical significance to the tests. Given the possible misinterpretation, the draft RTS have been amended to refer to current positions.

266. CCPs argued that tests should be conducted against confidence levels used by the CCP and that the use of different confidence levels does not generate additional value. ESMA agrees and notes that CCPs will consider a range of confidence levels in their sensitivity analysis which is more appropriate. The relevant provision has, therefore, been deleted.

267. Many respondents (including in response to the margin draft RTS) raised concerns regarding the time horizon for back tests, highlighting that one year of data is not enough to give a statistically significant back test. ESMA has therefore amended Article 63(2) and added an additional recital.

268. A respondent highlighted their confusion around the meaning of Article 52(1), so ESMA has made some amendments to help clarify that a CCP should evaluate coverage on a financial instrument and CM level, but also take into account portfolio margining effects to ensure that portfolio margin requirements are not inappropriately low.

Stress testing

269. Two respondents (CCPs) are supportive of CCPs being mandated to set out and enforce clear policies in relation to concentration risk and wrong-way risk and they do not see the rationale for these being included within stress tests. Although ESMA is supportive of such policies being established and tested, it is important for stress tests to consider that these risk factors and the drafting of the technical standard is broad enough to allow appropriate flexibility.

270. Additionally, it was pointed out by two respondents (CCPs) that Article 51(4) covers Article 54(5) and should therefore be deleted. ESMA disagrees with this proposal because the inclusion of this provision is intended to cover circumstances where a client is so large that its default could impact the CMs that clear on its behalf. One of these respondents did raise the concern that CCPs are not necessarily aware of all circumstances where a client clears through multiple routes, ESMA has therefore clarified that this provision applies to clients who are known to the CCP.

271. Two respondents asked for clarification on the treatment of client positions when performing its stress tests; it was not clear to them whether in considering the default of a CM, all client positions should be included, therefore resulting in a higher default fund contribution or whether it was possible to exclude relevant client positions if appropriate portability arrangements are in place. ESMA believes that it is important for CCPs to manage the risks they are exposed to, whether they are direct or indirect. This will be especially important in the future where EMIR will result in increased client clearing. ESMA has therefore amended Article 51(4) to clarify that all client positions should be included when a CCP conducts its tests.

Disclosure

272. With reference to disclosure, on the one hand, CCPs raised concerns with Article 52(5) and 54(7) and the need to avoid potential "gaming" by clients and CMs. On the other hand, banks and buy-side firms supported disclosure with some proposing timeframes for such disclosure and further public disclosure. As stated in the CP, ESMA understands the confidentiality issues arising from

disclosure but believe that a certain degree of transparency is important. ESMA has therefore taken a view that the aggregated data disclosed takes a form that does not breach confidentiality in order to reach an appropriate balance. Separately one respondent wanted Article 52(5) and 54(7) to be aligned with Article 60(6), they also requested for it to be made explicit that CCPs are permitted to make such information available to known clients only through clearing members, ESMA does not feel that making this explicit will add any value to the draft RTS.

273. Some respondents (many of those who had concerns with Article 52(5) and 54(7)) did highlight their concern with “full disclosure” or “all stress testing information” being disclosed. ESMA thought that this interpretation could be due to the provisions under Article 64, so it has introduced a minor amendment that a “high level” summary of results, analysis and corrective actions should be publicly disclosed.

Frequency of testing

274. It was suggested by one respondent that stress tests of liquid financial resources should be performed at a frequency that the CCP and its competent authority agree upon rather than daily. Daily stress testing of liquid financial resources is a requirement in the CPSS-IOSCO Principles for FMIs and is therefore internationally consistent, therefore ESMA believes the current drafting is appropriate.

275. One respondent raised concerns regarding the frequency of performing reverse stress testing, ESMA understands this point and has amended this from monthly to quarterly to ensure that conducting such testing and analysis does not become a purely mechanical process and adds significant value to reviewing risk management choices. One respondent also raised concerns regarding the frequency of conducting a detailed thorough analysis, it was proposed to change from monthly to quarterly, or more frequently during stressed conditions, however the current proposal is consistent with the CPSS-IOSCO Principles and is considered appropriate. Additionally, it must be noted that the draft RTS requires some tests to be performed at least daily in line with international standards. For CCPs to benefit from this, a detailed thorough analysis of these results should be carried out at least monthly, since this is increasingly important in an environment that is continuously changing. A full validation which will take more time and resources has been proposed on at least an annual basis. ESMA believes that its proposals have balanced the costs of performing such tests and analysis with the benefits of prudent risk management.

276. The ESRB proposed daily testing of haircuts. ESMA concluded that it would be too onerous and mechanical and therefore kept this to a frequency of at least monthly. Additionally, it must be noted that CCPs can conduct these tests more frequently than monthly if it is deemed necessary.

Default procedures

277. Some CCPs raised concerns regarding the feasibility of performing simulation exercises following the addition of new contracts being cleared by CCPs. ESMA understands this point and that any relevant changes to the contracts being cleared by a CCP will result in material changes to the default procedures which are already captured under the provision. Hence, the reference to “new types of contracts” has been deleted.

Other concerns

278. Some respondents representing potential clients proposed that this draft RTS include operational sequences for when a CCP mistakenly calculates positions incorrectly, as clients and indirect clients

do not have the opportunity to raise claims directly with the CCP. ESMA understands the issue but this is beyond the mandate of this draft RTS and is not contemplated in the level 1 text, so it cannot be addressed at level 2.

279. One respondent helpfully proposed that the draft RTS includes analysis of the frequency of testing exceptions. ESMA has therefore added an additional provision for this purpose in Article 59.

Feedback from EBA

280. Under Article 49 of EMIR, ESMA has to consult EBA before finalising the draft RTS.

281. Regarding Article 55 and 54, EBA suggested that responsibility and governance of the stress testing programme, including roles of senior management, integration into risk and strategic management of the CCP and actions to be taken based on the results of stress tests are not covered in the draft RTS but should be. ESMA considers these very important aspects and has covered actions to be taken based on test results in Article 59 and the policies and procedures that CCPs should develop and maintain are covered in Article 51. In addition, the organisational requirement draft RTS will provide a solid framework for CCP governance. Within the mandate of the draft RTS on review of model, stress testing and back testing, ESMA considers that there is no room for covering specifics such as roles of senior management.

282. Regarding Article 64, the EBA proposed including provisions on the frequency of disclosures, means of disclosures and verification of disclosures. There is limited scope to add such details because of the very specific mandate in the level 1 text which asks ESMA to prescribe the key information that should be publicly disclosed. Any data that is publicly disclosed should remain up-to-date.

283. Lastly, the EBA proposed that the draft RTS includes a general provision requiring CCPs to repeat the validation process when there are substantial changes to business models, the instruments cleared or to the overall volume. ESMA considers that indeed in most of the cases, new instruments cleared will result in changes to existing models or in new models being developed and these will require CCPs to carry out a full validation. With reference to changes in volumes, ESMA believes that to the extent that the models continue to perform properly in changed market conditions, as demonstrated by the tests performed, there would not be a need to change them and redo a complete validation. In addition, supervisors will have the discretion to question if something is material or not and whether a CCP is required to carry out a validation.

V. Trade Repositories

V.I Reporting Obligation

(Article 9 of EMIR) (Annex VI.I)

284. In developing the draft RTS regarding the details and type of reporting to TRs, ESMA consulted on the following key elements:

- a. the purpose and content of reporting;



- b. the elements to correctly identify the contracts and the corresponding counterparties; and
- c. the level of granularity.

285. In developing the draft ITS on format and frequency, ESMA considered:

- a. the fields required to report each element; and
- b. standard codes for each of the above elements (e.g. the identification of contracts, counterparties/clients, products, currencies).

286. ESMA's view is that the fields indicated in the tables of fields included under Annex VI.I should be reported by counterparties to TRs in order to comply with Article 9 of EMIR. These tables take into account the suggestions and amendments provided in the CP responses as much as possible and the changes are described in more detail under the specific sections below.

287. Both tables are divided in two sub-sets: (i) Table 1 - counterparty data (to be reported separately by each counterparty or their appointed reporting entity); and (ii) Table 2 - common data (may be reported by only one counterparty, if reporting also on behalf of the other, or an appointed reporting entity). In general, the responses to the CP were supportive of this proposal and therefore this approach has been maintained.

Purpose of reporting

288. For the purpose of reporting, ESMA has considered the G20 Pittsburgh declaration and the objectives of EMIR including improving transparency in the derivative markets, protection against market abuse and systemic risk mitigation. ESMA also considers that TR data will be useful to ensure firms' compliance with other requirements in EMIR including the clearing exemption and in the future, ensuring that the clearing thresholds are set at the appropriate level.

289. A comparison has been made between reporting to TRs under EMIR, the transaction reporting mechanisms already in place in the EU under MiFID and reporting under REMIT for energy commodity derivatives. A number of respondents to the CP urged ESMA to consider consistency between the various reporting requirements in the EU to avoid duplication and reduce the reporting burden on firms. Whilst efforts have been made to ensure that the data sets are aligned as much as possible, reporting under EMIR, as understood by ESMA, is still more extensive in scope than MiFID or REMIT. There are also concerns regarding the transmission of data from a TR; the current TR approach and the approach that has been taken in the draft RTS for Article 81 of EMIR is for access to be provided to the relevant authorities via a regulatory portal. However, under MiFID, transaction reports are actively sent to the relevant national competent authorities.

290. Nevertheless, given the objective of reducing the reporting burden for the industry, whilst ensuring there is no detriment in the transparency to regulators, ESMA will continue working towards the objective of a common reporting mechanism with any differences to be discussed with the TRs and the national competent authorities upon implementation and the work under the MiFID review, also considering the stakeholder input on exchange-traded derivatives as much as possible.

Content of reporting under parties to the contract

291. EMIR indicates a minimum set of information to be required and this is included in the draft RTS (Annex VI.I.): the parties to the contract, beneficiary of the rights and obligations arising from it, and the main details of the contract including the type, underlying, maturity, notional value, price and settlement date. These fields in the table have therefore not changed as they are required under EMIR.
292. Comments were raised with regards to the data fields specifying whether the contract is ‘directly linked to commercial activity or treasury financing’ and whether the contract is above the ‘clearing threshold’. As mentioned above, ESMA considers that TR data will be useful to ensure firms’ compliance with other requirements in EMIR. These include monitoring compliance with the clearing exemption and in the future, ensuring that the clearing thresholds are set at the appropriate level. These fields have therefore not changed.
293. Regarding the definition of a beneficiary, the draft RTS is consistent with the wording provided in the EMIR text; where the transaction is executed by a structure (fund, trust, etc.) which represents a number of beneficiaries, the beneficiary field should identify this structure and not all the individual beneficiaries. The responses to the CP were supportive of this proposal and the draft RTS remains unchanged.

Format of reporting

Codes

294. Under EMIR, ESMA is required to develop draft ITS specifying the formats that need to be used in the reporting of contract information to TRs. ESMA has considered the widest use of codes as possible. These codes will serve a multitude of purposes, including operational standardisation, cost-effective reporting, easier analysis of the data and increasing the efficiency in the overall reporting chain, provided certain principles are followed in creating, generating and using the codes. ESMA has considered any codes (entity, product and contract) that are endorsed at the EU level.
295. Respondents strongly support the development of the Legal Entity Identifier (LEI) and that any fields which would be captured by this should not be reported twice. ESMA agrees with this approach and will ensure that if a global entity identifier is in place and is endorsed in the EU, it shall be used.
296. Whilst some respondents were in favour of an interim LEI solution, others felt that this could incur more costs for market participants if they have to adjust their systems to different codes twice (interim LEI and then the final LEI). ESMA finds that any interim solution that is adopted for European entities subject to the reporting obligation, needs to be in line with the technical specifications agreed by the Financial Stability Board (FSB).
297. Furthermore, the principles agreed by the FSB (unique, neutral, reliable, has an open source, is scalable, accessible, available at a reasonable cost basis and subject to an appropriate governance framework) should be followed for any type of codes (entities, products, contracts) in the TR reporting context.
298. Therefore, the draft RTS and ITS specify that once a global legal entity identifier or an interim entity identifier, which is endorsed in the EU, is available, it should be used to identify all financial and NFCs, brokers, central counterparties, and beneficiaries. If neither a legal entity identifier nor



an interim entity identifier is available by the time the reporting obligation begins, entities should be identified in the report with a Business Identifier Code (BIC) which is already in place for counterparties to use.

299. Regarding products, a taxonomy should cover the range of derivatives products traded under EMIR and should enable a code to be generated which is key in identifying the reported products. It would also be useful in assisting regulators when analysing the data but also by organising the data into product categories when published by TRs.

300. As regards product codes, there was general industry support for the development of a Unique Product Identifier (UPI) by a major trade association; however some concerns were raised that the code might not be ready by the time of implementation. Furthermore, the association developing such a code suggested a phase-in for the reporting of product codes to ensure that the code would be developed in time for the reporting obligation.

301. Others suggested using the existing ISO standards for product identification which would involve using the International Securities Identification Numbers (ISIN), the Alternative Instrument Identifier (AII) as product and underlying identifiers and a Classification of Financial Instruments Code (CFI) code to identify the type of derivative.

302. In the absence of a globally agreed product identifier, ESMA agrees that the ISIN, AII and the CFI may be used to correctly identify the derivative product and therefore the draft ITS has been updated to reflect this. Where a CFI does not exist, counterparties should report the derivative type by using the taxonomy outlined in the draft ITS.

Trade Identification

303. ESMA believes that in order to effectively match counterparties to a contract, a Unique Trade Identifier (UTI) should be reported with each counterparty to allow for pairing contracts. This will be particularly relevant when counterparties are reporting to two different TRs.

304. There was general support for the development of a universal UTI or for TRs to provide a matching service which could generate a trade ID between counterparties. ESMA considers that if an identifier with a universal character is available, it should be used to enable reconciliation. However, ESMA is aware that industry has not progressed in this area until quite recently.

305. Therefore, in order to have a trade ID on time for the implementation of EMIR reporting, ESMA has taken the view that it should be the responsibility of the counterparties to a contract to generate a UTI which will enable aggregation and comparison of data across TRs. TR applicants should also provide information on the procedures they have in place to ensure that data can be reconciled between TRs if counterparties report to different TRs. The draft RTS on Articles 81 and 56 of EMIR respectively have therefore been amended accordingly.

Pricing

306. ESMA consulted on three essential elements that will be useful to authorities in understanding the price at which derivatives are traded:

- a. price/rate;



- b. price multiplier; and
- c. up-front payment.

307. The majority of CP respondents were supportive of these fields and therefore they remain largely unchanged. The reference to 'spread' was removed following comments from industry suggesting that spread refers to a strategy and not to a single contract.

Risk mitigation and clearing

308. ESMA consulted on a number of fields that should be reported in order to facilitate the monitoring of market participants' compliance with EMIR obligations, including the clearing obligation procedures. These elements are:

- a. a timestamp on the time of reporting to the TR;
- b. the type of platform where the contract was executed;
- c. whether confirmation occurred before reporting and, if so, whether it was by electronic means;
- d. whether there is an obligation to clear, whether the contract was cleared and, if cleared, when the contract was cleared and by which CCP and via which clearing member, where the counterparty is not a clearing member itself;
- e. whether the contract qualifies as intra-group for the application of the exemption on intra-group trades.

309. The majority of respondents were supportive of requiring the information above and these fields remain unchanged. A few respondents recommended that the 'clearing obligation' and 'intra-group' fields should be moved to the tables on counterparty data. However, these fields relate to whether the specific contract was subject to the clearing obligation or whether the contract was concluded on an intra-group basis and therefore these fields should remain as common data.

Specific asset classes

310. Whilst counterparties are expected to report all the applicable information in relation to the parties to the contract, the contract type, other details of the contract, risk mitigation, clearing and counterparties exposures and collateralisation, additional fields are needed to describe the derivative within the relevant asset class. These additional fields will only apply to the specific asset class of the derivative contract.

311. The majority of respondents were supportive of the fields on specific asset classes and therefore they remain largely unchanged. However, the fields on interest rates have been clarified following requests from respondents.

312. Furthermore, a number of the proposed formats in the draft ITS have been amended following clarifications and suggestions received from stakeholders. A number of free text fields were also removed to increase standardisation, reduce costs and increase efficiency in accessing data. Specific format options have been included to give greater certainty to the reporting counterparty.

313. No additional fields have been proposed for the reporting of credit and equity derivatives as the fields already contained in the counterparty data table and the common data table are considered sufficient in correctly identifying the type and details of the derivative contract.

Data on exposures

314. ESMA believes that the reporting of exposure data is essential to monitor systemic risk and therefore ESMA consulted on requiring firms to report data on daily mark-to-market valuations of contracts if they are required to conduct contract valuations under EMIR.

315. The majority of the respondents were not in favour of this information being reported commenting that this information goes beyond the legal mandate of EMIR. ESMA believes that the valuation of a contract is essential information in order to properly measure, monitor and mitigate the concentration of exposures and systemic risk. Furthermore, not performing such duties could be detrimental to prevent future financial crises. This is particularly relevant for EU-wide bodies such as ESMA and the ESRB.

316. ESMA believes that this is consistent with the requirements in EMIR Article 11 (2), whereby counterparties are required to conduct daily mark-to-market valuations of their derivative contracts. Therefore, those counterparties that are not subject to the relevant requirements in Article 11 (2) of EMIR are not required to report information on mark-to-market valuations. This means that NFCs below the clearing threshold are exempt from this reporting requirement.

317. The mark-to-market valuation field has been amended to ensure that the absolute value of the contract is reported on a daily basis, where valuation applies under Article 11 (2) of EMIR, and enables an up-to-date view of the price, which is considered a key detail of the contract.

318. Many respondents were concerned by the requirement to report exposure information under the common data table, given that this information may differ between counterparties. In order to cater for this concern, ESMA moved all the fields on exposures to the table on counterparty data.

Collateral

319. ESMA also consulted on requiring firms to report information on collateral, including collateral type and amount. Again, the majority of respondents were not in favour of this information being reported commenting that this information goes beyond the legal mandate of EMIR. Furthermore, respondents felt that reporting collateral would be too complex as collateral is most commonly held at the portfolio level rather than the individual transaction level. Nevertheless, some respondents felt that it would not be impossible to obtain this information.

320. ESMA has checked that this element is within the mandate given to it by EMIR and believes that the reporting of collateral information will complement the information reported on exposures and will indicate whether the exposure is covered or uncovered. For this reason, the reporting of collateral at the transaction level would be more useful. However ESMA understands that many counterparties exchange collateral on a portfolio basis. Therefore, counterparties may report the exchange of collateral on a portfolio basis when reporting a contract. To facilitate such reporting, a unique code should be assigned to the portfolio and reported to the TR. This will enable the TR to identify the specific portfolio to which the relevant collateral belongs.

321. ESMA is also aware that stakeholders wish to minimise the cost of reporting as much as possible and ESMA is therefore not requiring all the data on collateral (e.g. the type of commodity, if one, and the technical description and location of it, for instance).

322. The collateral fields have also been amended to take account of the comments received from consultation respondents. The revised collateral fields include whether the contract was collateralised, the basis of collateralisation (transaction or portfolio) and the value of the collateral.

Other data fields

323. A number of respondents did not consider reporting information held within a master agreement as relevant and therefore suggested that field 24 of the common data should be removed. ESMA consulted only on requiring the type and data of the master agreement and thus does not consider this information to be costly or complex to report. ESMA does however consider that this information will be useful for legal certainty, standardisation level measurement and more importantly, will facilitate the analysis of contracts by regulators. The draft RTS and ITS therefore remains unchanged.

324. Following stakeholder feedback, an additional data field has been added in the common data table in the draft RTS, to identify whether the reported contract is a result of a trade compression exercise.

Reporting start date

325. In the CP, ESMA proposed that a fixed date should be set based on the registration of a TR, with an ultimate deadline of no more than 2 years after which reporting will be sent to ESMA, if a TR for a particular asset class is not available.

326. Many respondents requested that the reporting obligation should be delayed or that there should be a phase in by counterparty type and by asset class. Other comments were raised in relation to the insufficient time given to counterparties for the backloading of outstanding contracts. ESMA understands the challenges many counterparties may face in setting up reporting systems to comply with the reporting requirements under EMIR, however there is a need to balance these challenges against the deadline set by the G20 (end of 2012) and the need for regulators to begin using this information as soon as possible.

327. ESMA has therefore taken a view that there should be phase in per asset class, with interest rate and credit derivatives being reported first and the other asset classes 6 months later. This is also consistent with what was done in other jurisdictions and in existing TRs' product launches. Furthermore, given the known challenges of reporting data on collateral, a further 6 months has been given to the industry to develop or adapt the necessary systems required to report this information. The draft ITS has also been amended to give counterparties 90 days (instead of 60) after which a TR has been registered before reporting begins.

328. The draft ITS has also been amended to allow contracts which were entered into on or after EMIR came into force but are not outstanding on the reporting start date to be reported to a TR within 3 years, given that the information will be of less importance for regulators. ESMA is confident that these new timelines will facilitate TRs, reporting entities and counterparties, and regulators to adapt to the new requirements.



V.II Application for Registration

(Article 56 of EMIR) (Annex VI.II)

329. In defining the elements to be contained in the application for registration of TRs, ESMA consulted on the following elements:

a. Ownership

A structure chart is required which should indicate all the associated entities of the TR at the global level. Also, lists of the relevant shareholders are required as well as information on any parent undertakings and their regulators.

b. Organisational structure, governance and compliance

A chart is required detailing the roles, reporting lines, accountable persons, and details on the internal controls and the functions under those controls (e.g. compliance, review, risk assessment and audit). Details are also required on the fitness and properness of the senior management and board members, policies on the appointment of senior staff, and the identification and mitigation of any potential conflicts of interest.

c. Staffing and compensation

Specific details are required on remuneration, mitigation of the over-reliance on individual employees and details of the fitness and properness of the TR staff.

d. Financial resources

Detailed financial and business documentation (annual reports, balance sheet, business plan) are required.

e. Conflicts of interest

Internal policies on the identification, mitigation and inventory of conflicts of interest are required.

f. Resources and procedures

Detailed information on the IT systems and outsourcing arrangements, with particular emphasis on any ancillary services are to be provided to ESMA.

g. Access rules and pricing

Details on compliance, particularly on the accuracy, confidentiality access rights of the data are required.

Additional requirements are included on price transparency including the pricing policy, structure and the separation of core and ancillary service fees.

h. Operational reliability

Extensive details on operational risk management, financial and business resources, processes, interdependencies, business continuity elements and testing are required. This includes the necessary and readily available financial resources needed to ensure smooth operations of the TR in all circumstances and an orderly winding down or restructuring of operations.

i. Recordkeeping

Information on the procedures required in order to ensure timely registration, data confidentiality, integrity, format/aggregation level and to ensure that the data is kept up to date.

j. Data availability

Detailed information is required in order to demonstrate that TRs will be able to provide regular and aggregate information to the public, detailed information to the relevant counterparties and competent authorities, respecting the timeline and other requirements under EMIR and the draft technical standards.

330. The majority of respondents did not highlight any difficulties in providing this information in a TR application therefore the draft RTS remains largely unchanged. There were a few recommendations to request additional information however ESMA considers that the information already required will be sufficient in conducting a thorough assessment of a TR application.

331. ESMA also consulted on whether there would be any issues in providing the information/documentation on:

- a. a business plan for at least a 3 year period;
- b. sufficient financial resources enabling the TR to cover its operating costs during at least 6 months.

332. The majority of respondents supported the 3 year business plan requirements, therefore this remains unchanged in the draft RTS. It should be noted that this 3 year business plan should be provided during the application process and not as an annual requirement, even if it could be wise for TRs to prepare business plans on an on-going basis.

333. As regards financial resources, a minority of respondents suggested that they should be held over a 12 month period. However, in the absence of a majority view and in keeping with the international financial resources requirements for other financial market infrastructures, the draft RTS remains unchanged.

334. In defining the format of the application for registration of TRs, ESMA proposed that an application for registration should be provided in an instrument which:

- a. stores information in a durable medium; and
- b. allows the unchanged reproduction of the information held.

335. To ensure the accurate registration and identification of TRs, the TR applicant should:

- a. assign a unique reference number to each document it submits and ensures that the information submitted clearly identifies to which specific requirement of the standards it refers to, and in which document that information is provided;
- b. clearly identify and explain, where in its view a requirement of the standards does not apply;
- c. include a cover letter with any documents sent to ESMA which is signed by a member of the TR's senior management, attesting that the submitted information is accurate and complete to the best of their knowledge, as of the date of that submission;
- d. accompany any documents submitted to ESMA with the relevant corporate legal documentation showing the accuracy of the information, including verification of any decisions taken at board level.

336. The responses received on the requirements above were positive therefore they are reflected in the draft RTS.

337. An application template in the draft ITS has been included to make it clearer to TR applicants how they should structure and number the relevant documents included in their application.

V.III Transparency and data availability

(Article 81 of EMIR) (Annex VI.III)

Authorities accessing data

338. ESMA was required to consult the members of the ESCB when the drafting the RTS under Article 81 of EMIR. Representatives of the ESCB participated as observers in the TR task force which drafted this RTS therefore they have been continuously consulted during the development phase.

339. When developing the draft RTS which define the scope of the data to which authorities and the public will have access, ESMA consulted on the following key elements:

- a. the granularity of data to be disclosed per type of recipient: (i) for the public; (ii) for each relevant authority;
- b. how information should be disclosed and organised;
- c. the means to receive this information (e.g. direct access, website, other);
- d. the frequency of the disclosure to both the public and to the different authorities; and
- e. the level of aggregation to be considered in the public disclosure or depending on the receiving authority.

340. On the data to be accessed by authorities, a functional approach was chosen, ensuring that entities accessing TR data would be considered according to the competences they have and the functions they perform, rather than the type of institution for example, a central bank, a takeover panel or

other. The majority of respondents were supportive of this proposal and the draft RTS remains unchanged.

341. ESMA consulted the entities listed in Article 81 in order to identify the level of details and type of aggregation required to fulfil their respective mandates and reflected this in the draft RTS. Following comments received from the relevant authorities, the draft RTS has been duly amended to reflect the needs of their mandates. In particular:

- a. ESMA should not have any restrictions to the transaction level data held at TRs, for the purpose of TR supervision, to be able to make information requests, take appropriate supervisory measures and also monitor whether the registration should be kept or withdrawn.
- b. ESMA is also required under its Regulation to perform economic analysis/research and systemic risk monitoring and mitigation for financial stability purposes, paying particular attention to any systemic risk posed by financial market participants, the failure of which may impair the operation of the financial system or the real economy.
- c. The Agency for the Cooperation of Energy Regulators (ACER) needs access to TR data for the purpose of monitoring wholesale energy markets in order to detect and deter market abuse in cooperation with national regulatory authorities, and the monitoring of wholesale energy markets to detect and deter market abuse under Regulation of 25 October 2011 (EU) No 1227/2011 on wholesale energy market integrity and transparency (REMIT). ACER should therefore have access to all data contained in a TR as regards energy derivatives. This was well received by ACER, that was consulted formally as suggested under recital 45 of EMIR.
- d. Supervisors and overseers of CCPs, who need to access TR data for performing their duties over such entities, should have access to all transaction level data on transactions cleared or reported by the supervised CCP. Indeed, the transactions cleared refers to the transactions cleared by the CCP and reported to the relevant TR, which might be reported by the original counterparties or third parties. Transactions reported means transactions cleared and reported by the CCP.
- e. Competent authorities supervising the venues of execution of the reported contracts should have access to all the transaction data on contracts executed on those venues.
- f. Authorities appointed under Article 4 of Directive 2004/25/EC on takeover bids need specific data to fulfil their mandates. Access should be allowed to the transactions in equity derivatives where the underlying is either admitted to trading on a regulated market in their jurisdiction, or has their registered office within their jurisdiction.
- g. Securities and markets authorities, amongst other duties, are responsible for investor protection in their respective jurisdictions. Therefore they need to access transaction data on markets, participants, products and underlyings covered by their surveillance or enforcement mandate.
- h. The ESRB, ESMA and the ESCB have a mandate for monitoring systemic risk and preserving financial stability in the EU, and some entities such as national central banks and securities and markets authorities have a similar role at a national level. Under these mandates, the relevant authorities should have access to transaction data for all counterparties within their

respective jurisdictions and for derivatives contracts where the reference entity of the derivative contracts is located within their respective jurisdiction or where the reference obligation is the sovereign debt of the respective jurisdiction.

- i. Members of the ESCB also deal with traditional central banking activities such as issue of currency and thus, should receive position data for derivatives contracts in the currency issued by that member.
- j. For the prudential supervision of counterparties subject to the reporting obligation, the relevant entities listed in Article 81 (3) of EMIR should receive access to all transaction data of such counterparties.

342. The relevant authorities of a third country that have entered into an international agreement with the EU and the relevant authorities of a third country that have entered into a cooperation arrangement with ESMA will have access depending on their specific mandates under the applicable EMIR provisions (Articles 75 and 76 respectively, and Article 81 and the associated draft technical standards) and the relevant arrangements.

Aggregate public data

343. In relation to information to be made publicly available by TRs, ESMA proposed that at least the breakdown of the aggregate open positions per asset class should be published. Some respondents requested that additional aggregate data be made available to the public, including transactions volumes, end of day prices for each instrument and collateral posted. ESMA has amended the draft RTS to include a breakdown of aggregate transaction volumes and values per asset class.

344. As regards the frequency of public disclosure, ESMA consulted on a weekly disclosure and that a simple solution for all asset classes should be adopted rather than a very complex or dynamic timeline per asset class or liquidity level. Some respondents raised concerns about disclosing public information on a weekly basis, particularly in less liquid markets where there are fewer market participants. ESMA understands these concerns, however given the challenges in defining what is an 'illiquid market' in the context of public reporting, and the lack of stakeholder input in that regard, the proposed timeline of weekly reporting as a minimum frequency has been kept. There is nevertheless a requirement in EMIR for the aggregate public data disseminated by a TR not to be capable of identifying any of the counterparties to a contract and TRs should comply with this rule.



ANNEX I - Legislative mandate to develop draft technical standards

Article 4

ESMA shall develop draft regulatory technical standards specifying the contracts that are considered to have a direct, substantial and foreseeable effect within the EU or the cases where it is necessary or appropriate to prevent the evasion of any provision of this Regulation.

ESMA shall develop draft regulatory technical standards specifying the types of indirect contractual clearing arrangements that do not increase counterparty risk and ensure that assets and position benefit from the protection with equivalent effects as segregation and portability.

Article 5

ESMA shall develop draft regulatory technical standards specifying the following:

- a) the details to be included in the notification from the competent authorities to ESMA;
- b) the criteria to be assessed to determine if a class of derivatives should be subject to CCP clearing (standardisation, volume and liquidity, price availability);

Article 6

ESMA may develop draft regulatory technical standards to specify the details to be included in the public register on the classes of derivatives subject to the clearing obligation.

Article 8

ESMA shall develop drafts regulatory technical standards specifying the concept of liquidity fragmentation.

Article 9

ESMA shall develop draft regulatory technical standards specifying the details and type of the reports to trade repositories for the different classes of derivatives.

The reports shall contain at least:

- a) the parties to the contract and, where different, the beneficiary of the rights and obligation arising from it;
- b) the main characteristics of the contracts including the type, underlying maturity, notional value, price, and settlement date.

ESMA shall develop draft implementing technical standards determining:

- a) the format and frequency of the reports for the different classes of derivatives;
- b) the date by which derivatives contracts shall be reported, including any phase in for contracts entered into before the reporting obligation applies.



Article 10

ESMA shall develop draft regulatory technical standards setting:

- a) criteria for establishing which OTC derivative contracts are objectively measurable as reducing risks directly related to the commercial activity or treasury financing activity referred to in paragraph (3);
- b) values of the clearing thresholds. The value of those thresholds shall be determined taking into account the systemic relevance of the sum of net positions and exposures by counterparty and per class of OTC derivatives.

Article 11

ESMA shall draft regulatory technical standards specifying:

- a) the procedures and arrangements referred to in paragraph 1 of Article 11 (timely confirmation, portfolio reconciliation, etc.);
- b) the market conditions that prevent marking-to-market and the criteria for using marking to model;
- c) the details of the exempted intragroup transactions to be included in the notification competent authorities;
- d) the details of the information to be publicly disclosed on exempted intragroup transactions.

Article 18

ESMA shall draft regulatory technical standards specifying:

- a) the conditions under which Union currencies are to be considered as the most relevant for central banks of issue participation in CCP colleges;
- b) the details of practical arrangements for the functioning of the colleges.

Article 25

ESMA shall draft regulatory technical standards specifying the information that the applicant third country CCP shall provide ESMA in its application for recognition.

Article 26

ESMA, in consultation with the members of the ESCB, shall develop draft regulatory technical standards specifying the minimum content of the rules and governance arrangements referred to in paragraphs (1) to (8):

- a) organisational structure, lines of responsibility, internal control mechanisms and administrative and accounting procedures;

- b) effective policies and procedures to ensure compliance with the Regulation;
- c) separation between reporting lines for risk management and other CCP operations;
- d) remuneration policy promoting sound and effective risk management;
- e) information technology to ensure security, integrity and confidentiality of information maintained by the CCP;
- f) disclosure of governance arrangements and governing rules and admission criteria;
- g) independent audits of CCPs.

Article 29

ESMA shall develop draft regulatory technical standards specifying the details of the records and information to be retained by CCPs.

ESMA shall develop draft implementing technical standards to determine the format of the records and information to be retained.

Article 34

ESMA shall, in consultation with the members of the ESCB, develop draft regulatory technical standards specifying the minimum content and requirements of the business continuity policy and of the disaster recovery plan.

Article 41

ESMA shall, after consulting EBA and the ESCB, develop draft regulatory technical standards specifying the appropriate percentage and time horizons for the liquidation period and the calculation of historical volatility to be considered for the different classes of financial instruments taking into account the objective to limit procyclicality and the conditions under which portfolio margining practices can be implemented.

Article 42

ESMA shall, in close cooperation with the ESCB and after consulting EBA, develop draft regulatory technical standards specifying the framework for defining extreme but plausible market conditions that should be used when defining the size of the default fund and of the other financial resources.

Article 44

ESMA shall, after consulting the relevant authorities and the members of the ESCB, develop draft regulatory technical standards specifying the framework for managing the CCP's liquidity risk that a CCP shall withstand.

Article 45



ESMA shall, after consulting the relevant authorities and the members of the ESCB, develop draft regulatory technical standards specifying the methodology for calculation and maintenance of the amount of the CCP's own resources to be used in the default waterfall.

Article 46

ESMA shall, after consulting, EBA, the ESRB and the ECSB develop draft regulatory technical standards specifying the type of collateral that could be considered highly liquid, such as cash, gold, government and high-quality corporate bonds, covered bonds, and the haircuts and the conditions under which commercial bank guarantees may be accepted as collateral.

Article 47

ESMA shall, after consulting EBA and the ESCB, develop draft regulatory technical standards specifying the financial instruments that can be considered highly liquid, bearing minimal credit and market risk, the highly secured arrangements for the deposit of cash and financial instruments and the concentration limits.

Article 49

ESMA shall, after consulting EBA and the ESCB, develop draft regulatory technical standards specifying the following:

- a) the type of tests to be undertaken for different classes of financial instruments and portfolios;
- b) the involvement of clearing members or other parties in the tests;
- c) the frequency of the tests;
- d) the time horizons of the tests;
- e) the key information to be publicly disclosed on the risk management model and assumptions adopted to perform the stress tests.

Article 56

ESMA shall develop draft regulatory technical standards specifying the details of the application for registration to ESMA.

ESMA shall develop draft implementing technical standards determining the format of the application for registration to ESMA.

Article 81

ESMA shall, after consulting the members of the ESCB, develop draft regulatory technical standards specifying the frequency and the details of the information referred to in paragraphs 1 (public disclosure) and 3 (disclosure to relevant authorities) as well as operational standards required in order to aggregate and compare data across repositories and for the entities referred to in paragraph 3 to have access to information as necessary. Those draft regulatory technical standards shall aim to ensure that the information published under paragraph 1 is not capable of identifying a party to any contract.



ANNEX II - Draft regulatory technical standards on OTC derivatives

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

of [date]

supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, risk mitigation techniques for OTC derivatives contracts not cleared by a CCP

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories⁶, and in particular Article 4(4), Article 5(1), Article 6(4), Article 8(5), Article 10(4) and Article 11(14) thereof.

Whereas:

- (1) The provisions in this Regulation are closely linked, since they deal with the clearing obligation, its application, possible exemptions and to risk mitigation techniques that need to be established when clearing with a CCP cannot take place. To ensure coherence between those provisions, which should enter into force at the same time, and to facilitate a comprehensive view and efficient access for stakeholders and in particular those subject to the obligations it is desirable to include most of the regulatory technical standards required under Title II of Regulation (EU) No 648/2012 in a single Regulation.
- (2) In view of the global nature of the OTC derivatives market, this Regulation should take into account the relevant internationally agreed guidelines and recommendations on OTC derivatives market reforms and mandatory clearing as well as the related rules developed in other jurisdictions. This will support, as much as possible, convergence with the approach in other jurisdictions.
- (3) An indirect clearing arrangement should not expose a CCP, clearing member, client or indirect client to additional counterparty risk and the assets and positions of the indirect client should benefit from an appropriate level of protection. It is therefore essential that indirect clearing arrangements provide for specific rights and obligations of parties involved in the arrangement. Such arrangements extend beyond the contractual relationship between indirect clients and the client of a clearing member that provides indirect clearing services.
- (4) Regulation (EU) No 648/2012 requires a CCP to be a designated system under Directive 98/26/EC on settlement finality in payment and securities settlement systems. This implies that clearing members of CCPs should fulfil the requirements to be participants under such a directive. Therefore to ensure an equivalent level of protection to indirect clients as granted to clients under Regulation (EU) No 648/2012, it is necessary to ensure that clients providing

⁶ OJ L 201. 27.7.2012, p. 1.

indirect clearing services are credit institutions, investment firms, or equivalent third country credit institution or investment firm.

- (5) Indirect clearing arrangements should be established so as to ensure that indirect clients can obtain an equivalent level of protection as direct clients in a default scenario. Following the failure of a clearing member that facilitates an indirect clearing arrangement, indirect clients should be included in the transfer of client positions to an alternative clearing member under the portability requirements established by Articles 39 and 48 of Regulation (EU) No 648/2012. Appropriate safeguards against client failure should also exist within indirect clearing arrangements and should support transferring indirect client positions to an alternative provider of clearing services.
- (6) The parties to an indirect clearing arrangement routinely identify, monitor and manage any material risks arising from the arrangement. Appropriate sharing of information between clients that provide indirect clearing services and clearing members that facilitate these services is especially important in this context. Clearing members should use information provided by clients for risk management purposes only and should erect 'Chinese Walls' to prevent the misuse of commercially sensitive information.
- (7) When it authorises a CCP to clear a class of OTC derivatives, the competent authority is required to notify the European Securities and Markets Authority (ESMA). This notification should include detailed information which is necessary for ESMA to carry out its assessment process, including information on liquidity and volume of the relevant class of OTC derivatives. Although the information flows from the competent authority to ESMA, it is the CCP having requested the authorisation that should initially provide the required information to the competent authorities which may then complement it.
- (8) Although all information to be included in the notification from the competent authority to ESMA for the purpose of the clearing obligation may not always be available, especially for new products, estimates that are available should be provided, including a clear indication of the assumptions made. The notification should also contain information pertaining to the counterparties, such as the type and number of counterparties, the steps required to start clearing with a CCP, their legal and operational capacity or their risk management framework in order to allow ESMA to assess the ability of the active counterparties to comply with the clearing obligation without disruption to the market.
- (9) The notification from the competent authority to ESMA should contain information on the degree of standardisation, liquidity and price availability, in order for ESMA to assess whether a class of OTC derivatives should be subject to the clearing obligation. The criteria related to the standardisation of the contractual terms and operational processes of a relevant class of OTC are an indicator of the standardisation of the economic terms of a class of OTC derivatives as it is only when such economic terms are standardised that the contractual terms and operational processes can be standardised. The criteria related to liquidity and price availability are assessed by ESMA with different considerations than the assessment made by the competent authority while authorising the CCP. Liquidity in this context is assessed on a wider perspective and differs from the liquidity after the clearing obligation would apply. In particular, the fact that a contract is sufficiently liquid to be cleared by one CCP does not necessarily imply that it should be subject to the clearing obligation. ESMA's assessment should not replicate or duplicate the review already performed by the competent authority.
- (10) The information to be provided by the competent authority for the purpose of the clearing obligation should enable ESMA to assess the availability of pricing information. In this respect, the access of a CCP to pricing information at one point in time does not mean that market participants could access pricing information in the future. As a result, the fact that a CCP has access to the necessary price information to manage the risks of clearing derivative contracts within a certain class of OTC derivatives, does not automatically imply that this class of OTC derivatives should be subject to the clearing obligation.
- (11) The level of details available in the register of classes of OTC derivative contracts subject to the clearing obligation depends on the relevance of these details to identify each class of OTC

derivative contracts. As a result the level of details in the register may differ for different classes of OTC derivative contracts.

- (12) Allowing access by multiple CCPs to a trading venue could broaden participant access to that venue and therefore enhance overall liquidity. It is necessary in such circumstances to specify the notion of liquidity fragmentation within a venue where it may threaten the smooth and orderly functioning of markets for the class of financial instruments for which the request is made.
- (13) The assessment of the competent authority of the trading venue to which a CCP has requested access and of the competent authority of the CCP should be based on the mechanisms available to prevent liquidity fragmentation within a trading venue.
- (14) To prevent liquidity fragmentation all participants in a trading venue should be able to clear all transactions executed between them. However, it would not be proportionate to require all clearing members of an existing CCP to become also clearing members of any new CCP serving such trading venue. Where there are entities which are clearing members of both CCPs, they may facilitate the transfer and clearing of transactions executed by market participants separately served by the two CCPs, to limit the risk of liquidity fragmentation. Nevertheless, it is important that a request to access a trading venue by a CCP does not fragment liquidity in a manner that would increase the risks to which the existing CCP is exposed.
- (15) A request to access a trading venue by a CCP should not require interoperability and this Regulation does not prescribe interoperability as the way to solve liquidity fragmentation. However, neither should this Regulation preclude such arrangement if the necessary conditions for its establishment are fulfilled.
- (16) In order to establish which OTC derivative contracts objectively reduce risks, counterparties may apply one of the definitions provided in this Regulation including the accounting definition based on International Financial Reporting Standards (IFRS) rules. The accounting definition may be used by counterparties even though they do not apply IFRS rules. For those non-financial counterparties that may use local accounting rules, it is expected that most of the contracts classified as hedging under such local accounting rules would fall within the general definition of contracts reducing risks directly related to commercial activity or treasury financing activity provided for in this Regulation.
- (17) In some circumstances, it may not be possible to hedge a risk by using a directly related derivative contract i.e. a contract with exactly the same underlying and settlement date as the risk being covered. In such case, the non-financial counterparty may use proxy hedging and utilize a closely correlated instrument to cover its exposure such as an instrument with a different but very close underlying in terms of economic behaviour. Those OTC derivative contracts as well as the OTC derivative contracts that certain groups of non-financial counterparties enter into, via a single entity, to hedge their risk in relation to the overall risks of the group, referred to as macro or portfolio hedging, may constitute hedging for the purpose of this Regulation and should be considered against the criteria for establishing which OTC derivative contracts are objectively reducing risks.
- (18) A risk may evolve over time and in order to adapt to the evolution of the risk, OTC derivative contracts initially executed for reducing risk related to commercial or treasury financing activity may have to be offset through the use of additional OTC derivative contracts. As a result, hedging of a risk may be achieved by a combination of OTC derivative contracts including offsetting OTC derivative contracts that close out those OTC derivative contracts that have become unrelated to the commercial or treasury financing risk.
- (19) The range of risks directly related to commercial and treasury financing activities is very wide and varies across different economic sectors. Risks related to commercial activities are typically attached to inputs to the production function of the company as well as products and services that the company sells or provides. Treasury financing activities typically relate to the management of the short and long term funding of the entity, including its debt, and the ways it invests the financial resources it generates or holds, including cash management. Treasury financing and commercial activities can be affected by common sources of risks, like foreign exchange, commodity prices, inflation or credit risk. Given that OTC derivatives are concluded to

hedge a particular risk, when analysing the risks directly related to commercial or treasury financing activities, those risks should be defined in a consistent way covering both activities. In addition, separating the two concepts might have unintended consequences, given that depending on the sector in which non-financial counterparties operate, a particular risk would be hedged under treasury financing or commercial activity.

- (20) While the clearing thresholds should be set taking into account the systemic relevance of the related risks, it is important to consider that the OTC derivatives that reduce risks are excluded from the computation of the clearing thresholds and that the clearing thresholds allow an exception to the principle of the clearing obligation for those OTC derivative contracts which may be considered as not concluded for hedging purpose. More specifically, the value of the clearing thresholds should be reviewed periodically and should be determined by class of OTC derivative contracts. The classes of OTC derivatives determined for the purpose of the clearing thresholds may be different from the classes of OTC derivatives for the purpose of the clearing obligation.
- (21) In setting the value of the clearing thresholds, due consideration was given to the need to define a single indicator reflecting the systemic relevance of the sum of net positions and exposures per counterparty and per asset class of OTC derivatives. Furthermore, the clearing thresholds being used by non-financial counterparties, it should be simple to implement.
- (22) The value of the clearing thresholds should be determined taking into account the systemic relevance of the sum of net positions and exposures per counterparty and per class of OTC derivatives. It should be considered that these net positions and exposures are different from a net exposure across counterparties and across asset class. Furthermore, under Regulation (EU) 648/2012 these net positions should be added up. In addition, the structure of the OTC derivatives activity of non-financial counterparties usually leads to a low level of netting as OTC derivative contracts are concluded in the same direction. As a result, the difference between the sum of the net positions and exposures per counterparty and per class of OTC derivatives would be very close to the gross value of contracts. Therefore, and in order to reach the objective of simplicity, the gross value of OTC derivative contracts should be used as a valid proxy of the measure of be taken into account in the determination of the clearing threshold.
- (23) Given that non-financials that do not exceed the clearing threshold are not required to mark-to-market their OTC derivative contracts, it would not be reasonable to use this measure to determine the clearing thresholds as it would impose a heavy burden on non-financials which would not be proportionate with the risk it would address. Instead, using the notional value of OTC derivative contracts would allow a simple approach which is not exposed to external events for non-financials.
- (24) Given that: i) OTC derivative contracts reducing risks are excluded from the calculation of the clearing threshold; ii) the consequences of exceeding the clearing threshold are not only related to the clearing obligation but extend to risk mitigation techniques; and iii) the approach for the relevant obligations under Regulation (EU) No 648/2012 applicable to non-financials should be simple in view of the non-sophisticated nature of most of them; the excess of one of the values set for a class of OTC derivatives should trigger the excess of the clearing threshold for all classes.
- (25) For those OTC derivative contracts that are not cleared, risk mitigation techniques such as timely confirmation should apply. The confirmation of OTC derivative contracts may refer to one or more master agreements, master confirmation agreements, or other standard terms. It may take the form of an electronically executed contract or a document signed by both counterparties.
- (26) It is essential that counterparties confirm the terms of their transactions as soon as possible following the execution of the transaction, especially when the transaction is electronically executed or processed, in order to ensure common understanding and legal certainty of the terms of the transaction. Counterparties entering into non-standard or complex OTC derivative contracts, in particular, may need to implement tools in order to comply with the requirement to confirm their OTC derivative contracts in a timely manner. The timely confirmation would also anticipate that relevant market practices would evolve in this area.
- (27) To further mitigate risks, portfolio reconciliation enables each counterparty to undertake a comprehensive review of a portfolio of transactions as seen by its counterparty in order to

promptly identify any misunderstandings of key transaction terms. Such terms should include the valuation of each transaction and may also include other relevant details such as the effective date, the scheduled maturity date, any payment or settlement dates, the notional value of the contract and currency of the transaction, the underlying instrument, the position of the counterparties, the business day convention and any relevant fixed or floating rates of the OTC derivative contract.

- (28) In view of the different risk profiles and in order for the portfolio reconciliation to be a proportionate risk mitigation technique, the frequency of the reconciliation and size of the portfolio to consider should be different depending on the nature of the counterparties. More demanding requirements should apply to both financial counterparties and non-financial counterparties that exceed the clearing threshold while lower reconciliation frequency should apply for non-financial counterparties that would not exceed the clearing threshold irrespective of the category of its counterparty who would also benefit from this less frequent reconciliation for that part of its portfolio.
- (29) Portfolio compression may also be an efficient tool for risk mitigation purpose depending on circumstances such as the size of the portfolio with a counterparty, the maturity, purpose and degree of standardisation of OTC derivative contracts. Financial counterparties and non-financial counterparties that have a portfolio of OTC derivative contracts not cleared by a CCP above the level determined in this Regulation should have procedures in order to analyse the possibility to use portfolio compression that would allow them to reduce their counterparty credit risk.
- (30) Dispute resolution aims at mitigating risks stemming from contracts that are not centrally cleared. When entering into OTC derivative transactions with each other, counterparties should have an agreed framework for resolving any related dispute that may arise. The framework should refer to resolution mechanisms such as third party arbitration or market polling mechanism. This framework intends to avoid that unresolved disputes increase and expose counterparties to additional risks. Disputes should be identified, managed and appropriately disclosed.
- (31) For the purpose of specifying market conditions that prevent marking-to-market, it is necessary to specify inactive markets. A market may be inactive for several reasons including when there are no regularly occurring market transactions on an arm's length basis. The notion of "arm's length basis" should be understood as the one used for accounting purpose.
- (32) This Regulation applies to financial counterparties and non-financial counterparties above the clearing threshold. It was developed taking into consideration the Directive 2006/49/EC on capital adequacy of investment firms and credit institutions which also sets requirements to be complied with when marking-to-model.
- (33) Although the design of the model used for the marking-to-model may be developed internally or externally, in order to ensure appropriate accountability, the approval of the model is the responsibility of the board of directors or the delegated committee of such board.
- (34) When counterparties can apply the intragroup exemption following their notification to the competent authorities but without waiting for the end of the non-objection period by such competent authorities, it is important to ensure that the competent authorities get timely appropriate and sufficient information in order to assess whether it should object to the use of the exemption.
- (35) The anticipated size, volumes and frequency of intragroup OTC derivative contracts may be determined on the basis of the historical intragroup transactions of the counterparties as well as the anticipated model and activity expected for the future.
- (36) When counterparties apply an intragroup exemption, they should publicly disclose information in order to ensure transparency vis-a-vis market participants and potential creditors. This is particularly important for the potential creditors of the counterparties in terms of assessing risks. The disclosure would prevent misperception that OTC derivative contracts are centrally cleared or subject to risk mitigation techniques when it is not the case.

- (37) The timeframe to achieve timely confirmation is ambitious. It would require adaptation efforts including changes of market practice and enhancement of IT systems. Given that the pace of adaptation to compliance may differ depending on the category of counterparties and the asset class of OTC derivatives, setting progressive dates of application which cater for these differences would allow enhancing the timeframe of the confirmation for those counterparties and products that could be ready more rapidly.
- (38) The standards set for portfolio reconciliation, portfolio compression or dispute resolution would require counterparties to set up procedures, policies, processes, and amend documentation which would require time. The entry into force of the related requirements should be delayed in order to grant time for the counterparties to take the necessary steps for compliance purposes.
- (39) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority to the Commission.
- (40) In accordance with Article 10 of Regulation (EU) No 1095/2010, ESMA has conducted open public consultations on the draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010.

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL

Article 1

Definitions

For the purpose of this Regulation

- (1) 'indirect client' means the client of a client of a clearing member.
- (2) 'indirect clearing arrangement' means the set of contractual relationships between the CCP, the clearing member, the client of a clearing member and indirect client that allows the client of a clearing member to provide clearing services to an indirect client.
- (3) 'confirmation' means the documentation of the agreement of the counterparties to all the terms of an OTC derivative contract.

CHAPTER II

INDIRECT CLEARING ARRANGEMENTS

(Article 4(3) of Regulation (EU) 648/2012)

Article 1

Structure of indirect clearing arrangements

1. Where a clearing member is prepared to facilitate indirect clearing, any client of such clearing member shall be permitted to provide indirect clearing services to one or more of its own clients, provided that the client of the clearing member is an authorised credit institution, investment firm or an equivalent third country credit institution or investment firm.

2. The contractual terms of an indirect clearing arrangement shall be agreed between the client of a clearing member and the indirect client, after consultation with the clearing member on the aspects that can impact the operations of the clearing member. They shall include contractual requirements on the client to honour all obligations of the indirect client towards the clearing member. These requirements shall refer only to transactions arising as part of the indirect clearing arrangement, the scope of which shall be clearly documented in the agreed contracts.

Article 2

Obligations of CCPs

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

Article 3

Obligations of clearing members

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

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

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

Article 4

Obligations of clients

1. A client that provides indirect clearing services shall keep separate records and accounts that enable it to distinguish between its own assets and positions and those held for the account of its indirect clients. It shall offer indirect clients a choice between the alternative account segregation options described in Article 3(2) and shall ensure that indirect clients are fully informed of the risks associated with each segregation option. The information provided by the client to indirect clients shall include details of arrangements for transferring positions and accounts to an alternative client.
2. A client that provides indirect clearing services shall request the clearing member to open a segregated account at the CCP. The account shall be for the exclusive purpose of holding the assets and positions of its indirect clients.
3. A client shall provide the clearing member with sufficient information to identify, monitor and manage any risks arising from facilitating indirect clearing arrangements. In the event of default of the client, all information held by the client in respect of its indirect clients shall be made immediately available to the clearing member.

CHAPTER III

CLEARING OBLIGATION PROCEDURE

NOTIFICATION TO ESMA

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

Article 5

Details to be included in the notification for the purpose of the clearing obligation

1. The notification shall include the following information:
 - (a) the identification of the class of OTC derivative contracts;
 - (b) the identification of the OTC derivative contracts within the class of OTC derivative contracts;

- (c) the other information to be included in the public register in accordance with Article 7;
 - (d) any further characteristics necessary to distinguish OTC derivative contracts within the class of OTC derivative contracts from OTC derivative contracts outside that class;
 - (e) evidence of the degree of standardisation of the contractual terms and operational processes for the relevant class of OTC derivative contracts;
 - (f) data on the volume of the class of OTC derivative contracts;
 - (g) data on the liquidity of the class of OTC derivative contracts;
 - (h) evidence of availability to market participants of fair, reliable and generally accepted pricing information for contracts in the class of OTC derivative contracts;
 - (i) evidence of the impact of the clearing obligation on availability to market participants of pricing information.
2. For the purpose of assessing the date or dates from which the clearing obligation takes effect, including any phasing-in and the categories of counterparties to which the clearing obligation applies, the notification shall include:
 - (a) data relevant for assessing the expected volume of the class of OTC derivative contracts if it becomes subject to the clearing obligation;
 - (b) evidence of the ability of the CCP to handle the expected volume of the class of OTC derivative contracts if it becomes subject to the clearing obligation and to manage the risk arising from the clearing of the relevant class of OTC derivative contracts, including through client or indirect client clearing arrangements;
 - (c) the type and number of counterparties active and expected to be active within the market for the class of OTC derivative contracts if it becomes subject to the clearing obligation;
 - (d) an outline of the different tasks to be completed in order to start clearing with the CCP, together with the determination of the time required to fulfil each task;
 - (e) information on the risk management, legal and operational capacity of the range of counterparties active in the market for the class of OTC derivative contracts if it becomes subject to the clearing obligation.
 3. The data pertaining to the volume and the liquidity shall contain for the class of OTC derivative contracts and for each derivative contract within the class, the relevant market information, including historical data, current data as well as any change that is expected to arise if the class of OTC derivative contracts becomes subject to the clearing obligation, including:
 - (a) the number of transactions;
 - (b) the total volume;
 - (c) the total open interest;
 - (d) the depth of orders including the average number of orders and of requests for quotes;
 - (e) the tightness of spreads;
 - (f) the measures of liquidity under stressed market conditions;
 - (g) the measures of liquidity for the execution of default procedures.
 4. The information related to the degree of standardisation of the contractual terms and operational processes for the relevant class of OTC derivative contracts provided in paragraph 1 point (e) shall include, for the class of OTC derivative contracts and for each derivative contract within the class, data on the daily reference price as well as the number of days per year with a reference price it considers reliable over at least the previous 12 months.

CHAPTER IV

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

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

Article 6

Criteria to be assessed by ESMA

1. In relation to the degree of standardisation of the contractual terms and operational processes of the relevant class of OTC derivative contracts, ESMA shall take into consideration:
 - (a) whether the contractual terms of the relevant class of OTC derivative contracts incorporate common legal documentation, including master netting agreements, definitions, standard terms and confirmations which set out contract specifications commonly used by counterparties;
 - (b) whether the operational processes of that relevant class of OTC derivative contracts are subject to automated post-trade processing and lifecycle events that are managed in a common manner to a timetable which is widely agreed among counterparties.
2. In relation to the volume and liquidity of the relevant class of OTC derivative contracts, ESMA shall take into consideration:
 - (a) whether the margins or financial requirements of the CCP would be proportionate to the risk that the clearing obligation intends to mitigate;
 - (b) the stability of the market size and depth in respect of the product over time;
 - (c) the likelihood that market dispersion would remain sufficient in the event of the default of a clearing member;
 - (d) the number and the value of the transactions.
3. In relation to the availability of fair, reliable and generally accepted pricing information in the relevant class of OTC derivative contracts, ESMA shall take into consideration whether the information needed to accurately price the contracts within the relevant class of OTC derivative contracts is easily accessible to market participants on a reasonable commercial basis and whether it would continue to be easily accessible if the relevant class of OTC derivative contracts became subject to the clearing obligation.

CHAPTER V

PUBLIC REGISTER

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

Article 7

Details to be included in ESMA's Register

1. The public register shall include for each class of OTC derivative contracts subject to the clearing obligation:
 - (a) the asset class of OTC derivative contracts;
 - (b) the type of OTC derivative contracts within the class;
 - (c) the underlying(s) of OTC derivative contracts within the class;
 - (d) for underlyings which are financial instruments, an indication of whether the underlying is a single financial instrument or issuer or an index or portfolio;
 - (e) for other underlyings an indication of the category of the underlying;
 - (f) the notional and settlement currencies of OTC derivative contracts within the class;
 - (g) the range of maturities of OTC derivative contracts within the class;
 - (h) the settlement conditions of OTC derivative contracts within the class;
 - (i) the range of payment frequency of OTC derivative contracts within the class;
 - (j) the product identifier of the relevant class of OTC derivative contracts;
 - (k) any other characteristic required to distinguish one contract in the relevant class of OTC derivative contracts from another.
2. In relation to CCPs that are authorised or recognised for the purpose of the clearing obligation, the public register shall include for each CCP:
 - (a) the identification code, in accordance with Article 3 of Regulation (EC) No xx/2012 [Commission Regulation endorsing draft implementing technical standards on format of reporting to trade repositories];
 - (b) the full name;
 - (c) the country of establishment;
 - (d) the competent authority designated in accordance with Article 22 of Regulation (EU) No 648/2012.
3. In relation to the dates from which the clearing obligation takes effect, including any phased-in implementation, the public register shall include:
 - (a) the identification of the categories of counterparties to which each phase-in period applies;
 - (b) any other condition required pursuant to the regulatory technical standards adopted under Article 5(2) of Regulation (EU) No 648/2012, in order for the phase-in period to apply.
4. The public register shall include the reference of the regulatory technical standards adopted under Article 5(2) of Regulation (EU) No 648/2012, according to which each clearing obligation was established.
5. In relation to the CCP that has been notified to ESMA by the competent authority, the public register shall include at least:
 - (a) the identification of the CCP;
 - (b) the asset class of OTC derivative contracts that are notified;
 - (c) the type of OTC derivative contracts;
 - (d) the date of the notification;



- (e) the identification of the notifying competent authority.

CHAPTER VI

LIQUIDITY FRAGMENTATION

(Article 8 of Regulation (EU) 648/2012)

Article 8

Specification of the notion of liquidity fragmentation

1. Liquidity fragmentation refers to a situation in which the participants in a trading venue are unable to conclude a transaction with one or more other participants in that venue because of the absence of clearing arrangements to which all participants have access.
2. Access by a CCP to a trading venue which is already served by another CCP does not give rise to liquidity fragmentation within the trading venue if, without the need to impose a requirement on clearing members of the incumbent CCP to become clearing members of the requesting CCP, all participants to the trading venue can clear, directly or indirectly, through one of the following:
 - (a) at least one CCP in common;
 - (b) clearing arrangements established by the CCPs.
3. The arrangements for the fulfilment of the conditions under point (a) or (b) of paragraph 2 shall be established before the requesting CCP starts providing clearing services to the relevant trading venue.
4. Access to a common CCP as referred to in point (a) of paragraph 2 may be established through two or more clearing members, clients or through indirect clearing arrangements.
5. Clearing arrangements referred to in point (b) of paragraph 2 may foresee the transfer of transactions executed by such market participants to clearing members of other CCPs. Without prejudice to the condition in the second subparagraph of Article 8(4) of Regulation (EU) No 648/2012, that access should not require interoperability, an interoperability arrangement which has been agreed by the relevant CCPs and approved by the relevant competent authorities may be used to fulfil the requirement for access to common clearing arrangements.

CHAPTER VII

NON FINANCIAL COUNTERPARTIES

Article 9

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

Criteria for establishing which OTC derivative contracts are objectively reducing risks

1. An OTC derivative contract is objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the non-financial counterparty or of that group, when, whether by itself or in combination with other derivative contracts, and whether directly or through closely correlated instruments, it meets one of the following conditions:
 - (a) it covers the risks arising from the potential change in the value of assets, services, inputs, products, commodities or liabilities that the non-financial counterparty or its group owns, produces, manufactures, processes, provides, purchases, leases, sells or incurs or reasonably anticipates owning, producing, manufacturing, processing, providing, purchasing, merchandising, leasing, selling or incurring in the normal course of its business;
 - (b) it covers the risks arising from the potential indirect impact on the value of assets, services, inputs, products, commodities or liabilities referred to in subparagraph (a), resulting from fluctuation of interest rates, inflation rates, foreign exchange rates or credit risk;
 - (c) it qualifies as a hedging contract pursuant to International Financial Reporting Standards (IFRS) adopted in accordance with Article 3 of Regulation (EC) No 1606/2002.

Article 10

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

Clearing thresholds

The clearing thresholds values shall be:

- (a) EUR 1 billion in gross notional value for OTC credit derivative contracts;
- (b) EUR 1 billion in gross notional value for OTC equity derivative contracts;
- (c) EUR 3 billion in gross notional value for OTC interest rate derivative contracts;
- (d) EUR 3 billion in gross notional value for OTC foreign exchange derivative contracts;
- (e) EUR 3 billion in gross notional value for OTC commodity derivative contracts and other OTC derivative contracts not defined under points (a) to (d).

CHAPTER VIII

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

Article 11

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

Timely confirmation

1. An OTC derivative contract concluded between financial counterparties or non-financial counterparties referred to in Article 10 of Regulation (EU) No 648/2012 and which is not cleared by a CCP shall be confirmed, where available via electronic means, as soon as possible and at the latest:
 - (a) for credit default swaps and interest rate swaps concluded until 28th February 2014, by the end of the second business day following the date of execution of the OTC derivative contract, and thereafter by the end of the next business day following the date of execution;
 - (b) for equity swaps, foreign exchange swaps, commodity swaps and all other derivatives except those in point (a) concluded until 31 August 2013, by the end of the third business day, from then until 31 August 2014 by the end of the second business day following the date of execution of the OTC derivative contract, and thereafter by the end of the next business day following the date of execution.
2. An OTC derivative contract concluded with a non-financial counterparty not referred to in Article 10 of Regulation (EU) No 648/2012, shall be confirmed as soon as possible, where available via electronic means, and at the latest:
 - (a) for credit default swaps and interest rate swaps concluded until 31 August 2013, by the end of the fifth business day, from then until 31 August 2014, by the end of the third business day, and thereafter by the end of the second business day following the date of execution;
 - (b) for equity swaps, foreign exchange swaps, commodity swaps and all other derivatives except those in point (a) concluded until 31 August 2013, the end of the seventh business day, from then until 31 August 2014 the end of the fourth business day, and thereafter by the end of the second business day following the date of execution.
3. Where a transaction referred to in paragraph 1 or 2 is concluded after 16.00 local time, or with a counterparty located in a different time zone which does not allow confirmation by the set deadline, the confirmation shall take place as soon as possible and, at the latest, one business day following the deadline set in paragraph 1 or 2 as relevant.
4. Financial counterparties shall have the necessary procedure to report on a monthly basis to the competent authority designated in accordance with Article 48 of Directive 2004/39/EC the number of unconfirmed OTC derivative transactions referred to in paragraph 1 and 2 that have been outstanding for more than five business days.

Article 12

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

Portfolio reconciliation

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

2. Portfolio reconciliation shall be performed by the counterparties to the OTC derivative contracts with each other, or by a qualified third party duly mandated to this effect by a counterparty. The portfolio reconciliation shall cover key trade terms that identify each particular OTC derivative contract and shall include at least the valuation attributed to each contract in accordance with Article 11(2) of Regulation (EU) No 648/2012.
3. In order to identify at an early stage, any discrepancy in a material term of the OTC derivative contract, including its valuation, the portfolio reconciliation shall be performed:
 - (a) for a financial counterparty or a non-financial counterparty referred to in Article 10 of Regulation (EU) No 648/2012:
 - (i) each business day when the counterparties have 500 or more OTC derivative contracts outstanding with each other;
 - (ii) once per week when the counterparties have between 51 and 499 OTC derivative contracts outstanding with each other at any time during the week;
 - (iii) once per quarter when the counterparties have 50 or less OTC derivative contracts outstanding with each other at any time during the quarter.
 - (b) for a non-financial counterparty not referred to in Article 10 of Regulation (EU) No 648/2012:
 - (i) once per quarter when the counterparties have more than 100 OTC derivative contracts outstanding with each other at any time during the quarter;
 - (ii) once per year when the counterparties have 100 or less OTC derivative contracts outstanding with each other.

Article 13

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

Portfolio compression

Financial counterparties and non-financial counterparties with 500 or more OTC derivative contracts outstanding with a counterparty which are not centrally cleared shall have procedures to regularly, and at least twice a year, analyse the possibility to conduct a portfolio compression exercise in order to reduce their counterparty credit risk and engage in such a portfolio compression exercise. Financial counterparties and non-financial counterparties shall ensure that they are able to provide a reasonable and valid explanation to the relevant competent authority for concluding that a portfolio compression exercise is not appropriate.

Article 14

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

Dispute resolution

1. When concluding OTC derivative contracts with each other, financial counterparties and non-financial counterparties shall have agreed detailed procedures and processes in relation to:
 - (a) the identification, recording, and monitoring of disputes relating to the recognition or valuation of the contract and to the exchange of collateral between counterparties. Those procedures shall at least record the length of time for which the dispute remains outstanding, the counterparty and the amount which is disputed;
 - (b) the resolution of disputes in a timely manner with a specific process for those disputes that are not resolved within five business days.
2. Financial counterparties shall report to the competent authority designated in accordance with Article 48 of Directive 2004/39/EC any disputes between counterparties relating to an OTC derivative contract, its valuation or the exchange of collateral for an amount or a value higher than EUR 15 million and outstanding for at least 15 business days.

Article 15

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

Market conditions that prevent marking-to-market

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

Article 16

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

Criteria for using marking-to-model

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

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

Article 17

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

Details of the intragroup transaction notification to the competent authority

1. The application or notification shall be in writing and shall include:
 - (a) the legal counterparties to the transactions including their identifiers in accordance with Article 3 of Regulation (EC) No xx/2012 [Commission regulation endorsing draft implementing technical standards on format of reporting to trade repositories];
 - (b) the corporate relationship between the counterparties;
 - (c) details of the supporting contractual relationships between the parties;
 - (d) the category of intragroup transaction met by the counterparties as determined by Article 3 paragraphs 1 and 2 of Regulation (EU) No 648/2012;
 - (e) details of the transactions for which the counterparty is seeking the exemption, including:
 - (i) the asset class of OTC derivative contracts;
 - (ii) the type of OTC derivative contracts;
 - (iii) the type of underlyings;
 - (iv) the notional and settlement currencies;
 - (v) the range of contract tenors;
 - (vi) the settlement type;
 - (vii) the anticipated size, volumes and frequency of OTC derivative contracts per annum.
2. As part of its application or notification to the relevant competent authority a counterparty shall also submit supporting information evidencing that the conditions of Article 11 paragraphs 6 to 10 of Regulation (EU) No 648/2012 are fulfilled. The supporting documents shall include copies of documented risk management procedures, historical transaction information, copies of the relevant contracts between the parties and may include a legal opinion upon request from the competent authority.

Article 18

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

Details of the intragroup transaction notification to ESMA

1. The notification by a competent authority shall be submitted to ESMA in writing:
 - (a) within 1 month of the receipt of the notification with respect to a notification under Article 11(7) or Article 11(9) of Regulation (EU) No 648/2012;



- (b) within 1 month from the decision being submitted to the counterparty with respect to a decision of the competent authority under Articles 11(6), 11(8) or 11(10) of Regulation (EU) No 648/2012.

2. The notification to ESMA shall include:

- (a) the information listed in Article 17;
- (b) whether there is a positive or a negative decision;
- (c) In case of a positive decision:
 - (i) a summary of the reason for considering that the conditions set in Article 11(6), 11(7), 11(8), 11(9) or 11(10) of Regulation (EU) No 648/2012 as applicable are fulfilled;
 - (ii) whether the exemption is a full exemption or a partial exemption with respect to of a notification related to Articles 11(6), 11(8) or 11(10) of Regulation (EU) No 648/2012.
- (d) In the case of a negative decision:
 - (i) the identification of the conditions of Article 11(6), 11(7), 11(8), 11(9) or 11(10) of Regulation (EU) No 648/2012 as applicable that are not fulfilled;
 - (ii) a summary of the reason for considering that such conditions are not fulfilled.

Article 19

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

Information on the intragroup exemption to be publicly disclosed

The public disclosure of an intragroup exemption shall contain:

- (a) the legal counterparties to the transactions including their identifiers in accordance with Article 3 of Regulation (EC) No xx/2012 [Commission regulation endorsing draft implementing technical standards on format of reporting to trade repositories];
- (b) the relationship between the counterparties;
- (c) whether the exemption is a full exemption or a partial exemption;
- (d) the notional aggregate amount of the OTC derivative contracts for which the intragroup exemption applies.

Article 20

Entry into force

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



It shall apply from the twentieth day following that of its publication in the *Official Journal of the European Union*. However, Article 12, Article 13 and Article 14 shall apply from 6 months following the entry into force 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]*

*[For the Commission
On behalf of the President]*

[Position]

[Position]

ANNEX III - Draft regulatory technical standards on colleges for CCPs

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

of [date]

supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 with regard to regulatory technical standards on colleges for central counterparties

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories⁷, and in particular Article 18(6), thereof,

Whereas:

- (1) In order to ensure a consistent and coherent functioning of colleges across the Union it is necessary to specify the arrangements for the participation in the colleges for CCPs to facilitate the exercise of the tasks specified in Regulation (EU) No 648/2012.
- (2) The exclusion of a central bank of issue of a relevant Union currency of financial instruments cleared in the CCP does not affect the rights of such central bank of issue to request and receive information in accordance with Article 18(3) and Article 84 of Regulation (EU) No 648/2012.
- (3) The activity of a CCP may be relevant for a particular central bank of issue in view of the volumes cleared in the currency issued by such central bank. However, the relevance of a currency for the participation of a central bank of issue in the college of the CCP should be determined by the share represented by that currency from among the CCP's average open cleared positions, in order to maintain a proportionate size of the college.
- (4) To ensure college meetings achieve an effective result, the objectives of any meeting or activity of the college should be clearly identified by the competent authority of the CCP, in consultation with the college members. Those objectives should be circulated well in advance to the participants together with documentation prepared by the CCP's competent authority or by other members of the college, so as to create effective discussion.
- (5) The function of colleges is to facilitate the exercise of the tasks specified in Regulation (EU) No 648/2012. However, for the practical functioning of a college a written agreement should be made between the members of that college, in order to allow the college to proceed with its tasks, the functioning of the college should not be unduly delayed by the formal execution of the agreement by every authority listed in Article 18(2) of Regulation (EU) No 648/2012 before being able to proceed with its tasks.
- (6) To ensure the timely and up to date exchange of information amongst college members, the college should meet regularly and allow the opportunity for college members to discuss and provide input to the competent authority's review of the arrangements, strategy, process and mechanism employed by the CCP to comply with Regulation (EU) No 648/2012, as well as to discuss the competent authority's evaluation of the risks to which the CCP is, or may be, exposed and that it could pose.

⁷ OJ L 201. 27.7.2012, p. 1.

- (7) ESMA should, as part of its general co-ordination role, seek to identify and promulgate best practice on college operations to ensure consistent practical arrangements operate for colleges across the Union.
- (8) To ensure all the views of the college members are duly taken into account, the competent authority should do its utmost to ensure that any disagreement among authorities that have a right to become members of a college are resolved before finalising the written agreement for the establishment and functioning of the college. ESMA should facilitate the finalisation of the agreement through its mediation role, where appropriate.
- (9) In order for college members to be able to consider effectively and reach a joint opinion on a risk assessment of the CCP, it is necessary that practical arrangements concerning the contents of the risk assessment be provided.
- (10) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.
- (11) ESMA has consulted, where relevant, the European Banking Authority (EBA), the European Systemic Risk Board and the members of the European System of Central Banks (ESCB) before submitting the draft technical standards on which this Regulation is based. In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and the Council of 24 November 2012 establishing a European Supervisory Authority (European Securities and Markets Authority)⁸, ESMA has conducted open public consultations on such draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010.

HAS ADOPTED THIS REGULATION:

Article 1

Determination of most relevant currencies

1. The most relevant Union currencies shall be identified on the basis of the relative share of each currency in the CCP's average end-of-day open positions across all financial instruments cleared by the CCP, calculated over a period of one year.
2. The most relevant Union currencies shall be the three currencies with the highest relative share calculated in accordance with paragraph 1 provided that each individual share exceeds 10%.
3. The calculation of the relative share of the currencies shall be calculated on an annual basis.

Article 2

The operational organisation of colleges

1. The CCP's competent authority shall draft a proposal for the written agreement under Article 18(5) of Regulation (EU) No 648/2012 and circulate it for discussion to the authorities listed in Article 18(2) of Regulation (EU) No 648/2012. The CCP's competent authority shall subsequently revise the proposal and propose a final draft agreement to such authorities. That written agreement shall include a process for annual review. It shall also include an amendment process whereby changes may be initiated at any time by the CCP's competent authority or by other members of the college, subject to approval by the college.

⁸ OJ L 331, 15.12.2010 p. 84

2. The authorities listed in Article 18(2) of Regulation (EU) No 648/2012 shall become members of the college as of the date of signature of the written agreement. The college may proceed with its operations in advance of obtaining the signature of every authority listed in Article 18(2) of Regulation (EU) No 648/2012 to the extent that the voting procedures specified in Article 19(3) of Regulation (EU) No 648/2012 can be implemented.

Article 3

Membership and participation in the colleges

1. Where a request for information is made to a college by a competent authority of a Member State which is not a member of the college in accordance with Article 18(3) of Regulation (EU) No 648/2012, the CCP's competent authority, after having consulted the college, shall decide on the most appropriate way to provide and request information to and from the authorities that are not members of the college.
2. Each member of the college shall designate one participant to attend the meetings of the college and may designate one alternate, with the exception of the CCP's competent authority which may require additional participants who shall have no voting rights.
3. Where the central bank of issue of one of the most relevant Union currencies corresponds to more than one central bank, the relevant central banks shall determine the single representative who will participate in the college.
4. Where an authority has the right to participate in the college under more than one of points (c) to (h) of Article 18 (2) of Regulation (EU) No 648/2012, it may nominate additional participants who shall have no voting rights.
5. Where in accordance with this Article there is more than one participant from a college member, or there are more college members belonging to the same Member State than number of votes that can be exercised by those college members in accordance with Article 19(3) of Regulation (EU) No 648/2012, that college member or those college members shall inform the college which participants shall exercise voting rights.

Article 4

Governance of the colleges

1. The CCP's competent authority shall ensure that the work of the college facilitates the tasks to be performed according to Articles 15, 17, 49, and 54 of Regulation (EU) No 648/2012.
2. The college shall notify ESMA of any tasks that the college wishes or is required to perform in addition to paragraph 1. ESMA shall have a coordination role in monitoring the tasks performed by a college and shall ensure that its objectives are in line with those of other colleges as far as possible.
3. The CCP's competent authority, shall at least ensure that:
 - (a) the objectives of any meeting or activity of the college are clearly identified;
 - (b) the college meetings or activities remain effective, while ensuring that all college members are fully informed of the college activities that are relevant to them;
 - (c) the timetable for meetings or activities of the college is defined so that their outcome provides assistance to the supervision of the CCP;

- (d) the CCP and other key stakeholders have a clear understanding of the role and functioning of the college;
 - (e) the activities of the college are regularly reviewed and remedial action is taken if the college is not operating effectively;
 - (f) the agenda is set for an annual crisis management planning meeting amongst members of the college in cooperation with the CCP if necessary.
4. To ensure the efficiency and effectiveness of the college, the CCP's competent authority shall act as a central point of contact for any matter related to the practical organisation of the college. The CCP's competent authority shall ensure that the following tasks are at least performed:
- (a) draw-up, update and circulate the contact list of college members;
 - (b) circulate the agenda as well as documentation for meetings or activities of the college;
 - (c) record minutes of the meetings and formalise action points;
 - (d) manage the college website or other electronic information-sharing mechanism, if any;
 - (e) where practical, provide information and specialised teams where appropriate, to assist the college in its tasks;
 - (f) share information in an appropriate manner among members of the college.
5. The frequency of college meetings shall be determined by the CCP's competent authority having regard to the CCP's size, nature, scale and complexity, the systemic implications of the CCP across jurisdictions and currencies, the potential impacts of the activities of the CCP, external circumstances and potential requests by college members. There shall be at least an annual meeting of the college and if deemed necessary by the CCP's competent authority, a meeting each time that a decision needs to be taken under Articles 15, 17, 49, and 54 of Regulation (EU) No 648/2012. The CCP's competent authority shall organise, periodically, meetings between members of the college and the senior management of the CCP.

Article 5

Exchange of information among authorities

1. Each member of a college shall provide, in a timely manner, the CCP's competent authority with all information necessary for the operational functioning of the college and for the performance of the key activities in which the member participates. The CCP's competent authority shall provide the members of the college with similar information in a timely manner.
2. The CCP's competent authority shall at least provide the following information to the college:
 - (a) significant changes to the structure and ownership of the CCP's group;
 - (b) significant changes in the level of the CCP's capital;
 - (c) changes in the organisation, senior management, processes or arrangements when those changes have a significant impact on governance or risk management;
 - (d) a list of clearing members of the CCP;

- (e) details of the authorities involved in the supervision of the CCP, including any changes in their responsibilities;
 - (f) information on any material threats to the CCP's ability to comply with Regulation (EU) No 648/2012 and relevant delegated and implementing regulations;
 - (g) difficulties that have potentially significant spill-over effects;
 - (h) factors which suggest a potentially high risk of contagion;
 - (i) significant developments in the financial position of the CCP;
 - (j) early warnings of possible liquidity difficulties or, major fraud;
 - (k) events of member default and any follow-up actions;
 - (l) sanctions and exceptional supervisory measures;
 - (m) reports on performance problems or incidents occurred and remedial actions taken;
 - (n) regular data on the activity of the CCP, the scope and frequency of which shall be agreed as part of the written agreement described in Article 2;
 - (o) overview of major commercial proposals, including new products or services to be offered;
 - (p) changes in the CCP's risk model, stress testing and back testing;
 - (q) changes in the CCP's interoperability arrangements, where applicable.
3. The exchange of information between the members of the college shall reflect their responsibilities and information needs. To avoid unnecessary information flows, the exchange of information shall be kept proportionate and risk-focused.
 4. Authorities which receive confidential information from the college shall ensure that it is only used in the course of their duties in accordance with Article 84 (2) of Regulation (EU) No 648/2012.
 5. The members of the college shall consider the most effective ways of communicating information to ensure continuous, timely and proportionate exchange of information.

Article 6

Voluntary sharing and delegation of tasks

1. College members shall agree upon detailed terms of any specific delegation arrangements and arrangements for the voluntary entrustment of tasks to other members, in particular in the case of delegations which will result in the delegation of a member's main supervisory tasks.
2. Parties to specific delegation arrangements and arrangements for the voluntary entrustment of tasks shall agree on detailed terms which cover at least the following topics:
 - (a) the specific activities in clearly specified areas that will be entrusted or delegated;
 - (b) the procedures and processes to be applied;
 - (c) the role and the responsibilities of each party;
 - (d) the type of information to be exchanged among the parties.

3. The sharing and delegation of tasks shall not purport to result in a change in the allocation of the decision-making power of the CCP's competent authority.

Article 7

Opinion of the college

1. The risk assessment report to be prepared by a CCP's competent authority in accordance with Article 19(1) of Regulation (EU) No 648/2012 shall contain, at least, the key risks that the CCP is exposed to and how the CCP proposes to mitigate these risks.
2. The report shall be submitted to the college within an appropriate timescale to ensure that college members are able to review it and contribute to it if required.
3. The written agreement referred to in Article 2 shall specify a quorum for meetings of the college.
4. The CCP's competent authority shall endeavour to ensure that each college meeting has a quorum. In the case that a quorum is not met, the chair shall ensure that any decisions that need to be taken are postponed until a quorum is present.

Article 8

Entry into force

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

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

Done at Brussels, []

[For the Commission
The President]

[On behalf of the President]

[Position]

ANNEX IV - Draft regulatory technical standards on CCP requirements

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

of [date]

supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 with regard to regulatory technical standards on requirements for central counterparties

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories⁹, and in particular Article 25(8), Article 26(9), Article 29(4), Article 34(3), Article 41(5), Article 42(5), Article 44(2), Article 45(5), Article 46(3), Article 47(8) and Article 49(4) thereof,

Whereas:

- (1) The provisions in this Regulation are closely linked, since they deal with organisational requirements, including record keeping and business continuity, and prudential requirements, including in relation to margins, the default fund, liquidity risk controls, the default waterfall, collateral, investment policy, review of models, stress testing and back testing. To ensure coherence between those provisions, which should enter into force at the same time, and to facilitate a comprehensive view and compact access to them by persons subject to those obligations it is desirable to include all the regulatory technical standards required under Title III and Title IV of Regulation (EU) No 648/2012 in a single Regulation.
- (2) In view of the global nature of financial markets, this Regulation should take into account the CPSS-IOSCO Principles for Financial Market Infrastructures which serve as a global benchmark for regulatory requirements for CCPs.
- (3) To ensure that CCPs are safe and sound in all market conditions, it is important that CCPs adopt prudent risk management procedures which duly cover all the risks CCPs are or may be exposed to. In this respect, the risk management standards actually implemented by CCPs should be more stringent than those set forth in this Regulation if for risk management purposes it is deemed appropriate.
- (4) It is important to ensure that recognised third country CCPs do not disrupt the orderly functioning of Union markets or have a competitive advantage over authorised CCPs. The information to be provided to ESMA concerning the recognition of a third country CCP should enable ESMA to assess whether that CCP is in full compliance with the prudential requirements applicable in that third country. In addition, the equivalence determination by the Commission should ensure that the laws and regulations of the third country are equivalent to every provision under Title IV of Regulation (EU) No 648/2012 and of this Regulation.
- (5) To ensure an adequate level of investor protection, in the recognition of third country CCPs ESMA may require additional information to the one strictly necessary to assess that conditions established in Regulation (EU) No 648/2012 are fulfilled.

⁹ OJ L 201. 27.7.2012, p. 1.

- (6) The on-going assessment of the full compliance of the third country CCP with the prudential requirements of such third country is the duty of the third country competent authority. The information to be provided to ESMA by the applicant third country CCP should not have the objective of replicating the assessment of the third country competent authority, but ensuring that the CCP is subject to effective supervision and enforcement in the third country, thus guaranteeing a high degree of investor protection.
- (7) To allow ESMA to perform a complete assessment, the information provided by the applicant third country CCP should be complemented by that information necessary to assess the effectiveness of the on-going supervision, enforcement powers and actions taken by the third country competent authority. Such information should be provided under the cooperation arrangement established in accordance with Regulation (EU) No 648/2012. Such cooperation arrangement should ensure that ESMA is informed in a timely manner of any supervisory or enforcement action against the CCP applying for recognition and any change of the conditions under which authorisation was granted to the relevant CCP on any relevant update of the information originally provided by the CCP under the recognition process.
- (8) The requirements of Regulation (EU) No 648/2012 relating to internal risk reporting lines need further specification to implement a risk-management framework, which includes the structure, rights and responsibilities of the internal risk management process. Governance arrangements should take into account different regimes on corporate law in the Union, in order to ensure that CCPs operate within a sound legal framework.
- (9) To ensure that a CCP implements the appropriate procedures to comply with this Regulation, Regulation (EU) No 648/2012 and Regulation (EC) No xx/xxxx [Commission regulation endorsing draft implementing technical standards on record keeping], the role and responsibilities of a compliance function of a CCP should be specified.
- (10) It is necessary to clearly define the responsibilities of the board and the senior management as well as to specify minimum requirements for the functioning of the board in order to ensure that the organisational structure of a CCP enables it to perform its services and activities in a continuous and orderly manner.
- (11) In order to ensure the sound and prudent management of a CCP, it is important that its remuneration policy dis-incentivises excessive risk taking. For the remuneration policy to produce the intended effects, it should be adequately monitored and reviewed by the board that should set-up a specific committee to appropriately oversee the fulfilment remuneration policy.
- (12) To ensure that: i) CCPs operate with the necessary level of human resources to meet all of their obligations; ii) CCPs are accountable for the performance of their activities; and iii) competent authorities have the relevant contact points within the CCPs they supervise, CCPs should have at least a chief risk officer, a chief compliance officer and chief technology officer.
- (13) CCPs should adequately assess and monitor the extent to which board members that sit on the boards of different entities have conflicts of interest, whether within or outside the group of the CCP. Board members should not be prevented from sitting on different boards unless this gives rise to conflicts of interest.
- (14) In order to have an effective audit function, a CCP should define the responsibilities and reporting lines of its internal auditors, to ensure that issues are taken before the board of the CCP and to the competent authorities in a timely manner. When establishing and maintaining an internal audit function, its mission, independence and objectivity, scope and responsibility, authority, accountability and standards of operation should be clearly defined.
- (15) To carry out its duties effectively, the relevant competent authority should be provided with access to all necessary information to determine whether the CCP is in compliance with its conditions of authorisation. Such information should be made available by the CCP without undue delay.
- (16) Records kept by CCPs should facilitate a thorough knowledge of CCPs' credit exposure towards clearing members and allow monitoring of the implied systemic risk. They should also enable competent authorities, ESMA and the relevant members of the ESCB to adequately re-construct the clearing process, in order to assess compliance with regulatory requirements including reporting requirements. Once recorded, that data is also useful for CCPs in meeting regulatory requirements and obligations towards clearing members and in disputes.

- (17) Data reported by CCPs to trade repositories should be recorded so as to empower competent authorities to verify the compliance of CCPs with the reporting obligation set out in Regulation (EU) No 648/2012 and to easily access information in cases where this cannot be found in trade repositories.
- (18) The record-keeping requirements in relation to trades should make use of the same concepts used in the reporting obligation set out in Article 9 of Regulation (EU) No 648/2012, in order to ensure appropriate reporting by CCPs.
- (19) To ensure business continuity in times of disruption, the secondary processing site of the CCP should be located sufficiently distant and in a sufficiently geographically distinct location from the primary site so that it would not be subject to the same disaster which may cause the unavailability of the primary site. Scenarios should be created to analyse the impact of crisis events on critical services, including scenarios which envisage the unavailability of systems caused by a natural disaster. Those analyses should be reviewed periodically.
- (20) CCPs are systemically relevant financial market infrastructures and they should recover critical functions within two hours, with backup systems ideally starting processing immediately after an incident. CCPs should also ensure with very high probability that no data will be lost
- (21) It is important that the default of a clearing member does not cause significant losses to other market participants. Therefore, CCPs are required to cover through margins posted by the defaulter, at least, a relevant proportion of the possible loss that during the close out process the CCP might have. Rules should determine the minimum percentage the margins should cover for different classes of financial instruments. Furthermore, CCPs should follow principles to adequately tailor their margin levels to the characteristics of each financial instrument or portfolio they clear.
- (22) CCPs should not reduce their margins to a level that compromises their safety as a result of the existence of a highly competitive environment. For this reason, margin calculations should follow some specific requirements in their basic components. In this sense, margins should take into account a full range of market conditions including periods of stress.
- (23) This regulation specifies the appropriate percentage and time horizons for the liquidation period and the calculation of historical volatility. However, in order to ensure that CCPs duly manage the risk they face, this regulation does not specify the approach which the CCP should take to calculating margin requirements from these parameters. For the same reasons, CCPs should not be prevented to rely on various reliable methodological approaches for the development of portfolio margining, they should be allowed to rely on methods based on correlations between price risk of the financial or set of financial instrument they clear, as well as any appropriate methods based on equivalent statistical of dependence.
- (24) To determine the period of time during which a CCP is exposed to market risk related to the management of a defaulter's position, the CCP should consider the relevant characteristics of the financial instruments or portfolio cleared, such as their level of liquidity and the size of the position or its concentration. CCPs should prudently evaluate the time required for the complete closure of a defaulter's position since the last collection of margins, the size of the position and its concentration.
- (25) In order to avoid causing or exacerbating financial instability, CCPs should, to the maximum extent practical, adopt forward-looking margin methodologies that limit the likelihood of procyclical changes in margin requirements, without undermining the resilience of the CCP.
- (26) A higher confidence interval for OTC derivatives is typically justified because these products can suffer from less reliable pricing and shorter runs of historical data on which to base exposure estimations. CCPs might clear OTC derivatives that do not suffer from these phenomena and have the same risk characteristics as listed derivatives and they should be able to clear these products consistently irrespective of the execution method.
- (27) A suitable definition of extreme but plausible market conditions is a core component of CCP risk management. For the purposes of keeping the CCP risk management framework up to date, extreme but plausible market conditions should not be considered as a static concept, but rather as conditions that evolve over time and vary across markets. One market scenario can be extreme but plausible for one CCP while not having great importance for another. A CCP should establish a robust internal policy framework for identifying the markets to which it is exposed and employ

a common minimum set of standards for defining extreme but plausible conditions in each identified market. It should also consider objectively the potential for simultaneous pressures in multiple markets.

- (28) To ensure appropriate and robust governance arrangements are in place, the framework used by a CCP to identify extreme but plausible market conditions should be discussed by the risk committee and approved by the board. It should be reviewed at least annually, with results discussed by the risk committee and then shared with the board. The review should ensure that changes to the scale and concentration of the CCP's exposures as well as developments in the markets in which it operates are reflected in the definition of extreme but plausible market conditions. This review should not, however, be a substitute for continuous judgment by the CCP on the adequacy of its default fund in light of evolving market conditions.
- (29) To ensure efficient management of their liquidity risk, CCPs should be required to establish a liquidity risk management framework. That framework should depend on the nature of its obligations and address the tools a CCP has available for assessing the liquidity risk it is facing, determining the liquidity pressures likely to occur and ensuring the adequacy of its liquid resources.
- (30) In assessing the adequacy of its liquid resources, a CCP should be required to consider the size and liquidity of the resources it holds, as well as the possible concentration risk of these assets. It is important that CCPs are able to identify all major kinds of liquidity risk concentrations within their resources so that the CCP's liquidity resources are immediately available when necessary. CCPs should also consider additional risks stemming from multiple relationships, interdependencies and concentrations.
- (31) As liquidity has to be readily available for same day transactions or even intra-day transactions, a CCP might employ: i) cash at the central bank of issue; ii) cash at creditworthy commercial banks; iii) committed lines of credit; iv) committed repos; v) highly marketable collateral held in custody and vi) investments that are readily available and convertible into cash with prearranged and highly reliable funding arrangements, even in stressed market conditions. Such cash and collateral should only be counted as part of prearranged liquid financial resources under certain conditions.
- (32) In order to provide the necessary incentive to the CCP to set prudent requirements and to keep this amount to an adequate level while avoiding regulatory arbitrage, it is important to establish a common methodology for the calculation and the maintenance of a specific amount of the dedicated own resources that a CCP should maintain to be used in the default waterfall. It is essential to keep those resources covering default losses separate and with a distinct function from the CCP's minimum capital requirements which cover different risks to which a CCP might be exposed.
- (33) It is important that CCPs apply a consistent methodology for the calculation of the own resources to be used in the default waterfall, in order to ensure equivalent conditions field between CCPs. Allowing CCPs discretion to implement a methodology that is insufficiently clear would lead to very different results among CCPs, thus incentivising regulatory arbitrage. It is therefore essential that the methodology does not allow for discretion to CCPs. For this purpose, it would be appropriate to have a simple percentage on a clearly identifiable measure clear methodology for ensuring a consistent calculation of CCPs' own resources to be used in a default waterfall.
- (34) A minimum set of criteria should be laid down to ensure that acceptable collateral is highly liquid and can be converted into cash rapidly and with minimal price impact. Those criteria should refer to the issuer of the collateral, the extent to which it can be liquidated in the market and whether its value is correlated with the credit standing of the member posting the collateral to cater for possible wrong-way risk. A CCP should have the option to apply additional criteria where necessary to achieve the desired level of robustness.
- (35) CCPs should only accept highly liquid collateral with minimal credit and market risk. In determining their policies on eligible collateral and concentration limits they should take in account the global availability of such collateral in view of the potential macro-economic effects of their policies.
- (36) To avoid wrong-way risk, clearing members should not, in general, be permitted to use as collateral their own securities or securities issued by an entity from their same group. However, a CCP should be able to allow clearing members to post covered bonds that are insulated from the

insolvency of the issuer. The underlying collateral should nevertheless be appropriately segregated from the issuer and satisfy the minimum criteria for acceptable of collateral. A clearing member should not issue financial instruments for the primary purpose of using them as collateral by another clearing member.

- (37) To ensure the safety of CCPs, a CCP should accept as collateral a commercial bank guarantee only after a thorough assessment of the issuer and of the legal, contractual and operational framework of the guarantee. Unsecured exposures of CCPs to commercial banks should be avoided. Therefore, commercial bank guarantees may be accepted only under strict conditions. These conditions are generally met in markets characterised by a high concentration of commercial banks willing to provide credit to non-financial clearing members. For this reason a higher concentration limit in these cases should be permitted in these cases.
- (38) To limit its market risk, a CCP should be required to value its collateral at least daily. It should apply prudent haircuts that reflect the potential decrease of value of the collateral over the interval between its last revaluation and the time by which the collateral can reasonably be assumed to be liquidated under stressed market conditions. The level of collateral should also take account of potential wrong-way risk exposures.
- (39) The implementation of haircuts should enable the CCP to avoid large and unexpected adjustments to the amount of collateral required, thus avoiding, to the extent possible, procyclical effects.
- (40) A CCP should not concentrate collateral on a limited number of issuers or in a limited number of assets, so as to avoid potential significant adverse price effects in case of liquidation of the collateral in a short period of time. Concentrated collateral positions should not be considered highly liquid for this reason.
- (41) Liquidity, credit and market risk should be considered at portfolio level as well as at the level of an individual financial instrument. A concentrated portfolio can have a significant negative effect on the liquidity of the collateral or of the financial instruments in which the CCP can invest its financial resources, since selling large positions in stressed market conditions is unlikely to be feasible without depressing the market price. For the same reason, collateral maintained by the CCP should be monitored and valued on a continuous basis to ensure that it remains liquid.
- (42) Energy derivative markets show a particularly strong interlink with spot commodity markets and in these derivative markets the proportion of non-financial clearing members is high. In these markets, a significant number of market participants are also producers of the underlying commodity. Access to sufficient collateral to back commercial bank guarantees in full could require substantial divesting by those non-financial clearing members of their current positions or could impede them from continuing to clear their positions as a direct clearing member of a CCP. That process, if introduced immediately after this Regulation enters into force, could cause market disruptions in energy markets, in terms of liquidity and diversity of market participants. In order to ensure a consistent application of the framework established in Regulation (EU) No 648/2012, all sectors should face similar requirements in the final form of the rules applicable to them. Energy firms currently operate under a well-established framework that will require time to adapt to the new requirements established under this Regulation to avoid detrimental effects to the real economy. Therefore, it is considered desirable to establish an application date for this type of markets that allows an appropriate transition from the current market practice without affecting unduly market structure and liquidity.
- (43) The investment policy of a CCP should assign the highest priority to the principles of capital preservation and liquidity maximisation. The investment policy should also ensure that no conflicts of interest arise with the commercial interests of the CCP.
- (44) The criteria that financial instruments should meet to be considered eligible investments for the CCP, should take into account Principle 16 of the CPSS-IOSCO Principles for Financial Market Infrastructure in order to ensure international consistency. In particular, a CCP should be required to apply restrictive standards concerning the issuer of the financial instrument, the transferability of the financial instrument and the credit, market, volatility and foreign exchange risk of the financial instrument. A CCP should ensure that it does not undermine measures taken to limit the risk exposure of its investments by having excessive exposures to any individual financial instrument, type of financial instrument, individual issuer, type of issuer or individual custodian.

- (45) The use of derivatives by a CCP exposes it to additional credit and market risks and it is therefore necessary to define a restrictive set of circumstances in which a CCP can invest its financial resources in derivatives. Given that a CCP's aim should be to have a flat position with regards to market risk, the only risks that a CCP should need to hedge are those concerning the collateral that it accepts or the risks arising from the default of a clearing member. Risks concerning the collateral that a CCP accepts can be sufficiently managed through haircuts and it is not considered necessary for a CCP to use derivatives in this regard. Derivatives should only be used by a CCP for managing liquidity risk arising for exposures to different currencies and for the purposes of hedging the portfolio of a defaulted clearing member and only where the CCP's default management procedures envisage such use.
- (46) To ensure the safety of CCPs, they should only be allowed to maintain cash in unsecured deposits in minimal proportions. In securing its cash, CCPs should always ensure that they are always adequately protected against liquidity risk.
- (47) It is necessary to set out rigorous stress and back testing requirements to ensure that a CCP's models, their methodologies and the liquidity risk management framework work properly, taking into account all risks the CCP is exposed to, so that the CCP has at all times adequate resources to cover those risks.
- (48) To ensure consistent application of requirements for CCPs, it is necessary to set out detailed provisions with respect to the types of tests to be undertaken, including both stress and back testing. In order to cater for the wide range of security and derivative contracts which may be cleared in the future, reflect differences in CCP's business and risk management approaches, allow for future developments and new risks to be dealt with and allow for sufficient flexibility, a criteria based approach is necessary.
- (49) In validating a CCP's models, their methodologies and the liquidity risk management framework it is important to use an appropriate independent party so that any necessary corrective measures can be found and addressed before implementation and to avoid any material conflicts of interest. The independent party should be sufficiently separate from the part of the CCP's business that develops, implements and will operate the model or policies being reviewed and should not hold a material conflict of interest. This could either be an internal party that has separate reporting lines or an external party.
- (50) Various aspects of a CCP's financial resources, notably margin coverage, default funds and other financial resources, are designed to cover different scenarios and objectives. It is therefore necessary to provide specific requirements to reflect these objectives and to ensure consistent application across CCPs. In assessing the necessary coverage the CCP should not net off any exposures between defaulting clearing members, in order to avoid reducing the potential impacts that these exposures might have.
- (51) The different types of financial instruments which a CCP may clear are subject to a variety of specific risks. A CCP should therefore be required to consider all the risks relevant to the markets it provides clearing services for in its models, their methodologies and the liquidity risk management framework to ensure it adequately measures its potential future exposure. In order for such risks to be properly considered, stress testing requirements should include instrument-specific risks relevant to different types of financial instruments.
- (52) For a CCP to ensure that its model for calculating initial margins adequately reflects its potential exposures, in addition to the daily back testing of its margin coverage which looks at the adequacy of the margin being called, it should also back test key parameters and assumptions of the model. This is essential to ensure that CCPs' models calculate initial margin accurately.
- (53) Rigorous sensitivity analysis of margin requirements may take on increased importance when markets are illiquid or volatile and should be used to determine the impact of varying important model parameters. Sensitivity analysis is an effective tool to explore hidden shortcomings that cannot be discovered through back testing.
- (54) Failure to conduct stress and back tests regularly could lead to a CCP's financial and liquid resources being inadequate to cover the actual risks it is exposed to. Appropriate tests will also allow a CCP's models, their methodologies and the liquidity risk management framework to deal with changing markets and new risks promptly.

- (55) Modelling extreme market conditions can help a CCP determining the limits of its current models, the liquidity risk management framework and the financial and liquid resources. However, it requires the CCP to exercise judgment when modelling different markets and products. Reverse stress testing should be considered a helpful management tool, whilst not the main one, to determine the appropriate level of financial resources.
- (56) The involvement of clearing members, clients and other relevant stakeholders in the testing of a CCP's default management procedures, through simulation exercises, is essential to ensure that they have the understanding and operational capability to successfully participate in a default management situation. Simulation exercises should replicate a default scenario to demonstrate the roles and responsibilities of clearing members, clients and other relevant stakeholders. Additionally it is important that a CCP has appropriate mechanisms that enable it to ascertain whether corrective action is required and to identify any lack of clarity in, or discretion allowed by, the rules and procedures. The testing of a CCP's default management procedures is particularly important where it relies on non-defaulting clearing members or third parties to assist in the close-out process and where the default procedures have never been tested by an actual default.
- (57) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.
- (58) ESMA has consulted, where relevant, the European Banking Authority (EBA), the European Systemic Risk Board and the members of the European System of Central Banks (ESCB) before submitting the draft technical standards on which this Regulation is based. In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and the Council of 24 November 2012 establishing a European Supervisory Authority (European Securities and Markets Authority)¹⁰, ESMA has conducted open public consultations on such draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010.

HAS ADOPTED THIS REGULATION:

CHAPTER I
GENERAL

Article 1

Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (1) 'basis risk' means the risk arising from less than perfectly correlated movements between two or more assets or contracts cleared by the CCP.
- (2) 'confidence interval' means the percentage of exposures movements for each financial instrument cleared with reference to a specific lookback period that a CCP is required to cover over a certain liquidation period.
- (3) 'convenience yield' means the benefits from direct ownership of the physical commodity and is affected both by market conditions and by factors such as physical storage costs.
- (4) 'initial margin' means margin collected by the CCP to cover potential future exposure to clearing members providing the margin and, where relevant, interoperable CCPs in the interval between the last margin collection and the liquidation of positions following a default of a clearing member or of an interoperable CCP default.

¹⁰ OJ L 331, 15.12.2010 p. 84

- (5) 'variation margin' means margins collected or paid out to reflect current exposures resulting from actual changes in market price.
- (6) 'margins' means margins as referred to in Article 41 of Regulation (EU) No 648/2012 which can be, at least, composed of initial margins and variation margins.
- (7) 'jump to default risk' means the risk that a counterparty or issuer defaults suddenly before the market has had time to factor in its increased default risk.
- (8) 'liquidation period' means the time period used for the calculation of the margins that the CCP estimates necessary to manage its exposure to a defaulting member and during which the CCP is exposed to market risk related to the management of the defaulters' positions.
- (9) 'lookback period' means the time horizon for the calculation of historical volatility.
- (10) 'money-market instrument' means money-market instruments as defined in Article 4(1)(19) of Directive 2004/39/EC of the European Parliament and the Council on markets in financial instruments¹¹.
- (11) 'testing exception' means the result of a test which shows that a CCP's model or liquidity risk management framework did not result in the intended level of coverage.
- (12) 'transferable securities' means transferable securities as defined in Article 4(1)(18) of Directive 2004/39/EC.
- (13) 'wrong-way risk' means the risk arising from exposure to a counterparty or issuer when the collateral provided by that counterparty or issued by that issuer is highly correlated with its credit risk.

CHAPTER II

RECOGNITION OF THIRD COUNTRY CCPs

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

Article 2

Information to be provided to ESMA for the recognition of a CCP

1. An application for recognition from a CCP established in a third country shall contain at least the following information:
 - (a) full name of the legal entity;
 - (b) identities of the shareholders or members with qualifying holdings;
 - (c) a list of the Member States in which it intends to provide services;
 - (d) classes of financial instruments cleared;
 - (e) details to be included in the ESMA website in accordance with Article 88 (1)(e) of Regulation (EU) No 648/2012;
 - (f) details of its financial resources, the form and methods in which they are maintained and the arrangements to secure them including default management procedures;

¹¹ OJ L 145, 30.4.2004, p. 1

- (g) details on the margin methodology and for the calculation of the default fund;
- (h) a list of the eligible collateral;
- (i) a breakdown of values, in prospective form if needed, cleared by the applying CCP by each EU currency cleared;
- (j) results of the stress tests and back tests performed during the year preceding the date of application;
- (k) its rules and internal procedures with evidences of full compliance with the requirements applicable in that third country;
- (l) details of any outsourcing arrangements;
- (m) details on segregation arrangements and respective legal soundness and enforceability;
- (n) details on the CCP's access requirements and terms for suspension and termination of membership;
- (o) details of any interoperability arrangement, including the information provided to the third country competent authority for the purpose of assessing the arrangement.

CHAPTER III

ORGANISATIONAL REQUIREMENTS

Article 26 of Regulation (EU) No 648/2012

Article 3

Governance arrangements

1. A CCP shall define its organisational structure as well as the policies, procedures and processes by which its board and senior management operate. These arrangements shall be clearly specified and well-documented.
2. Key components of the governance arrangements to be defined by the CCP shall include the following:
 - (a) the composition, role and responsibilities of the board and any board committees;
 - (b) the roles and responsibilities of the management;
 - (c) the senior management structure;
 - (d) the reporting lines between the senior management and the board;
 - (e) the procedures for the appointment of board members and senior management;
 - (f) the design of the risk management, compliance and internal control functions;
 - (g) the processes for ensuring accountability to stakeholders.

3. A CCP shall have adequate human resources to meet all obligations arising from this Regulation and from Regulation (EU) 648/2012. A CCP shall not share human resources with other group entities, unless under the terms of an outsourcing arrangement in accordance with Article 35 of Regulation (EU) 648/2012.
4. A CCP shall establish lines of responsibility which are clear, consistent and well-documented. A CCP shall have dedicated and distinct chief risk officer, chief compliance officer and chief technology officer. These positions shall be filled by dedicated employees of the CCP.
5. A CCP that is part of a group shall take into account any implications of the group for its own governance arrangements including whether it has the necessary level of independence to meet its regulatory obligations as a distinct legal person and whether its independence could be compromised by the group structure or by any board member also being a member of the board of other entities of the same group. In particular, such a CCP shall consider specific procedures for preventing and managing conflicts of interest including with respect to outsourcing arrangements.
6. Where a CCP maintains a two-tiered board system, the role and responsibilities of the board as established in this Regulation and in Regulation (EU) No 648/2012 shall be allocated to the supervisory board and the management board as appropriate.
7. The risk management policies, procedures, systems and controls shall be part of a coherent and consistent governance framework that is reviewed and updated regularly.

Article 4

Risk management and internal control mechanisms

1. A CCP shall have a sound framework for the comprehensive management of all material risks to which it is or may be exposed. A CCP shall establish documented policies, procedures and systems that identify, measure, monitor and manage such risks. In establishing risk-management policies, procedures and systems, a CCP shall structure them in a way as to ensure that clearing members properly manage and contain the risks they pose to the CCP.
2. A CCP shall take an integrated and comprehensive view of all relevant risks. These shall include the risks it bears from and poses to its clearing members and, to the extent practicable, clients as well as the risks it bears from and poses to other entities such as, but not limited to interoperable CCPs, securities settlement and payment systems, settlement banks, liquidity providers, central securities depositories, trading venues served by the CCP and other critical service providers. A CCP shall develop appropriate risk management tools to be in a position to manage and report on all relevant risks. These shall include the identification and management of system, market or other interdependencies. If a CCP provides services linked to clearing that present a distinct risk profile from its functions and potentially pose significant additional risks to it, the CCP shall manage those additional risks adequately. This may include separating legally the additional services that the CCP provides from its core functions, or taking equivalent action in an appropriate way.
3. The governance arrangements shall ensure that the board of a CCP assumes final responsibility and accountability for managing the CCP's risks. The board shall define, determine and document an appropriate level of risk tolerance and risk bearing capacity for the CCP. The board and senior management shall ensure that the CCP's policies, procedures and controls are consistent with the CCP's risk tolerance and risk bearing capacity and that address how the CCP identifies, reports, monitors and manages risks.
4. A CCP shall employ robust information and risk-control systems to provide the CCP and, where appropriate, its clearing members and, to the extent practicable, clients with the capacity to obtain

timely information and to apply risk management policies and procedures appropriately. These systems shall ensure, at least that credit and liquidity exposures are monitored continuously at the CCP level as well as at the clearing member level and, to the extent practicable, at the client level.

5. A CCP shall ensure that the risk management function has the necessary authority, resources, expertise and access to all relevant information and that it is sufficiently independent from the other functions of the CCP. The CCP chief risk officer shall implement the risk management framework including the policies and procedures established by the board.
6. A CCP shall have adequate internal control mechanisms to assist the board in monitoring and assessing the adequacy and effectiveness of a CCP's risk management policies, procedures and systems. Such mechanisms shall include sound administrative and accounting procedures, a robust compliance function and an independent internal audit and validation or review function.
7. A CCP's financial statement shall be prepared on an annual basis and be audited by statutory auditors or audit firms within the meaning of Directive 2006/43/EC.

Article 5

Compliance policy and procedures

1. A CCP shall establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the CCP and its employees to comply with the CCP's obligations under this Regulation, the Regulation (EU) No 648/2012 and Regulation (EU) No xx/2012 [Commission regulation endorsing draft implementing technical standard on record keeping], as well as the associated risks, and put in place adequate measures and procedures designed to minimise such risk and to enable the competent authorities to exercise their powers effectively under these Regulations.
2. A CCP shall ensure that its rules, procedures and contractual arrangements are clear and comprehensive and they ensure compliance with this Regulation, Regulation (EU) No 648/2012 and Regulation (EU) No xx/2012 [Commission regulation endorsing draft implementing technical standards on record keeping] as well as all other applicable regulatory and supervisory requirements. The rules, procedures and contractual arrangements of the CCP shall be recorded in writing or another durable medium. These rules, procedures, and contractual arrangements and any accompanying material shall be accurate, up-to-date and readily available to the competent authority, clearing members and, where appropriate, clients. A CCP shall identify and analyse the soundness of the rules, procedures and contractual arrangements of the CCP. If necessary, independent legal opinions shall be sought for the purpose of this analysis. The CCP shall have a process for proposing and implementing changes to its rules and procedures and prior to implementing any material changes to consult with all affected clearing members and submit the proposed changes to the competent authority.
3. In developing its rules, procedures and contractual arrangements a CCP shall consider relevant regulatory principles and industry standards and market protocols and clearly indicate where such practices have been incorporated into the documentation governing the rights and obligations of the CCP, its clearing members and other relevant third parties.
4. A CCP shall identify and analyse potential conflicts of law issues and develop rules and procedures to mitigate legal risk resulting from such issues. If necessary, independent legal opinions shall be sought for the purpose of this analysis. A CCP's rules and procedures shall clearly indicate the law that is intended to apply to each aspect of the CCP's activities and operations.

Article 6

Compliance function

1. A CCP shall establish and maintain a permanent and effective compliance function which operates independently from the other functions of the CCP. The CCP shall ensure that the compliance function has the necessary authority, resources, expertise and access to all relevant information. When establishing its compliance function, the CCP shall take into account the nature, scale and complexity of its business, and the nature and range of the services and activities undertaken in the course of that business.
2. The chief compliance officer shall at least have the following responsibilities:
 - (a) monitor and, on a regular basis, assess the adequacy and effectiveness of the measures put in place in accordance with Article 5(4) and the actions taken to address any deficiencies in the CCP's compliance with its obligations;
 - (b) administer the compliance policies and procedures established by senior management and the board;
 - (c) advise and assist the persons responsible for carrying out the CCP services and activities to comply with the CCP's obligations under this Regulation (EU) No 648/2012 and Regulation (EU) No xx/2012 [Commission regulation endorsing draft implementing technical standard on record keeping] and other regulatory requirements, where applicable;
 - (d) report regularly to the board on compliance by the CCP and its employees with this Regulation, Regulation (EU) No 648/2012 and Regulation (EU) No xx/2012 [Commission regulation endorsing draft implementing technical standards on record keeping];
 - (e) establish procedures for the effective remediation of instances of non-compliance;
 - (f) ensure that the relevant persons involved in the compliance function are not involved in the performance of the services or activities they monitor and that any conflicts of interest of such persons are properly identified and eliminated.

Article 7

Organisational structure and separation of the reporting lines

1. A CCP shall define the composition, role and responsibilities of the board and senior management and any board committees. These arrangements shall be clearly specified and well-documented. The board shall establish, at a minimum an audit committee and a remuneration committee. The risk committee established in accordance with Article 26 of the Regulation (EU) No 648/2012 shall be an advisory committee to the board.
2. The board shall assume at least the following responsibilities:
 - (a) the establishment of clear objectives and strategies for the CCP;
 - (b) the effective monitoring of senior management;
 - (c) the establishment of appropriate remuneration policies,
 - (d) the establishment and oversight of the risk management function;
 - (e) the oversight of the compliance and internal control function;

- (f) the oversight of outsourcing arrangements;
 - (g) the oversight of compliance with all provisions of this Regulation, Regulation (EU) No 648/2012, Regulation (EU) No xx/2012 [Commission regulation endorsing draft implementing technical standards on record keeping] and all other regulatory and supervisory requirements;
 - (h) the provision of accountability to the shareholders or owners and employees, clearing members and their customers and other relevant stakeholders.
3. The senior management shall have at least the following responsibilities:
 - (a) ensuring consistency of the CCP's activities with the objectives and strategy of the CCP as determined by the board;
 - (b) designing and establishing compliance and internal control procedures that promote the CCP's objectives;
 - (c) subjecting the internal control procedures to regular review and testing;
 - (d) ensuring that sufficient resources are devoted to risk management and compliance;
 - (e) be actively involved in the risk control process;
 - (f) ensuring that risks posed to the CCP by its clearing and activities linked to clearing are duly addressed.
 4. Where the board delegates tasks to committees or sub-committees, it shall retain the approval of decisions that could have a significant impact on the risk profile of the CCP.
 5. The arrangements by which the board and senior management operate shall include processes to identify, address and manage potential conflicts of interest of members of the board and senior management.
 6. A CCP shall have clear and direct reporting lines between its board and senior management in order to ensure that the senior management is accountable for its performance. The reporting lines for risk management, compliance and internal audit shall be clear and separate from those for the other operations of the CCP. The chief risk officer shall report to the board either directly or through the chair of the risk committee. The chief compliance officer and the internal audit function shall report directly to the board.

Article 8

Remuneration policy

1. The remuneration committee shall design and further develop the remuneration policy, oversee its implementation by senior management and review its practical operation on a regular basis. The policy itself shall be documented and reviewed at least on an annual basis.
2. The remuneration policy shall be designed to align the level and structure of remuneration with prudent risk management. The policy shall take into consideration prospective risks as well as existing risks and risk outcomes. Pay out schedules shall be sensitive to the time horizon of risks. In particular in the case of variable remuneration the policy shall take due account of possible

mismatches of performance and risk periods and shall ensure that payments are deferred as appropriate. The fixed and variable components of total remuneration shall be balanced and shall be consistent with risk alignment.

3. The remuneration policy shall provide that staff engaged in risk management, compliance and internal audit functions are remunerated in a manner that is independent of the business performance of the CCP. The level of remuneration shall be adequate in terms of responsibility as well as in comparison to the level of remuneration in the business areas.
4. The remuneration policy shall be subject to independent audit, on an annual basis. The results of these audits shall be made available to the competent authority.

Article 9

Information technology systems

1. A CCP shall design and ensure its information technology systems are reliable and secure as well as capable of processing the information necessary for the CCP to perform its activities and operations in a safe and efficient manner. The information technology architecture shall be well-documented. The systems shall be adequate to deal with the CCP's operational needs and the risks the CCP faces, be resilient, including in stressed market conditions, and be scalable, if necessary, to process additional information. The CCP shall provide for procedures and capacity planning as well as for sufficient redundant capacity to allow the system to process all remaining transactions before the end of the day in circumstances where a major disruption occurs. The CCP shall provide for procedures for the introduction of new technology including clear reversion plans.
2. In order to ensure a high degree of security in information processing and to enable connectivity with its clearing members and clients as well as with its service providers, a CCP shall base its information technology systems on internationally recognised technical standards and industry best practices. The CCP shall subject its systems to stringent testing, simulating stressed conditions, before initial use, after making significant changes and after a major disruption has occurred. Clearing members and clients, interoperable CCPs and other interested parties shall be involved as appropriate in the design and conduct of these tests.
3. A CCP shall maintain a robust information security framework that appropriately manages its information security risk. The framework shall include appropriate mechanisms, policies and procedures to protect information from unauthorised disclosure, to ensure data accuracy and integrity and to guarantee the availability of the CCP's services.
4. The information security framework shall include at least the following features:
 - (a) access controls to the system;
 - (b) adequate safeguards against intrusions and data misuse;
 - (c) specific devices to preserve data authenticity and integrity, including cryptographic techniques;
 - (d) reliable networks and procedures for accurate and prompt data transmission without major disruptions;
 - (e) audit trails.
5. The information technology systems and the information security framework shall be reviewed at least on an annual basis. They shall be subject to independent audit assessments. The results of

these assessments shall be reported to the board and shall be made available to the competent authority.

Article 10
Disclosure

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

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

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

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

Article 11

Auditing

1. A CCP shall establish and maintain an internal audit function which is separate and independent from the other functions and activities of the CCP and which has the following tasks:
 - (a) to establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the CCP's systems, internal control mechanisms and governance arrangements;
 - (b) to issue recommendations based on the result of work carried out in accordance with point (a);
 - (c) to verify compliance with those recommendations;
 - (d) to report internal audit matters to the board.
2. The internal audit function shall have the necessary authority, resources, expertise, and access to all relevant documents. It shall be sufficiently independent from the management and shall report directly to the board.
3. Internal audit shall assess the effectiveness of the CCP's risk management processes and control mechanisms in a manner that is proportionate to the risks faced by the different business lines and independent of the business areas assessed. The internal audit function shall have the necessary access to information in order to review all of the CCP's activities and operations, processes and systems, including outsourced activities.
4. Internal audit assessments shall be based on a comprehensive audit plan that shall be reviewed and reported to the competent authority at least on an annual basis. The CCP shall ensure that special audits may be performed on an event-driven basis at short notice. Audit planning and review shall be approved by the board.
5. A CCP's clearing operations, risk management processes, internal control mechanisms and accounts shall be subject to independent audit. Independent audits shall be performed, at a least, on an annual basis.

CHAPTER IV

RECORD KEEPING

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

Article 12

General requirements

1. The records shall be retained in a durable medium that information to be provided within the time specified in paragraphs 3 and 4 to the competent authorities, ESMA and relevant ESCB members, and in such a form and manner that the following conditions are met:

- (a) it is possible to reconstitute each key stage of the processing by the CCP;
 - (b) it is possible to record, trace and retrieve the original content of a record before any corrections or other amendments;
 - (c) appropriate measures are in place to prevent unauthorised alteration of records;
 - (d) appropriate measures are in place to ensure the security and confidentiality of the data recorded;
 - (e) a mechanism for identifying and correcting errors is incorporated in the record keeping system;
 - (f) appropriate precautionary measures to enable the timely recovery of the records in the case of a system failure are included in the record keeping system.
2. Where records or information are less than 6 months old, they shall be provided to the authorities listed in paragraph 1 as soon as possible and at the latest by the end of the following business day following a request from the relevant authority.
 3. Where records or information are older than 6 months, shall be provided to the authorities listed in paragraph 1 as soon as possible and within five business days following a request from the relevant authority.
 4. Where the records contain personal data within the scope of Directive 95/46/EC or Regulation (EC) No 45/2001, CCPs shall have regard to their obligations under Directive 95/46/EC and Regulation (EC) No 45/2001 when processing such data.
 5. Where a CCP maintains records outside the Union, it shall ensure that the competent authority, ESMA and the relevant members of the ESCB are able to access the records to the same extent and within the same periods as if they were maintained within the Union.
 6. Each CCP shall name the relevant persons who can, within the delay established in paragraphs 2 and 3 for the provision of the relevant records, explain the content of its records to the competent authorities.
 7. All records required to be kept by a CCP under this Regulation shall be open to inspection by the competent authority. CCPs shall provide the competent authorities with a direct data feed to the records required under Articles 13 and 14, when requested.

Article 13

Transaction records

1. A CCP shall maintain records of all transactions in all contracts it clears and shall ensure that its records include all information necessary to conduct a comprehensive and accurate reconstruction of the clearing process for each contract and that each record on each transaction is uniquely identifiable and searchable at least by all fields concerning the CCP, interoperable CCP, clearing member, client, if known to the CCP, and financial instrument.
2. In relation to every transaction received for clearing, a CCP shall, immediately upon receiving the relevant information, make and keep updated a record of the following details:
 - (a) the price, rate or spread and quantity;
 - (b) the clearing capacity, which identifies whether the transaction was a buy or sale from the perspective of the CCP recording;
 - (c) the instrument identification;

- (d) the identification of the clearing member;
- (e) the identification of the venue where the contract was concluded;
- (f) the date and time of interposition of the CCP;
- (g) the date and time of termination of the contract;
- (h) the terms and modality of settlement;
- (i) the date and time of settlement or of buy-in of the transaction and to the extent they are applicable of the following details:
 - (i) the day and the time at which the contract was originally concluded;
 - (ii) the original terms and parties of the contract;
 - (iii) the identification of the interoperable CCP clearing one leg of the transaction, where applicable;
 - (iv) the identity of the client, including any indirect client, where known to the CCP, and in case of a give-up, the identification of the party that transferred the contract.

Article 14

Position records

1. A CCP shall maintain records of positions held by each clearing member. Separate records shall be held for each account kept in accordance with Article 39 of Regulation (EU) No 648/2012 and the CCP shall ensure that its records include all information necessary to conduct a comprehensive and accurate reconstruction of the transactions that established the position and that each record is identifiable and searchable at least by all fields concerning the CCP, interoperable CCP, clearing member, client, if known to the CCP, and financial instrument.
2. At the end of each business day a CCP shall make a record in relation to each position including the following details, to the extent they are linked to the position in question:
 - (a) the identification of the clearing member, of the client, if known to the CCP, and of any interoperable CCP maintaining such position, where applicable;
 - (b) the sign of the position;
 - (c) the daily calculation of the value of the position with records of the prices at which the contracts are valued, and of any other relevant information.
3. A CCP shall make, and keep updated, a record of the amounts of margins, default fund contributions and other financial resources referred to in Article 43 of Regulation (EU) No 648/2012, called by the CCP and the corresponding amount actually posted by the clearing member at the end of day and changes to that amount that may occur intraday, with respect to each single clearing member and client account if known to the CCP.

Article 15

Business records

1. A CCP shall maintain adequate and orderly records of activities related to its business and internal organisation.
2. The records referred to in paragraph 1 shall be made each time a material change in the relevant documents occurs and shall include at least:
 - (a) the organisational charts for the board and relevant committees, clearing unit, risk management unit, and all other relevant units or divisions;
 - (b) the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and the amounts of those holdings;
 - (c) the documents attesting the policies, procedures and processes required under Chapter III and Article 29;
 - (d) the minutes of board meetings and, if applicable, of meetings of sub-committees of the board and of senior management committees;
 - (e) the minutes of meetings of the risk committee;
 - (f) the minutes of consultation groups with clearing members and clients, if any;
 - (g) internal and external audit reports, risk management reports, compliance reports, and reports by consultant companies, including management responses;
 - (h) the business continuity policy and disaster recovery plan, required under Article 17;
 - (i) the liquidity plan and the daily liquidity reports, required under Article 32;
 - (j) records reflecting all assets and liabilities and capital accounts as required by Regulation (EU) No 648/2012;
 - (k) complaints received, with information on the complainant's name, address, and account number; the date the complaint was received; the name of all persons identified in the complaint; a description of the nature of the complaint; the disposition of the complaint, and the date the complaint was resolved;
 - (l) records of any interruption of services or dysfunction, including a detailed report on the timing, effects and remedial actions;
 - (m) records of the results of the back and stress tests performed;
 - (n) written communications with competent authorities, ESMA and the relevant members of the ESCB;
 - (o) legal opinions received in accordance with Chapter III;
 - (p) where applicable, documentation regarding interoperability arrangements with other CCPs;
 - (q) the information under Article 10 paragraphs (1)(b)(vii) and (1)(d);
 - (r) the relevant documents describing the development of new business initiatives;

Article 16
Records of data reported to a trade repository

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

CHAPTER V

BUSINESS CONTINUITY

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

Article 17
Strategy and policy

1. A CCP shall have a business continuity policy and a disaster recovery plan which are approved by the board. The business continuity policy and the disaster recovery plan shall be subject to independent reviews which are reported to the board.
2. The business continuity policy shall identify all critical business functions and related systems, and include the CCP's strategy, policy, and objectives to ensure the continuity of these functions and systems.
3. The business continuity policy shall take into account external links and interdependencies within the financial infrastructure including trading venues cleared by the CCP, securities settlement and payment systems and credit institutions used by the CCP or a linked CCP. It shall also take into account critical functions or services which have been outsourced to third-party providers.
4. The business continuity policy and disaster recovery plan shall contain clearly defined and documented arrangements for use in the event of a business continuity emergency, disaster or crisis which are designed to ensure a minimum service level of critical functions.
5. The disaster recovery plan shall identify and include recovery point objectives and recovery time objectives for critical functions and determine the most suitable recovery strategy for each of these functions. Such arrangements shall be designed to ensure that in extreme scenarios critical functions are completed on time and that agreed service levels are met.
6. A CCP's business continuity policy shall identify the maximum acceptable down time of critical functions and systems. The maximum recovery time for the CCP's critical functions to be included in the business continuity policy shall not be higher than 2 hours. End of day procedures and payments shall be completed on the required time and day in all circumstances.
7. A CCP shall take into account the potential overall impact on market efficiency in determining the recovery times for each function.

Article 18
Business impact analysis

1. A CCP shall use conduct a business impact analysis which is designed to identify the business functions which are critical to ensure the services of the CCP. The criticality of these functions to other institutions and functions in the financial infrastructure shall be part of the analysis.
2. A CCP shall use scenario based risk analysis which is designed to identify how various scenarios affect the risks to its critical business functions.

3. In assessing risks, a CCP shall take into account dependencies on external providers, including utilities services. A CCP shall take action to manage these dependencies through appropriate contractual and organisational arrangements.
4. Business impact analysis and scenario analysis shall be kept up to date, at a minimum they shall be reviewed on an annual basis and following an incident or significant organisational changes. The analyses shall take into account all relevant developments, including market and technology developments.

Article 19

Disaster recovery

1. A CCP shall have in place arrangements to ensure continuity of its critical functions based on disaster scenarios. These arrangements shall at least address the availability of adequate human resources, the maximum downtime of critical functions, and fail over and recovery to a secondary site.
2. A CCP shall maintain a secondary processing site capable of ensuring continuity of all critical functions of the CCP identical to the primary site. The secondary site shall have a geographical risk profile which is distinct from that of the primary site.
3. A CCP shall maintain or have an immediate access to a secondary business site, at least, to allow staff to ensure continuity of the service if the primary location of business is not available.
4. The need for additional processing sites shall be considered by the CCP, in particular if the diversity of the risk profiles of the primary and secondary sites do not provide sufficient confidence that the CCP's business continuity objectives will be met in all scenarios.

Article 20

Testing and monitoring

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

Article 21

Maintenance

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

Article 22
Crisis management

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

Article 23
Communication

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

CHAPTER VI

MARGINS

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

Article 24
Percentage

1. A CCP shall calculate the initial margins to cover the exposures arising from market movements for each financial instrument that is margined on a product basis, over the time period defined in Article 25 and assuming a time horizon for the liquidation of the position as defined in Article 26. For the calculation of initial margins the CCP shall at least respect the following confidence intervals:
 - (a) for OTC derivatives, 99.5%.
 - (b) for financial instruments other than OTC derivatives, 99%.
2. For the determination of the adequate confidence interval for each class of financial instruments it clears, a CCP shall in addition consider at least the following factors:
 - (a) The complexities and level of pricing uncertainties of the class of financial instruments which may limit the validation of the calculation of initial and variation margin.
 - (b) The risk characteristics of the class of financial instruments, which can include, but are not limited to, volatility, duration, liquidity, non-linear price characteristics, jump to default risk and wrong way risk.
 - (c) The degree to which other risk controls do not adequately limit credit exposures.

- (d) The inherent leverage of the class of financial instruments, including whether the class of financial instrument is significantly volatile, is highly concentrated among a few market players or may be difficult to close out.
3. The CCP shall inform its competent authority and its clearing members on the criteria considered to determine the percentage applied to the calculation of the margins for each class of financial instruments.
 4. Where a CCP clears OTC derivatives that have the same risk characteristics as derivatives executed on regulated markets or an equivalent third country market, on the basis of an assessment of the risk factors listed in paragraph 2, the CCP may use an alternative confidence interval from the one specified in paragraph 1(a) of at least 99% for these contracts if the risks of OTC derivatives contracts it clears are appropriately mitigated using such confidence interval and the conditions in paragraph 2 are respected.

Article 25

Time horizon for the calculation of historical volatility

1. A CCP shall assure that according to its model methodology and its validation process established in accordance with Chapter XII, initial margins cover at least with the confidence interval defined in Article 24 and for the liquidation period defined in Article 26 the exposures resulting from historical volatility calculated based on data covering at least the latest 12 months. The CCP shall ensure that the data used for calculating historical volatility capture a full range of market conditions, including periods of stress.
2. A CCP may use any other time horizon for the calculation of historical volatility provided that the use of such time horizon results in margin requirements at least as high as those obtained with the time period defined in paragraph 1.
3. Margin parameters for financial instruments without a historical observation period shall be based on conservative assumptions. The CCP shall promptly adapt the calculation of the required margins based on the analysis of the price history of the new financial instruments.

Article 26

Time horizons for the liquidation period

1. A CCP shall define the time horizons for the liquidation period taking into account the characteristics of the financial instrument cleared, the market where it is traded, and the period for the calculation and collection of the margins. This liquidation periods shall be at least:
 - (a) for OTC derivatives, 5 business days;
 - (b) for financial instruments other than OTC derivatives, 2 business days.
2. In all cases, for the determination of the adequate liquidation period, the CCP shall evaluate and sum at least the following:
 - (a) the longest possible period that may elapse from the last collection of margins up to the declaration of default by the CCP or activation of the default management process by the CCP;
 - (b) the estimated period needed to design and execute the strategy for the management of the default of a clearing member according to the particularities of each class of financial instrument, including its level of liquidity and the size and concentration of the positions, and the markets the CCP will use to close-out or hedge completely a clearing member position;

- (c) where relevant, the period needed to cover the counterparty risk to which the CCP is exposed.
3. In evaluating the periods defined in paragraph 2, the CCP shall consider, at least, the factors indicated in Article 24(2) and the time period for the calculation of the historical volatility as defined in Article 25.
 4. Where a CCP clears OTC derivatives that have the same risk characteristics as derivatives executed on regulated markets or an equivalent third country market, it may use a time horizon for the liquidation period different from the one specified in paragraph 1, provided that it can demonstrate to its competent authority that:
 - (a) such time horizon would be more appropriate than that specified in paragraph 1 in view of the specific features of the relevant OTC derivatives;
 - (b) such time horizon is at least equal to 2 business days.

Article 27

Portfolio margining

1. A CCP may allow offsets or reductions in the required margin across the financial instruments that it clears if the price risk of one financial instrument or a set of financial instruments is significantly and reliably correlated, or based on equivalent statistical parameter of dependence, with the price risk of other financial instruments.
2. The CCP shall document its approach on portfolio margining and it shall at least provide that the correlation, or an equivalent statistical parameter of dependence, between two or more financial instruments cleared is shown to be reliable over the look-back period calculated in accordance with Article 26 and demonstrates resilience during stressed historical or hypothetical scenarios. The CCP shall demonstrate the existence of an economic rationale for the price relation.
3. All financial instruments to which portfolio margining is applied shall be covered by the same default fund unless the CCP can demonstrate in advance to its competent authority and to its clearing members how potential losses would be allocated among different default funds and set out the necessary provisions in its rules.
4. Where portfolio margining covers multiple instruments, the amount of margin reductions shall be no greater than 80% of the difference between the sum of the margins for each product calculated on an individual basis and the margin calculated based on a combined estimation of the exposure for the combined portfolio. Where the CCP is not exposed to any potential risk from the margin reduction, it may apply a reduction of up to 100% of this difference.
5. The margin reductions related to portfolio margining shall be subject to a sound stress test programme in accordance with Chapter XII.

Article 28

Procyclicality

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

- (a) applying a margin buffer at least equal to 25% of the calculated margins which it allows to be temporarily exhausted in periods where calculated margin requirements are rising significantly;
 - (b) assigning at least 25% weight to stressed observations in the look-back period calculated in accordance with Article 26;
 - (c) ensuring that its margin requirements are not lower than those that would be calculated using volatility estimated over a 10 year historical look-back period.
2. When a CCP revises the parameters of the margin model in order to better reflect current market conditions, it shall take into account any potential procyclical effects of such revision.

CHAPTER VII

DEFAULT FUND

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

Article 29

Framework and governance

1. To determine the minimum size of default fund and amount of other financial resources necessary to satisfy the requirements of Articles 42 and 43 of Regulation (EU) 648/2012, taking into account group dependencies, a CCP shall implement an internal policy framework for defining the types of extreme but plausible market conditions that could expose it to greatest risk.
2. The framework shall include a statement describing how the CCP defines extreme but plausible market conditions. It shall be fully documented and retained in accordance with Article 12.
3. The framework shall be discussed by the risk committee and approved by the board. The robustness of the framework and its ability to reflect market movements shall be subject to at least an annual review. The review shall be discussed by the risk committee and reported to the board.

Article 30

Identifying extreme but plausible market conditions

1. The framework described in Article 29 shall reflect the risk profile of the CCP, taking account of cross-border and cross-currency exposures where relevant. It shall identify all the market risks to which a CCP would be exposed following the default of one or more clearing member, including unfavourable movements in the market prices of cleared instruments, reduced market liquidity for these instruments, and declines in the liquidation value of collateral. The framework shall also reflect additional risks to the CCP arising from the simultaneous failure of entities in the group of the defaulting clearing member.
2. The framework shall individually identify all the markets to which a CCP is exposed in a clearing member default scenario. For each identified market the CCP shall specify extreme but plausible conditions based, at least on:
 - (a) a range of historical scenarios, including periods of extreme market movements observed over the past 30 years, or as long as reliable data have been available, that would have exposed the CCP to greatest financial risk. If a CCP decides that recurrence of a historical instance of large

price movements is not plausible, it shall justify its omission from the framework to the competent authority.

- (b) a range of potential future scenarios, founded on consistent assumptions regarding market volatility and price correlation across markets and financial instruments, drawing on both quantitative and qualitative assessments of potential market conditions.
3. The framework shall also consider, quantitatively and qualitatively, the extent to which extreme price movements could occur in multiple identified markets simultaneously. The framework shall recognise that historical price correlations may breakdown in extreme but plausible market conditions.

Article 31

Reviewing extreme but plausible scenarios

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

CHAPTER VIII

LIQUIDITY RISK CONTROLS

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

Article 32

Assessment of liquidity risk

1. A CCP shall establish a robust liquidity risk management framework which shall include effective operational and analytical tools to, identify, measure and monitor its settlement and funding flows on an on-going and timely basis, including its use of intraday liquidity. CCPs shall regularly assess the design and operation of their liquidity management framework, including considering the results of the stress tests.
2. A CCP's liquidity risk management framework shall ensure with a high level of confidence that the CCP is able to effect payment and settlement obligations in all relevant currencies as they fall due, including where appropriate intraday. A CCP's liquidity risk management framework shall also include the assessment of its potential future liquidity needs under a wide range of potential stress scenarios. Stress scenario shall include the default of clearing members according to Article 44 of Regulation (EU) No 648/2012 from the date of a default until the end of a liquidation period and the liquidity risk generated by its investment policy and procedures in extreme but plausible market conditions.
3. The liquidity risk management framework shall include a liquidity plan which is documented and retained in accordance with Article 12. The minimum content of the liquidity plan shall include the CCP's procedures for:

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

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

4. A CCP shall assess the liquidity risk it faces including where the CCP or its clearing members cannot settle their payment obligations when due as part of the clearing or settlement process, taking also into account the investment activity of the CCP. The risk management framework shall address the liquidity needs stemming from the CCP's relationships with any entity towards which the CCP has a liquidity exposure including:
 - (a) settlement banks;
 - (b) payments systems;
 - (c) securities settlement systems;
 - (d) nostro agents;
 - (e) custodian banks;
 - (f) liquidity providers;
 - (g) interoperable CCPs;
 - (h) service providers.
5. A CCP shall take into account any interdependencies across the entities listed in paragraph 4 and multiple relationships that an entity listed in paragraph 4 may have with a CCP in its liquidity risk management framework.
6. A CCP shall establish a daily report on the needs and resources under paragraph 3 points (a) to (c) and a quarterly report on its liquidity plan under paragraph 3 points (d) to (h). The reports shall be documented and retained in accordance with Chapter IV.

Article 33
Access to liquidity

1. A CCP shall maintain, in each relevant currency, liquid resources commensurate with its liquidity requirements, defined in accordance with Article 44 of Regulation (EU) No 648/2012 and Article 32. These liquid resources shall be limited to:
 - (a) cash deposited at a central bank of issue;
 - (b) cash deposited at authorised credit institutions in accordance with Article 47;
 - (c) committed lines of credit or equivalent arrangements with non-defaulting clearing members;
 - (d) committed repurchase agreements;
 - (e) highly marketable financial instruments that satisfy the requirements of Article 45 and Article 46 and that the CCP can demonstrate are readily available and convertible into cash on a same-day basis using prearranged and highly reliable funding arrangements, including in stressed market conditions.
2. A CCP shall have regard to the currencies in which its liabilities are denominated and shall take into account the potential effect of stressed conditions on its ability to access foreign exchange markets in a manner consistent with the securities settlement cycles of foreign exchange and securities settlement systems.
3. Committed lines of credit that are provided against collateral provided by clearing members shall not be double counted as liquid resources. A CCP shall take action to monitor and control the concentration of liquidity risk exposures to individual liquidity providers.
4. A CCP shall obtain a high degree of confidence through rigorous due diligence that its liquidity providers have enough capacity to perform according to the liquidity arrangements.
5. A CCP shall periodically test its procedures to access pre-arranged funding arrangements. This may include methods such as drawing down test amounts of the commercial lines of credit, to check the speed of access to the resources and reliability of procedures.
6. A CCP shall have detailed procedures within its liquidity plan for using its liquid financial resources to fulfil its payment obligations during a liquidity shortfall. The liquidity procedures shall clearly state when certain resources should be used. The procedures shall also describe how to access cash deposits or overnight investments of cash deposits, how to execute same-day market transactions, or how to draw on prearranged liquidity lines. These procedures shall be regularly tested. A CCP shall also establish an adequate plan for the renewal of funding arrangements in advance of their expiration.

Article 34
Concentration risk

1. A CCP shall closely monitor and control the concentration of its liquidity risk exposure, including its exposures to the entities listed in Article 32(4) and to entities in the same group.
2. A CCP's liquidity risk management framework shall include the application of exposure and concentration limits.
3. A CCP shall define processes and procedures for breaches of concentration limits.

CHAPTER IX

DEFAULT WATERFALL

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

Article 35

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

1. A CCP shall keep, and indicate separately in its balance sheet, an amount of dedicated own resources for the purpose set out in Article 45(4) of Regulation (EU) No 648/2012. This amount shall be at least equal to the 25% of the minimum capital, including retained earnings and reserves, held in accordance with Article 16 of Regulation (EU) No 648/2012 and Regulation (EC) xx/2012 [Commission delegated regulation endorsing EBA draft regulatory technical standards on minimum capital requirements].

The CCP shall revise that amount on a yearly basis.

2. Where the CCP has established more than one default fund for the different classes of financial instruments it clears, the total dedicated own resources calculated under paragraph 1 shall be allocated to each of the default funds in proportion to the size of each default fund, to be separately indicated in its balance sheet and used for defaults arising in the different market segments to which the default funds refer to.
3. No resources other than capital, including retained earnings and reserves, as referred to in Article 16 of Regulation (EU) No 648/2012 can be used to comply with the requirement under paragraph 1.

Article 36

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

1. A CCP shall immediately inform the competent authority if the amount of dedicated own resources held falls below the amount required by Article 35, together with the reasons for the breach and a comprehensive description in writing of the measures and the timetable for the replenishment of such amount.
2. Where a subsequent default of one or more clearing members occurs before the CCP has reinstated the dedicated own resources, only the residual amount of the allocated dedicated own resources shall be used for the purpose of Article 45 of Regulation (EU) No 648/2012.
3. A CCP shall reinstate the dedicated own resource at least within one month from the notification under paragraph 1.

CHAPTER X

COLLATERAL

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

Article 37

General requirements

A CCP shall establish and implement transparent and predictable policies and procedures to assess and continuously monitor the liquidity of assets accepted as collateral and take remedial action where appropriate. In addition, a CCP shall review its eligible asset policies and procedures at least annually. Such a review shall also be carried out whenever a material change occurs that affects the CCP's risk exposure.

Article 38

Cash collateral

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

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

Article 39

Financial instruments

For the purpose of Article 46(1) of Regulation (EU) No 648/2012 and without prejudice to paragraph 2 of the same article, highly liquid collateral in the form of financial instruments shall be financial instruments meeting the conditions under Article 45(1) or transferable securities and money-market instruments which meet each of the following conditions:

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

- (h) they are not otherwise subject to significant wrong-way risk.

Article 40

Bank guarantees

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

- (ii) a currency in which the CCP clears transactions, in the limit of the collateral required to cover the CCP's exposures in that currency;
- (c) it is irrevocable, unconditional and the issuing central bank cannot rely on any legal or contractual exemption or defence to oppose the payment of the guarantee;
- (d) it can be honoured within the period of liquidation of the portfolio of the defaulting clearing member providing it without any regulatory, legal or operational constraint or any third party claim on it.

Article 41

Gold

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

- (a) it is directly held by the CCP;
- (b) it is deposited with an EEA central bank or a central bank of issue of a currency in which the CCP has exposures that has adequate arrangements so as to safeguard clearing member or clients' ownership rights to the gold and enables the CCP prompt access to the gold when required;
- (c) it is deposited with an authorised credit institution as defined under Directive 2006/48/EC that has adequate arrangements so as to safeguard clearing member or clients' ownership rights to the gold, enables the CCP prompt access to the gold when required and the CCP can demonstrate to the competent authority with a high degree of confidence that it has low credit risk based upon an internal assessment by the CCP. In performing such an assessment, the CCP shall employ a defined and objective methodology that shall not fully rely on external opinions and that takes into consideration the risk arising from the establishment of the issuer in a particular country;
- (d) it is deposited with a third country credit institution that is subject to and complies with prudential rules considered by the competent authorities to be at least as stringent as those laid down in Directive 2000/12/EC or in Directive 93/6/EEC and which has robust accounting practices, safekeeping procedures and internal controls that has adequate arrangements so as to safeguard clearing member or clients' ownership rights to the gold, enables the CCP prompt access to the gold when required and CCP can demonstrate to the competent authority with a high degree of confidence that it has low credit risk based upon an internal assessment by the CCP. In performing such an assessment, the CCP shall employ a defined and objective methodology that shall not fully rely on external opinions and that takes into consideration the risk arising from the establishment of the issuer in a particular country.

Article 42

Valuing collateral

1. For the purposes of valuing highly liquid collateral as defined in Article 37, a CCP shall establish and implement policies and procedures to monitor on a near to real time basis the credit quality, market liquidity and price volatility of each asset accepted as collateral. A CCP shall monitor on a regular basis, and at least annually, the adequacy of its valuation policies and procedures. Such review shall also be carried out whenever a material change occurs that affects the CCP's risk exposure.
2. A CCP shall mark-to-market its collateral on a near to real time basis and, where not possible, a CCP shall be able to demonstrate to the competent authorities that it is able to manage the risks.

Article 43

Haircuts

1. A CCP shall establish and implement policies and procedures to determine prudent haircuts to apply to collateral value.
2. Haircuts shall recognise that collateral may need to be liquidated in stressed market conditions and take into account the time required to liquidate it. The CCP shall demonstrate to the competent authority that haircuts are calculated in a conservative manner to limit as far as possible procyclical effects. For each collateral asset, the haircut shall be determined taking in consideration the relevant criteria, including:
 - (a) the type of asset and level of credit risk associated with of the financial instrument based upon internal assessment by the CCP. In performing such assessment the CCP shall employ a defined and objective methodology that shall not fully rely on external opinions and that takes into consideration the risk arising from the establishment of the issuer in a particular country;
 - (b) the maturity of the asset;
 - (c) the historical and hypothetical future price volatility of the asset in stressed market conditions;
 - (d) the liquidity of the underlying market, including bid/ask spreads;
 - (e) the foreign exchange risk, if any;
 - (f) wrong-way risk.
3. A CCP shall monitor on a regular basis the adequacy of the haircuts. A CCP shall review the haircut policies and procedures at least annually and whenever a material change occurs that affects the CCP risk exposure, but should avoid as far as possible disruptive or big step changes in haircuts that could introduce procyclicality. The haircut policies and procedures shall be independently validated at least annually.

Article 44

Concentration limits

1. A CCP shall establish and implement policies and procedures to ensure that the collateral remains sufficiently diversified to allow its liquidation within a defined holding period without a significant market impact. The policies and the procedures shall determine the risk mitigation measures to be applied when the concentration limits specified in paragraph 2 are exceeded.
2. A CCP shall determine concentration limits at the level of:
 - (a) individual issuers;
 - (b) type of issuer;
 - (c) type of asset;
 - (d) each clearing member;
 - (e) all clearing members.
3. Concentration limits shall be determined in a conservative manner taking into account all relevant criteria, including:
 - (a) financial instruments issued by issuers of the same type in terms of economic sector, activity, geographic region;

- (b) the level of credit risk of the financial instrument or of the issuer based upon an internal assessment by the CCP. In performing such assessment the CCP shall employ a defined and objective methodology that shall not fully rely on external opinions and that takes into consideration the risk arising from the establishment of the issuer in a particular country;
 - (c) the liquidity and the price volatility of the financial instruments.
4. A CCP shall ensure that no more than 10% of its collateral is guaranteed by a single credit institution, or equivalent third country financial institution, or by an entity that is part of the same group as the credit institution or third country financial institution. Where the collateral received by the CCP in the form of commercial bank guarantees is higher than 50% of the total collateral, this limit may be set up to 25%.
 5. In calculating the limits mentioned in paragraph 2, a CCP shall include the total exposure of a CCP to an issuer, including the amount of the cumulative credit lines, certificates of deposit, time deposits, savings accounts, deposit accounts, current accounts, money-market instruments, and reverse repurchase facilities utilised by the CCP. These limits shall not apply to collateral held by the CCP in excess of the minimum requirements for margins, default fund or other financial resources.
 6. When determining the concentration limit for a CCP's exposure to an individual issuer, a CCP shall aggregate and treat as a single risk its exposure to all financial instruments issued by the issuer or by a group entity, explicitly guaranteed by the issuer or by a group entity, and to financial instruments issued by undertakings whose exclusive purpose is to own means of production that are essential for the issuer's business.
 7. A CCP shall monitor on a regular basis the adequacy of its concentration limit policies and procedures. A CCP shall review its concentration limit policy and procedure at least annually and whenever a material change occurs that affects the risk exposure of the CCP.
 8. A CCP shall inform the competent authority and the clearing members of the applicable concentration limits and of any amendment to these limits.
 9. If the CCP materially breaches a concentration limit set out in its policies and procedures, it shall inform the competent authority immediately. The CCP shall rectify the breach as soon as possible.

CHAPTER XI

INVESTMENT POLICY

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

Article 45

Highly liquid financial instruments

1. For the purpose of Article 47(1) of Regulation (EU) No 648/2012, debt instruments can be considered highly liquid financial instruments, bearing minimal credit and market risk if they meet each of the following conditions:
 - (a) they are issued or explicitly guaranteed by:
 - (i) a government;
 - (ii) a central bank;
 - (iii) a multilateral development bank as listed under Section 4.2 of Part 1 of Annex VI to Directive 2006/48/EC;

- (iv) the European Financial Stability Facility or the European Stability Mechanism where applicable;
 - (b) the CCP can demonstrate that they have low credit and market risk based upon an internal assessment by the CCP. In performing such assessment the CCP shall employ a defined and objective methodology that shall not fully rely on external opinions and that takes into consideration the risk arising from the establishment of the issuer in a particular country;
 - (c) the average time-to-maturity of the CCP's portfolio does not exceed two years;
 - (d) they are denominated in one of the following currencies:
 - (i) a currency the risks of which the CCP can demonstrate with a high level of confidence that it is able to manage; or
 - (ii) a currency in which the CCP clears transactions, in the limit of the collateral received in that currency.
 - (e) they are freely transferable and without any regulatory or third party claims that impair liquidation;
 - (f) they have an active outright sale or repurchase agreement market, with a diverse group of buyers and sellers, including in stressed conditions and to which the CCP has reliable access;
 - (g) reliable price data on these instruments are published on a regular basis.
2. For the purpose of Article 47(1) of Regulation (EU) No 648/2012, derivative contracts can also be considered highly liquid financial investments, bearing minimal credit and market risk if they are entered into for the purpose of:
- (a) hedging the portfolio of a defaulted clearing member as part of the CCP's default management procedure; or
 - (b) hedging currency risk arising from its liquidity management framework established in accordance with Chapter VIII.

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

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

Article 46

Highly secured arrangements for the deposit of financial instruments

1. If a CCP is unable to deposit the financial instruments referred to in Article 45 or those posted to it as margins, default fund contributions or contributions to other financial resources, both by way of title transfer and security interest, with the operator of a securities settlement system that ensures the full protection of those instruments then such financial instruments shall be deposited with any of the following:
 - (a) a central bank that ensures the full protection of those instruments and that enables the CCP prompt access to the financial instruments when required;
 - (b) an authorised credit institution as defined under Directive 2006/48/EC that ensures the full segregation and protection of those instruments, enables the CCP prompt access to the financial instruments when required and that the CCP can demonstrate has low credit risk based upon an internal assessment by the CCP. In performing such an assessment, the CCP shall employ a defined and objective methodology that shall not fully rely on external opinions and that takes into consideration the risk arising from the establishment of the issuer in a particular country;

- (c) a third country financial institution that is subject to and complies with prudential rules considered by the relevant competent authorities to be at least as stringent as those laid down in Directive 2000/12/EC or in Directive 93/6/EEC and which has robust accounting practices, safekeeping procedures, and internal controls and that ensures the full segregation and protection of those instruments, enables the CCP prompt access to the financial instruments when required and that the CCP can demonstrate to have low credit risk based upon an internal assessment by the CCP. In performing such an assessment, the CCP shall employ a defined and objective methodology that shall not fully rely on external opinions and that takes into consideration the risk arising from the establishment of the issuer in a particular country.
2. Where financial instruments are deposited in accordance with letter (b) or (c) of paragraph 1, they shall be held under arrangements that prevent any losses to the CCP due to the default or insolvency of the authorised financial institution.
3. Highly secured arrangements for the deposit of financial instruments posted as margins, default fund contributions or contributions to other financial resources shall only allow the CCP to re-use these financial instruments where the conditions in Article 39(8) of Regulation (EU) No 648/2012 are met and where the purpose of the reuse is for making payments, managing the default of a clearing member or in the execution of an interoperable arrangement.

Article 47

Highly secured arrangements maintaining cash

1. For the purposes of Article 47(4) of Regulation (EU) No 648/2012, where cash is deposited other than with a central bank then such deposit shall meet each of the following conditions:
 - (a) the deposit is in one of the following currencies:
 - (i) a currency the risks of which the CCP can demonstrate with a high level of confidence that it is able to manage;
 - (ii) a currency in which the CCP clears transactions, in the limit of the collateral received in that currency;
 - (b) the deposit shall be placed with one of the following entities:
 - (i) an authorised credit institution as defined under Directive 2006/48/EC that the CCP can demonstrate to have low credit risk based upon an internal based upon an internal assessment by the CCP. In performing such assessment the CCP shall employ a defined and objective methodology that shall not fully rely on external opinions and that takes into consideration the risk arising from the establishment of the issuer in a particular country;
 - (ii) a third country financial institution that is subject to and complies with prudential rules considered by the competent authorities to be at least as stringent as those laid down in Directive 2000/12/EC or in Directive 93/6/EEC and which has robust accounting practices, safekeeping procedures, and internal controls and that the CCP can demonstrate to have low credit risk based upon an internal based upon an internal assessment by the CCP. In performing such assessment the CCP shall employ a defined and objective methodology that shall not fully rely on external opinions and that takes into consideration the risk arising from the establishment of the issuer in a particular country;
2. Where cash is maintained overnight in accordance with paragraph 1 then not less than 95% of such cash, calculated over an average period of one calendar month, shall be deposited through arrangements that ensure the collateralisation of the cash with highly liquid financial instruments meeting the requirements under Article 45, except the requirement at paragraph 1(c) of that Article.

Article 48
Concentration limits

1. A CCP shall establish and implement policies and procedures to ensure that the financial instruments in which its financial resources are invested remain sufficiently diversified.
2. A CCP shall determine concentration limits and monitor the concentration of its financial resources at the level of:
 - (a) individual financial instruments;
 - (b) types of financial instruments;
 - (c) individual issuers;
 - (d) types of issuers;
 - (e) counterparties with which arrangements as provided for in Article 46(1) points (b) and (c) or in Article 47(2) are established.
3. When considering types of issuers a CCP shall take into account the following:
 - (a) geographic distribution;
 - (b) interdependencies and multiple relationships that an entity may have with a CCP;
 - (c) the level of credit risk;
 - (d) exposures the CCP have to the issuer through products cleared by the CCP.
4. The policies and the procedures shall determine the risk mitigation measures to be applied when the concentration limits are exceeded.
5. When determining the concentration limit for a CCP's exposure to an individual issuer or custodian, a CCP shall aggregate and treat as a single risk, the exposure to all financial instruments issued by, or explicitly guaranteed by, the issuer and all financial resources deposited with the custodian.
6. A CCP shall monitor on a regular basis the adequacy of its concentration limit policies and procedures. In addition, a CCP shall review its concentration limit policy and procedure at least annually and whenever a material change occurs that affects the risk exposure of the CCP.
7. If the CCP breaches a concentration limit set out in its policies and procedures, it shall inform the competent authority immediately. The CCP shall rectify the breach as soon as possible

Article 49
Non-cash collateral

Where collateral is received in the form of financial instruments in accordance with the provisions of Chapter X, only Articles 46 and 48 shall apply.

CHAPTER XII
REVIEW OF MODELS, STRESS TESTING AND BACK TESTING

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

SECTION 1

MODELS AND PROGRAMMES

Article 50

Model Validation

1. A CCP shall conduct a comprehensive validation of its models, their methodologies and the liquidity risk management framework used to quantify, aggregate, and manage its risks. Any material revisions or adjustments to its models, their methodologies and the liquidity risk management framework shall be subject to appropriate governance, including seeking advice from the risk committee, and validated by a qualified and independent party prior to application
2. A CCP's validation process shall be documented and at least shall specify the policies used to test the CCP's margin, default fund and other financial resources methodologies and framework for calculating liquid financial resources. Any material revisions or adjustments to such policies shall be subject to appropriate governance, including seeking advice from the risk committee, and validated by a qualified and independent party prior to application.
3. A comprehensive validation shall, at least, include the following:
 - (a) an evaluation of the conceptual soundness of the models and framework, including developmental supporting evidence;
 - (b) a review of the on-going monitoring procedures, including verification of processes and benchmarking;
 - (c) a review of the parameters and assumptions made in the development of its models, their methodologies and the framework;
 - (d) a review of the adequacy and appropriateness of the models, their methodologies and framework adopted in respect of the type of contracts they apply to;
 - (e) a review of the appropriateness of its stress testing scenarios in accordance with Chapter VII and Article 55;
 - (f) an analysis of the outcomes of testing results.
4. A CCP shall establish the criteria against which it assesses whether its models, their methodologies and liquidity risk management framework can be successfully validated. The criteria shall include successful testing results.
5. Where pricing data is not readily available or reliable, a CCP shall address such pricing limitations and, at least, adopt conservative assumptions based on observed correlated or related markets and current behaviours of the market.
6. Where pricing data is not readily available or reliable, the systems and valuation models used for this purpose shall be subject to appropriate governance, including seeking advice from the risk committee, and validation and testing. A CCP shall have its valuation models validated under a variety of market scenarios by a qualified and independent party to ensure that its models accurately produces appropriate prices, and where appropriate, it shall adjust its calculation of initial margins to reflect any identified model risk.
7. A CCP shall regularly conduct an assessment of the theoretical and empirical properties of its margin model for all the financial instruments that it clears.

Article 51

Testing programmes

1. A CCP shall have policies and procedures in place that detail the stress and back testing programmes it undertakes to assess the appropriateness, accuracy, reliability and resilience of the

models and their methodologies used to calculate its risk control mechanisms including margin, default fund contributions, and other financial resources in a wide range of market conditions.

2. A CCP's policies and procedures shall also detail the stress testing programme it undertakes to assess the appropriateness, accuracy, reliability and resilience of the liquidity risk management framework.
3. The policies and procedures shall include at least methodologies for the inclusion of the selection and development of appropriate testing, including portfolio and market data selection, the regularity of the tests, the specific risk characteristics of the financial instruments cleared, the analysis of testing results and exceptions and the relevant corrective measures needed.
4. A CCP shall include any client positions when performing all tests.

SECTION 2

BACK TESTING

Article 52

Back testing

1. A CCP shall assess its margin coverage by performing an ex-post comparison of observed outcomes with expected outcomes derived from the use of margin models. Such back testing analysis shall be performed each day in order to evaluate whether there are any testing exceptions to margin coverage. Coverage shall be evaluated on current positions for financial instruments, clearing members and take into account possible effects from portfolio margining and, where appropriate, interoperable CCPs.
2. A CCP shall consider the appropriate historical time horizons for its back testing programme to ensure that the observation window used is sufficient enough to mitigate any detrimental effect on the statistical significance.
3. A CCP shall consider in its back testing programme, at least, clear statistical tests, and performance criteria to be defined by CCPs for the assessment of back testing results.
4. A CCP shall periodically report its back testing results and analysis in a form that does not breach confidentiality to the risk committee in order to seek their advice in the review of its margin model.
5. Back testing results and analysis shall be made available to all clearing members and, where known to the CCP, clients. For all other clients back testing results and analysis shall be made available by the relevant clearing members on request. Such information shall be aggregated in a form that does not breach confidentiality and clearing members and clients shall only have access to detailed back testing results and analysis for their own portfolios.
6. A CCP shall define the procedures to detail the actions it could take given the results of back testing analysis.

SECTION 3

SENSITIVITY TESTING AND ANALYSIS

Article 53

Sensitivity testing and analysis

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

2. A CCP shall use a wide range of parameters and assumptions to capture a variety of historical and hypothetical conditions, including the most-volatile periods that have been experienced by the markets it serves and extreme changes in the correlations between prices of contracts cleared by the CCP, in order to understand how the level of margin coverage might be affected by highly stressed market conditions and changes in important model parameters.
3. Sensitivity analysis shall be performed on a number of actual and representative clearing member portfolios. The representative portfolios shall be chosen based on their sensitivity to the material risk factors and correlations to which the CCP is exposed. Such sensitivity testing and analysis shall be designed to test the key parameters and assumptions of the initial margin model at a number of confidence intervals to determine the sensitivity of the system to errors in the calibration of such parameters and assumptions. Appropriate consideration shall be given to the term structure of the risk factors, and the assumed correlation between risk factors.
4. A CCP shall evaluate the potential losses in clearing member positions.
5. A CCP shall, where applicable, consider parameters reflective of the simultaneous default of clearing members that issue financial instruments cleared by the CCP or the underlying of derivatives cleared by the CCP. Where applicable, the effects of a client's default that issues financial instruments cleared by the CCP or the underlying of derivatives cleared by the CCP shall also be considered.
6. A CCP shall periodically report its sensitivity testing results and analysis in a form that does not breach confidentiality to the risk committee in order to seek its advice in the review of its margin model.
7. A CCP shall define the procedures to detail the actions it could take given the results of sensitivity testing analysis.

SECTION 4

STRESS TESTING

Article 54

Stress testing

1. A CCP's stress tests shall apply stressed parameters, assumptions, and scenarios to the models used for the estimation of risk exposures to make sure its financial resources are sufficient to cover those exposures under extreme but plausible market conditions.
2. A CCP's stress testing programme shall require the CCP to conduct a range of stress tests on a regular basis that shall consider the CCP's product mix and all elements of its models and their methodologies and its liquidity risk management framework.
3. A CCP's stress testing programme shall prescribe that stress tests are performed, using defined stress testing scenarios, on both past and hypothetical extreme but plausible market conditions in accordance with Chapter VII. Past conditions to be used shall be reviewed and adjusted, where appropriate. A CCP shall also consider other forms of appropriate stress testing scenarios including, but not limited to, the technical or financial failure of its settlement banks, nostro agents, custodian banks, liquidity providers, or interoperable CCPs.
4. A CCP shall have the capacity to adapt its stress tests quickly to incorporate new or emerging risks.
5. A CCP shall consider the potential losses arising from the default of a client, where known, which clears through multiple clearing members.
6. A CCP shall periodically report its stress testing results and analysis in a form that does not breach confidentiality to the risk committee in order to seek its advice in the review of its models, its methodologies and its liquidity risk management framework.
7. Stress testing results and analysis shall be made available to all clearing members and, where known to the CCP, clients. For all other clients, back testing results and analysis shall be made available by the relevant clearing members on request. Such information shall be aggregated in a

form that does not breach confidentiality and clearing members and clients shall only have access to detailed stress testing results and analysis for their own portfolios.

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

Article 55

Stress testing - Risk factors to test

1. A CCP shall identify, and have an appropriate method for measuring, relevant risk factors specific to the contracts it clears that could affect its losses. A CCP's stress tests shall, at least, take into account risk factors specified for the following type of financial instruments, where applicable:
 - (a) interest rate related contracts: risk factors corresponding to interest rates in each currency in which the CCP clears financial instruments. The yield curve modelling shall be divided into various maturity segments in order to capture variation in the volatility of rates along the yield curve. The number of related risk factors shall depend on the complexity of the interest rate contracts cleared by the CCP. Basis risk, arising from less than perfectly correlated movements between government and other fixed-income interest rates, shall be captured separately.
 - (b) exchange rate related contracts: risk factors corresponding to each foreign currency in which the CCP clears financial instruments and to the exchange rate between the currency in which margin calls are made and the currency in which the CCP clears financial instruments.
 - (c) equity related contracts: risk factors corresponding to the volatility of individual equity issues for each of the markets cleared by the CCP and to the volatility of various sectors of the overall equity market. The sophistication and nature of the modelling technique for a given market shall correspond to the CCP's exposure to the overall market as well as its concentration in individual equity issues in that market.
 - (d) commodity contracts: risk factors that take into account the different categories and sub-categories of commodity contracts and related derivatives cleared by the CCP, including, where appropriate, variations in the convenience yield between derivatives positions and cash positions in the commodity.
 - (e) credit related contracts: risk factors that consider jump to default risk, including the cumulative risk arising from multiple defaults, basis risk and recovery rate volatility.
2. A CCP shall also, at least, give appropriate consideration to the following in its stress tests:
 - (a) correlations, including those between identified risk factors and similar contracts cleared by the CCP;
 - (b) factors corresponding to the implied and historical volatility of the contract being cleared;
 - (c) specific characteristics of any new contracts to be cleared by the CCP;
 - (d) concentration risk, including to a clearing member, and group entities of clearing members;
 - (e) interdependencies and multiple relationships;
 - (f) relevant risks including foreign exchange risk;

(g) set exposure limits;

(h) wrong-way risk.

Article 56

Stress testing - total financial resources

1. A CCP's stress-testing programme shall ensure that its combination of margin, default fund contributions and other financial resources are sufficient to cover the default of at least the two clearing members to which it has the largest exposures under extreme but plausible market conditions. The stress testing programme shall also examine potential losses resulting from the default of entities in the same group as the two clearing members to which it has the largest exposures under extreme but plausible market conditions.
2. A CCP's stress-testing programme shall ensure that its margins and default fund are sufficient to cover at least the default of the clearing member to which it has the largest exposures or of the second and third largest clearing members, if the sum of their exposures is larger in accordance with Article 42 of Regulation (EU) No 648/2012.
3. The CCP shall conduct a thorough analysis of the potential losses it could suffer and shall evaluate the potential losses in clearing member positions, including the risk that liquidating such positions could have an impact on the market and the CCP's level of margin coverage.
4. A CCP shall, where applicable, consider in its stress tests, the effects of the default of a clearing member that issues financial instruments cleared by the CCP or the underlying of derivatives cleared by the CCP. Where applicable, the effects of a client's default that issues financial instruments cleared by the CCP or the underlying of derivatives cleared by the CCP shall also be considered.
5. A CCP's stress tests shall consider the liquidation period as outlined in Chapter VI.

Article 57

Stress testing – liquid financial resources

1. A CCP's stress-testing programme of its liquid financial resources shall ensure that they are sufficient in accordance with the requirements laid down in Chapter VIII.
2. Additionally a CCP shall have clear and transparent rules and procedures to address insufficient liquid financial resources highlighted by its stress tests to ensure settlement of payments obligations. A CCP shall also have clear procedures for using the results and analysis of its stress tests to evaluate and adjust the adequacy of its liquidity risk management framework and liquidity providers.
3. The stress testing scenarios used in the stress testing of liquid financial resources shall consider the design and operation of the CCP, and include all entities that might pose material liquidity risk to it. Such stress tests shall also consider any strong linkages or similar exposures between its clearing members, including other entities that are part of the same group, and assess the probability of multiple defaults and the contagion effect among its clearing members that such defaults may cause.

SECTION 5

COVERAGE AND USING TEST RESULTS

Article 58

Maintaining sufficient coverage

1. A CCP shall establish and maintain procedures to recognise changes in market conditions, including increases in volatility or reductions in the liquidity of the financial instruments it clears, so as to promptly adapt calculation of its margin requirement to appropriately account for new market conditions.
2. A CCP shall conduct tests on its haircuts in order to ensure collateral can be liquidated at least at its haircutted value in observed and extreme but plausible market conditions.
3. If a CCP collects margin at a portfolio, as opposed to product level, it shall continuously review and test offsets among products. A CCP shall base such offsets on prudent and economically meaningful methodology that reflects the degree of price dependence between the products. In particular, a CCP shall test how correlations perform during periods of actual and hypothetical severe market conditions.

Article 59

Review of models using test results

1. A CCP shall have clear procedures to determine the amount of additional margin it may need to collect, including on an intraday basis, and to recalibrate its margin model where back testing indicates that the model did not perform as expected with the result that it does not identify the appropriate amount of initial margin necessary to achieve the intended level of confidence. Where a CCP has determined that it is necessary to call additional margin it shall do so by the next margin call.
2. A CCP shall evaluate the source of testing exceptions highlighted by its back tests. Depending on the source of exceptions, the CCP shall determine whether a fundamental change to the margin model, or to the models that input into it, is required and whether the recalibration of current parameters is necessary.
3. A CCP shall evaluate the sources of testing exceptions highlighted by its stress tests. The CCP shall determine whether a fundamental change to its models, their methodologies or its liquidity risk management framework is required or if the recalibration of current parameters or assumptions is necessary, on the basis of the sources of exceptions.
4. Where the results of the tests show an insufficient coverage of margin, default fund or other financial resources, a CCP shall increase overall coverage of its financial resources to an acceptable level by the next margin call. Where the results of the tests show insufficient liquid financial resources, the CCP shall increase its liquid financial resources to an acceptable level as soon as is practicable.
5. A CCP shall, in reviewing its models, their methodologies and the liquidity risk management framework, monitor the frequency of reoccurring testing exceptions to identify and resolve issues appropriately and without undue delay.

SECTION 6

REVERSE STRESS TESTS

Article 60

Reverse stress tests

1. A CCP shall conduct reverse stress tests which are designed to identify under which market conditions the combination of its margin, default fund and other financial resources may provide

insufficient coverage of credit exposures and for which its liquid financial resources may be insufficient. When conducting such tests, a CCP shall model extreme market conditions that go beyond what are considered plausible market conditions, in order to help determine the limits of its models, its liquidity risk management framework, its financial resources and its liquid financial resources.

2. A CCP shall develop reverse stress tests tailored to the specific risks of the markets and of the contracts that it provides clearing services for.
3. A CCP shall use the conditions identified in paragraph 1 and the results and analysis of its reverse stress tests to help in identifying extreme but plausible scenarios in accordance with Chapter VII.
4. A CCP shall periodically report its reverse stress testing results and analysis in a form that does not breach confidentiality to the risk committee in order to seek their advice in its review.

SECTION 7

DEFAULT PROCEDURES

Article 61

Testing default procedures

1. A CCP shall test and review its default procedures to ensure they are both practical and effective. A CCP shall perform simulation exercises as part of the testing of its default procedures.
2. A CCP shall, following testing of its default procedures, identify any uncertainties and appropriately adapt its procedures to mitigate such uncertainty.
3. A CCP shall, through conducting simulation exercises, verify that all clearing members, where appropriate, clients and other relevant parties including, but not limited to, interoperable CCP's and any related service providers, are duly informed and know the procedures involved in a default scenario.

SECTION 8

FREQUENCIES

Article 62

Frequency

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

7. A CCP shall conduct a detailed thorough analysis of testing results at least on a monthly basis in order to ensure its stress testing scenarios, models and liquidity risk management framework, underlying parameters and assumptions are correct. Such analysis shall be conducted more frequently in stressed market conditions, including when the financial instruments cleared or markets served in general display high volatility, become less liquid, or when the size or concentrations of positions held by its clearing members increase significantly or when it is anticipated that a CCP will encounter stressed market conditions.
8. Sensitivity analysis shall be conducted at least monthly, using the results of sensitivity tests. This analysis should be conducted more frequently when markets are unusually volatile or less liquid or when the size or concentrations of positions held by its clearing members increase significantly.
9. A CCP shall test offsets among financial instruments and how correlations perform during periods of actual and hypothetical severe market conditions at least annually.
10. A CCP's haircuts shall be tested at least monthly.
11. A CCP shall conduct reverse stress tests at least quarterly.
12. A CCP shall test and review its default procedures at least quarterly and perform simulation exercises at least annually, in accordance with Article 61. A CCP shall also perform simulation exercises following any material change to its default procedures.

SECTION 9

TIME HORIZONS USED WHEN PERFORMING TESTS

Article 63

The time horizons

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

SECTION 10

PUBLIC DISCLOSURE

Article 64

Information to be publicly disclosed

1. A CCP shall publicly disclose the general principles underlying its models and their methodologies, the nature of tests performed, with a high level summary of the test results and any corrective actions undertaken.
2. A CCP shall make available to the public key aspects of its default procedures, including:
 - (a) the circumstances in which action may be taken;
 - (b) who may take those actions;
 - (c) the scope of the actions which may be taken, including the treatment of both proprietary and client positions, funds and assets;
 - (d) the mechanisms to address a CCP's obligations to non-defaulting clearing members;
 - (e) the mechanisms to help address the defaulting clearing member's obligations to its clients.

Article 65
Entry into force

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

Except as specified below, this Regulation shall apply from the date of entry into force:

Where a commercial bank guarantee is provided to cover exposures arising from transactions on derivatives as defined in Article 2(4) point (b) and (d) of Regulation (EU) No 1227/2011, point (h) of Article 40(1) shall apply from 3 years following the entry into force 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]

[On behalf of the President]

[Position]

ANNEX V - Draft implementing technical standards on record keeping requirements for CCPs

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

of [date]

laying down implementing technical standards with regard to the format of the records to be maintained by central counterparties

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories¹², and in particular Article 29(5) thereof,

Whereas:

- (1) To carry out their duties effectively and consistently, the relevant authorities should be provided with data that are comparable among central counterparties (hereinafter referred to as 'CCPs'). The use of common formats also facilitates the reconciliation of data between CCPs.
- (2) A CCP should be required to retain data for record keeping purposes in a format compatible with the format in which data is retained by trade repositories, taking into account that in certain circumstances CCPs and trade repositories are required to maintain or report the same information. The use of a common format across different financial market infrastructures facilitates the greater use of these formats by a wide variety of market participants, thus promoting standardisation.
- (3) To facilitate straight through processing and reduction of costs to market participants, it is important to use standardised procedures and data formats across CCPs as much as possible.
- (4) The underlying should be identified by using a single identifier, however there is currently no market wide standardised code to identify the underlyings within a basket. CCPs should therefore indicate at least that the underlying is a basket and use International Securities Identification numbers (ISINs) for standardised indices where possible.
- (5) This Regulation is based on the draft implementing technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.
- (6) In accordance with Article 15 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)¹³, ESMA has conducted an open public consultation before submitting the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and

¹² OJ L 201. 27.7.2012, p. 1.

¹³ OJ L331, 15.12.2010, p.84.

Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010.

HAS ADOPTED THIS REGULATION:

Article 1

Formats of records

1. A CCP shall retain the records specified in Article 20 of Regulation (EC) xx/2012 [Commission delegated regulation endorsing draft regulatory technical standards on CCP requirements] of each contract processed in the format set out in Table 1 in the Annex.
2. A CCP shall retain the records specified in Article 21 of Regulation (EC) xx/2012 [Commission delegated regulation endorsing draft regulatory technical standards on CCP requirements] of each position in the format set out in Table 2 in the Annex.
3. A CCP shall retain the records specified in Article 22 of Regulation (EC) xx/2012 [Commission delegated regulation endorsing draft regulatory technical standards on CCP requirements] of activities related to its business and internal organisation in the format set out in Table 3 in the Annex.
4. A CCP shall provide the competent authority the records and information under paragraph 1 to 3 in a format that allows a direct data feed between the CCP and the competent authority. A CCP shall establish such data feed within 6 months after the request of the competent authority.

Article 2

Entry into force

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

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

Done at Brussels, []

[For the Commission
The President]

[On behalf of the President]

[Position]

ANNEX to implementing technical standard on record-keeping requirements for CCPs

Tables of fields to be recorded under Article 29 of EMIR

Table 1 – Records of transactions processed

	FIELD	FORMAT	DESCRIPTION
1	Reporting timestamp	<i>ISO 8601 date format / UTC time format.</i>	Date and time of reporting.
2	Price/rate	<i>Up to 20 numerical digits in the format xxxx,yyyyy.</i>	The price per security or derivative contract excluding commission and (where relevant) accrued interest. In the case of a debt instrument, the price may be expressed either in terms of currency or as a percentage.
2a	Price notation	<i>E.g. ISO 4217 Currency Code, 3 alphabetical digits, percentage.</i>	The manner in which the price is expressed.
3	Notional Currency	<i>ISO 4217 Currency Code, 3 alphabetical digits.</i>	The currency in which the price is expressed. If, in the case of a bond or other form of securitised debt, the price is expressed as a percentage, that percentage shall be included.
3a	Deliverable currency	<i>ISO 4217 Currency Code, 3 alphabetical digits.</i>	The currency to be delivered.
4	Quantity	<i>Up to 10 numerical digits.</i>	The number of units of the financial instruments, the nominal value of bonds, or the number of derivative contracts included in the transaction.
5	Quantity notation	<i>Up to 10 numerical digits.</i>	An indication as to whether the quantity is the number of units of financial instruments, the nominal value of bonds or the number of derivative contracts.
6	CCP side	<i>B=Buyer / S=Seller.</i>	
7	Product ID	<i>Interim taxonomy in accordance with the information in Article 4 of Regulation (EC) xx/2012 [draft ITS on format and frequency of trade reports to trade repositories], ISIN or a unique product identifier (UPI).</i>	The contract shall be identified by using a product identifier, where available.
8	Clearing member ID	<i>Legal Entity Identifier (LEI) (20 alphanumerical digits), interim entity identifier (20 alphanumerical digits), BIC (11 alphanumerical digits) or client code (50 alphanumerical digits).</i>	In case the reporting counterparty is not a clearing member, its clearing member shall be identified in this field by a unique code. In case of an individual, a client code, as assigned by the CCP, shall be used.

9	Beneficiary ID	<i>Legal Entity Identifier (LEI) (20 alphanumeric digits), interim entity identifier (20 alphanumeric digits), BIC (11 alphanumeric digits) or client code (50 alphanumeric digits).</i>	If the beneficiary of the contract is not a C/P to this contract it has to be identified by a unique code or, in case of individuals, by a client code as assigned by the legal entity used by the individual.
10	Party that transferred the contract (in case of give-up)	<i>Legal Entity Identifier (LEI) (20 alphanumeric digits), interim entity identifier (20 alphanumeric digits), BIC (11 alphanumeric digits) or client code (50 alphanumeric digits).</i>	
11	Venue of execution	<i>ISO 10383 Market Identifier Code (MIC) where relevant, XOFF for listed derivatives that are traded off-exchange or XXXX for OTC derivatives.</i>	Identification of the venue where the transaction was executed. In case of a contract concluded OTC, it has to be identified whether the respective instrument is admitted to trading but traded OTC or not admitted to trading and traded OTC.
12	Date of interposition	<i>ISO 8601 date format.</i>	The day on which the interposition of the CCP in the contract was executed.
13	Time of interposition	<i>UTC time format.</i>	The time at which the interposition of the CCP in the contract was executed, reported in the local time of the competent authority to which the transaction will be reported, and the basis in which the transaction is reported expressed as Coordinated Universal Time (UTC) +/- hours.
14	Date of termination of the contract	<i>ISO 8601 date format.</i>	The day on which the termination of the contract occurred.
15	Time of termination of the contract	<i>UTC time format.</i>	The time at which the termination of the contract occurred, reported in the local time of the competent authority to which the transaction will be reported, and the basis in which the transaction is reported expressed as Coordinated Universal Time (UTC) +/- hours.
16	Delivery type	<i>C = cash, P = physical, O = optional for counterparty.</i>	Whether the contract is settled physically or in cash.
17	Settlement date	<i>ISO 8601 date format.</i>	The day on which the settlement or the buy-in of the contract is executed. If more than one, further fields may be identified.
18	Time of settlement or of buy-in in the contract	<i>UTC time format.</i>	The time at which the settlement or the buy-in of the contract is executed, reported in the local time of the competent authority to which the

			transaction will be reported, and the basis in which the transaction is reported expressed as Coordinated Universal Time (UTC) +/- hours.
Details on the original terms of the contracts cleared, to be provided to the extent they are applicable			
19	Date	<i>ISO 8601 date format.</i>	The day on which the contract was originally concluded.
20	Time	<i>UTC time format.</i>	The time at which the original contract was originally concluded, reported in the local time of the competent authority to which the transaction will be reported, and the basis in which the transaction is reported expressed as Coordinated Universal Time (UTC) +/- hours.
21	Product ID	<i>Interim taxonomy in accordance with the information in Article 4 of Regulation (EC) xx/2012 [draft ITS on format and frequency of trade reports to trade repositories], ISIN or a unique product identifier (UPI).</i>	The contract shall be identified by using a unique product identifier where available.
22	Underlying	<i>A unique product identifier, ISIN (12 alphanumerical digits and CFI (6 alphanumerical digits). Legal Entity Identifier (LEI) (20 alphanumerical digits), interim entity identifier (20 alphanumerical digits), B= Basket, or I=Index.</i>	The instrument identification applicable to the security that is the underlying asset in a derivative contract as well as the transferable security falling within Article 4(1)(18)(c) of Directive 2004/39/EC.
23	Derivative type (in case of derivative contract)	The harmonised description of the derivative type should be done according to one of the top level categories as provided by a uniform internationally accepted standard for financial instrument classification.	
24	Inclusion of the instrument in the ESMA register of contracts subject to the clearing obligation (in case of derivative contract)	<i>Y=Yes / N=No.</i>	
Other information to be provided to the extent they are applicable			
25	Identification of the interoperable CCP clearing on leg of the transaction	<i>Legal Entity Identifier (LEI) (20 alphanumerical digits), interim entity identifier (20 alphanumerical digits), BIC (11 alphanumerical digits) or client code (50 alphanumerical digits).</i>	

Table 2 Position records

	FIELD	FORMAT
1	Clearing member ID	<i>Legal Entity Identifier (LEI), interim entity identifier or BIC</i>
2	Beneficiary ID	<i>Legal Entity Identifier (LEI), interim entity identifier, BIC or Client Code</i>
3	Interoperable CCP maintaining the position	<i>Legal Entity Identifier (LEI), interim entity identifier, BIC or Client Code</i>
4	Sign of the position	<i>B=Buyer / S=Seller</i>
5	Value of the position	<i>Up to 10 numerical digits (xxxx,yy).</i>
6	Price at which the contracts are valued	<i>Up to 10 numerical digits (xxxx,yy).</i>
7	Currency	<i>ISO Currency Code.</i>
8	Other relevant information	<i>Free Text</i>
9	Amount of margins called by the CCP	<i>Up to 10 numerical digits (xxxx,yy).</i>
10	Amount of default fund contributions called by the CCP	<i>Up to 10 numerical digits (xxxx,yy).</i>
11	Amount of other financial resources called by the CCP	<i>Up to 10 numerical digits (xxxx,yy).</i>
12A	Amount of margins posted by the Clearing Member with reference to client account A	<i>Up to 10 numerical digits (xxxx,yy).</i>
13A	Amount of default fund contributions posted by the Clearing Member with reference to client account A	<i>Up to 10 numerical digits (xxxx,yy).</i>
14A	Amount of other financial resources posted by the Clearing Member with reference	<i>Up to 10 numerical digits (xxxx,yy).</i>

	to client account A	
15B	Amount of margins posted by the Clearing Member with reference to client account B	<i>Up to 10 numerical digits (xxxx,yy).</i>
16B	Amount of default fund contributions posted by the Clearing Member with reference to client account B	<i>Up to 10 numerical digits (xxxx,yy).</i>
17B	Amount of other financial resources posted by the Clearing Member with reference to client account B	<i>Up to 10 numerical digits (xxxx,yy).</i>

Table 3 Business records

	FIELD	FORMAT	DESCRIPTION
1	Organisational charts	<i>Free text</i>	Board and relevant committees, clearing unit, risk management unit, and all other relevant units or divisions.
Shareholders or members that have qualifying holdings (fields to be added for each of the relevant shareholder/member)			
2	Type	<i>S=Shareholder / M=member.</i>	
3	Type of qualified holding	<i>D=direct / I=indirect.</i>	
4	Type of entity	<i>N=natural person / L=legal person.</i>	
5	Amount of the holding	<i>Up to 10 numerical digits (xxxx,yyyyyy).</i>	
Other documents			
6	Policies, procedures, processes required under organisational requirements	<i>Documents</i>	
7	Minutes of Board meetings, meeting of sub-committees (if applicable) and of Senior Management Committees (if applicable)	<i>Documents</i>	

8	Minutes of meetings of the risk committee	<i>Documents</i>	
9	Minutes of consultation group with clearing members and clients (if any)	<i>Documents</i>	
10	Reports of internal and external audit, risk management, compliance and consultant	<i>Documents</i>	
11	Business continuity policy and disaster recovery plan	<i>Documents</i>	
12	Liquidity plan and daily liquidity reports	<i>Documents</i>	
13	Documents reflecting all assets and liabilities and capital accounts	<i>Documents</i>	
14	Complaints received	<i>Free text</i>	For each complaint: information on complaint's name, address and account number; date of receiving the complaint; names of all persons identified in the complaint; description of the nature of the complaint; disposition of the complaint; date at which the complaint was resolved.
15	Information on interruption of services or dysfunction	<i>Free text</i>	Information on any interruption of services or dysfunction, including a detailed report on the timing, effects and remedial actions.
16	Results of back and stress test performed	<i>Free text</i>	
17	Written communications with competent Authorities, ESMA and the relevant members of the ESCB	<i>Documents</i>	
18	Legal opinions received in accordance with organisational requirements	<i>Documents</i>	

19	Interoperability arrangements with other CCPs (where applicable)	<i>Documents</i>	
20	List of all clearing members (Article 17 of Regulation (EC) xx/2012 [Commission regulation endorsing draft RTS on CCP requirements])	<i>Free text / Document</i>	List in accordance with Article 17 of Regulation (EC) xx/2012 [Commission regulation endorsing draft RTS on CCP requirements].
21	Information required by Article 17 of Regulation (EC) xx/2012 [Commission regulation endorsing draft RTS on CCP requirements]	<i>Free text / Documents</i>	Law and Rules governing (i) the access to the CCP, (ii) the contracts concluded by the CCP with clearing members and, where practicable, clients, (iii) the contracts that the CCP accepts for clearing, (iv) any interoperability arrangements, (v) the use of collateral and default fund contributions, including the liquidation of positions and collateral and the extent to which collateral is protected against third party claims (level of segregation).
22	Development on new initiative processes	<i>Free text</i>	In case of the provision of new services.

ANNEX VI - Draft regulatory technical standards on trade repositories

Annex VI.I

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

of [date]

supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards on the minimum details of the data to be reported to trade repositories

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories¹⁴, and in particular Articles in particular Article 9(5) thereof,

Whereas:

- (1) In order to allow flexibility, a counterparty should be able to delegate the reporting of the contract to the other counterparty or to a third party. Counterparties should also be able to agree to delegate reporting to a common third entity including a central counterparty (CCP), the latter submitting one report, including the relevant table of fields, to the trade repository. In these circumstances and in order to ensure data quality, the report should indicate that it is made on behalf of both counterparties and will contain the full set of details that would have been reported had the contract been reported separately.
- (2) To avoid inconsistencies in the Common Data tables, each counterparty to a derivative contract should ensure that the Common Data reported is agreed between both parties to the trade. A unique trade identifier will help with the reconciliation of the data in the case that the counterparties are reporting to different trade repositories.
- (3) To avoid duplicate reporting and to reduce the reporting burden, where one counterparty or CCP reports on behalf of both counterparties, the counterparty or CCP should be able to send one report to the trade repository containing the relevant information.
- (4) Valuation of derivative contracts is essential to allow regulators to fulfil their mandates, in particular when it comes to financial stability. The mark to market or mark to model value of a contract indicates the sign and size of the exposures related to that contract, and complements the information on the original value specified in the contract.
- (5) Gathering collateral information regarding a particular contract is key to ensuring the proper monitoring of exposures. To enable this, counterparties that collateralise should report such collateralisation details on a transaction level basis. Where collateral is calculated on the basis of net positions resulting from a set of contracts, and is therefore not posted on a transaction level basis but on a portfolio basis, counterparties should be able to

¹⁴ OJ L 201, 27.7.2012.

report the portfolio using a unique code or numbering system as determined by the counterparty. That unique code should identify the specific portfolio over which the collateral is exchanged where the counterparty has more than one portfolio and should also ensure that a derivative contract can be linked to a particular portfolio over which collateral is being held.

- (6) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission and it reflects the relevance of the role of trade repositories to improve transparency of markets towards the public and regulators, the data to be reported to, collected by and made available by trade repositories depending on derivative class and the nature of the trade.
- (7) ESMA has consulted the relevant authorities and the members of the European System of Central Banks (ESCB) before submitting the draft technical standards on which this Regulation is based. In accordance with Article 10 of Regulation (EU) No 1095/2010, of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)¹⁵. ESMA has conducted open public consultations on such draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the ESMA Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation.

HAS ADOPTED THIS REGULATION:

Article 1

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

1. Reports to a trade repository shall include:
 - (a) the details set out in Table 1 of the Annex which contains information relating to the counterparties to a contract;
 - (b) the information set out in Table 2 of the Annex which contains details pertaining to the derivative contract concluded between the two counterparties.
2. For the purposes of paragraph 1, conclusion of a contract shall mean 'execution of a transaction' as referred to in Article 25 (3) of Directive 2004 /39/EC of the European Parliament and of the Council on markets in financial instruments¹⁶.
3. Where one report is made on behalf of both counterparties, it shall contain the information set out in Table 1 of the Annex in relation to each of the counterparties. The information set out in Table 2 of the Annex shall be submitted only once.
4. Where one report is made on behalf of both counterparties it shall indicate this fact, as set out in field 9 of Table 1 of the Annex.
5. Where one counterparty reports the details of a contract to a trade repository on behalf of the other counterparty, or a third entity reports a contract to a trade repository on behalf of one or both counterparties, the details reported shall include the full set of details that would have been reported had the contracts been reported to the trade repository by each counterparty separately.

¹⁵ OJ L 331, 15.12.2010, p.84.

¹⁶ OJ L 145, 30.4.2004, p. 1.

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

Article 2

Cleared trades

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

Article 3

Reporting of exposures

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

Article 4

Reporting log

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

Article 5

Entry into force

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

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

Done at Brussels, []
The President]

[For the Commission

[On behalf of the President]

[Position]

ANNEX

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

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

26	Currency of the collateral value	Specify the value of the collateral for field 25.
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Table 2 - Common Data			
	FIELD	DETAILS TO BE REPORTED	APPLICABLE TYPES OF DERIVATIVE CONTRACT
	Section 2a - Contract type		All contracts
1	Taxonomy used	The contract shall be identified by using a product identifier.	
2	Product ID 1	The contract shall be identified by using a product identifier.	
3	Product ID 2	The contract shall be identified by using a product identifier.	
4	Underlying	The underlying shall be identified by using a unique identifier for this underlying. In case of baskets or indices, an indication for this basket or index shall be used where a unique identifier does not exist.	
5	Notional currency 1	The currency of the notional amount. In the case of an interest rate derivative contract, this will be the notional currency of leg 1.	
6	Notional currency 2	The currency of the notional amount. In the case of an interest rate derivative contract, this will be the notional currency of leg 2.	
7	Deliverable currency	The currency to be delivered.	
	Section 2b - Details on the transaction		All contracts
8	Trade ID	A Unique Trade ID agreed at the European level, which is provided by the reporting counterparty. If there is no unique trade ID in place, a unique code should be generated and agreed with the other counterparty.	
9	Transaction reference number	A unique identification number for the transaction provided by the reporting entity or a third party reporting on its behalf.	

10	Venue of execution	The venue of execution shall be identified by a unique code for this venue. In case of a contract concluded OTC, it has to be identified whether the respective instrument is admitted to trading but traded OTC or not admitted to trading and traded OTC.	
11	Compression	Identify whether the contract results from a compression exercise.	
12	Price / rate	The price per derivative excluding, where applicable, commission and accrued interest.	
13	Price notation	The manner in which the price is expressed.	
14	Notional amount	Original value of the contract.	
15	Price multiplier	The number of units of the financial instrument which are contained in a trading lot; for example, the number of derivatives represented by one contract.	
16	Quantity	Number of contracts included in the report, where more than one derivative contract is reported.	
17	Up-front payment	Amount of any up-front payment the reporting counterparty made or received.	
18	Delivery type	Indicates whether the contract is settled physically or in cash.	
19	Execution timestamp	As defined in Article 1 (2).	
20	Effective date	Date when obligations under the contract come into effect.	
21	Maturity date	Original date of expiry of the reported contract. An early termination shall not be reported in this field.	
22	Termination date	Termination date of the reported contract. If not different from maturity date, this field shall be left blank.	
23	Date of Settlement	Date of settlement of the underlying. If more than one, further fields may be used (e.g. 23A, 123B, 23C...).	
24	Master Agreement type	Reference to the name of the relevant master agreement, if used for the reported contract (e.g. ISDA Master Agreement; Master Power Purchase and Sale Agreement; International ForEx Master Agreement; European Master Agreement or any local Master Agreements).	
25	Master Agreement version	Reference to the year of the master agreement version used for the reported trade, if applicable (e.g. 1992, 2002, ...).	
	Section 2c - Risk mitigation /		All contracts

	Reporting		
26	Confirmation timestamp	Date and time of the confirmation, as defined under Regulation (EC) the xx/2012 [Commission delegated regulation endorsing draft regulatory technical standards on OTC Derivatives] indicating time zone in which the confirmation has taken place.	
27	Confirmation means	Whether the contract was electronically confirmed, non-electronically confirmed or remains unconfirmed.	
	Section 2d – Clearing		All contracts
28	Clearing obligation	Indicates, whether the reported contract is subject to the clearing obligation under Regulation (EU) No 648/2012.	
29	Cleared	Indicates, whether clearing has taken place.	
30	Clearing timestamp	Time and date when clearing took place.	
31	CCP	In case of a contract that has been cleared, the unique code for the CCP that has cleared the contract.	
32	Intragroup	Indicates whether the contract was entered into as an intra-group transaction, defined in Article 3 of Regulation (EU) No 648/2012.	
	Section 2e Interest Rates	If a UPI is reported and contains all the information below, this is not required to be reported.	Interest rate derivatives
33	Fixed rate of leg 1	An indication of the fixed rate leg 1 used, if applicable.	
34	Fixed rate of leg 2	An indication of the fixed rate leg 2 used, if applicable.	
35	Fixed rate day count	The actual number of days in the relevant fixed rate payer calculation period, if applicable.	
36	Fixed leg payment frequency	Frequency of payments for the fixed rate leg, if applicable.	
37	Floating rate payment frequency	Frequency of payments for the floating rate leg, if applicable.	
38	Floating rate reset frequency	Frequency of floating rate leg resets, if applicable.	
39	Floating rate of leg 1	An indication of the interest rates used which are reset at predetermined intervals by reference to a market reference rate, if applicable.	
40	Floating rate of leg 2	An indication of the interest rates used which are reset at predetermined intervals by reference to a market reference rate, if	

		applicable.	
	Section 2f – Foreign Exchange	If a UPI is reported and contains all the information below, this is not required to be reported.	Currency derivatives
41	Currency 2	The cross currency, if different from the currency of delivery.	
42	Exchange rate 1	The contractual rate of exchange of the currencies.	
43	Forward exchange rate	Forward exchange rate on value date.	
44	Exchange rate basis	Quote base for exchange rate.	
	Section 2g - Commodities	If a UPI is reported and contains all the information below, this is not required to be reported unless to be reported according to Regulation (EU) No 1227/2011.	Commodity derivatives
	General		
45	Commodity base	Indicates the type of commodity underlying the contract.	
46	Commodity details	Details of the particular commodity beyond field 45.	
	Energy	Information to be reported according to Regulation (EU) No 1227/2011, if applicable.	
47	Delivery point or zone	Delivery points(s) of market area(s).	
48	Interconnection Point	Identification of the border(s) or border point(s) of a transportation contract.	
49	Load type	Repeatable section of fields 50-54 to identify the product delivery profile which correspond to the delivery periods of a day.	
50	Delivery start date and time	Start date and time of delivery.	
51	Delivery end date and time	End date and time of delivery.	
52	Contract capacity	Quantity per delivery time interval.	
53	Quantity Unit	Daily or hourly quantity in MWh or kWh/d which corresponds to the underlying commodity.	
54	Price/time interval quantities	If applicable, price per time interval quantities.	
	Section 2h - Options	If a UPI is reported and contains all the information below, this is not required to be reported.	Contracts that contain an option
55	Option type	Indicates whether the contract is a call or a put.	
56	Option style (exercise)	Indicates whether the option may be exercised only at a fixed date (European, and	

		Asian style), a series of pre-specified dates (Bermudan) or at any time during the life of the contract (American style).	
57	Strike price (cap/floor rate)	The strike price of the option.	
	Section 2i - Modifications to the report		All contracts
58	Action type	<p>Whether the report contains:</p> <ul style="list-style-type: none"> • a derivative contract or post-trade event for the first time, in which case it will be identified as 'new'; • a modification of details of a previously reported derivative contract, in which case it will be identified as 'modify'; • a cancellation of a wrongly submitted report, in which case, it will be identified as 'error'; • a termination of an existing contract, in which case it will be identified as 'cancel'; • a compression of the reported contract, in which case it will be identified as 'compression'; • an update of a contract valuation, in which case it will be identified as 'valuation update'; • any other amendment to the report, in which case it will be identified as 'other'. 	
59	Details of action type	Where field 58 is reported as 'other' the details of such amendment should be specified here.	

Annex VI.II

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

supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards specifying the details of the application for registration as a trade repository

of []

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 27 July 2012 on OTC derivatives, central counterparties and trade repositories¹⁷, and in particular Article 56(3) thereof,

Whereas:

- (1) Rules should be laid down specifying the information to be provided to the European Securities and Markets Authority (ESMA) as part of an application for registration as a trade repository.
- (2) Any person applying for registration as a trade repository should provide information on the structure of its internal controls and the independence of its governing bodies, in order to enable ESMA to assess whether the corporate governance structure ensures the independence of the trade repository and whether that structure and its reporting routines are adequate.
- (3) The European Securities and Markets Authority (ESMA) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)¹⁸, is responsible for the registration and supervision of trade repositories under Title VI of Regulation (EU) No 648/2012. For the purpose of enabling ESMA to assess the good repute, as well as the experience and skills of the prospective trade repository senior management, an applicant trade repository should provide the relevant information to perform such an assessment.
- (4) The trade repository should provide information to ESMA to demonstrate that it has the necessary financial resources at its disposal for the performance of its functions on an on-going basis and adequate business continuity arrangements.

¹⁷ OJ L 201, 27.7.2012.

¹⁸ OJ L 331, 15.12.2010, p.84.

- (5) Although when a trade repository operates through branches, these are not separate legal persons, separate information on branches should be provided in order to enable ESMA to clearly identify the position of the branches in the organisational structure of the trade repository; assess the fitness for duty and appropriateness of the senior management of the branches; and evaluate whether the control mechanisms, compliance and other functions in place are considered to be robust and enough to identify, evaluate and manage the branches' risks in an appropriate manner.
- (6) It is important for an applicant to provide ESMA with information on ancillary services, or other business lines that the trade repository offers outside its core activity of derivatives reporting, particularly as regards its central core activity of regulatory reporting.
- (7) In order for ESMA to assess the continuity and orderly function of an applicant's trade repository's technological systems, that applicant should provide ESMA with descriptions of those relevant technological systems and how they are managed. The applicant should also describe any outsourcing arrangements that are relevant for its services.
- (8) The fees associated with the services provided by trade repositories are important information for enabling market participants to make an informed choice and should therefore form part of the application for registration as trade repository.
- (9) Given that market participants and regulators rely on the data maintained by trade repositories, strict operational and record-keeping requirements should be clearly distinguishable in a trade repository's application for registration.
- (10) The risk management models associated with the services provided by a trade repository are a necessary item in its application for registration so as to enable market participants to make an informed choice.
- (11) In order to secure full access to the trade repository, third party service providers are granted non-discriminatory access to information maintained by the trade repository, on the condition that the entity providing the data and the relevant counterparties have provided their consent. An applicant trade repository should therefore provide ESMA with information about its access policies and procedures.
- (12) In order to carry out its authorisation duties effectively, ESMA should receive all information from trade repositories, related third parties and third parties to whom the trade repositories have outsourced operational functions and activities. Such information is necessary to assess or complete the assessment of the application for registration and the documentation therein.
- (13) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the Commission.
- (14) In accordance with Article 10 of Regulation (EU) No 1095/2010, ESMA has conducted open public consultations on the draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the ESMA Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation.

HAS ADOPTED THIS REGULATION:

CHAPTER 1

REGISTRATION

SECTION 1

GENERAL

Article 1

Identification, legal status and class of derivatives

1. An application for registration as a trade repository shall identify the applicant and the activities it intends to carry out which require it to be registered as a trade repository.
2. The application for registration as a trade repository shall in particular contain the following information:
 - (a) the corporate name of the applicant and legal address within the Union;
 - (b) an excerpt from the relevant commercial or court register, or other forms of certified evidence of the place of incorporation and scope of business activity of the applicant, valid at the application date;
 - (c) information on the classes of derivatives for which the applicant wishes to be registered;
 - (d) the articles of incorporation and, where relevant, other statutory documentation stating that the applicant is to conduct trade repository services;
 - (e) the minutes from the meeting where the board approved the application;
 - (f) the name and contact details of the person(s) responsible for compliance, or any other staff involved in compliance assessments for the applicant;
 - (g) the programme of operations, including indications of the location of the main business activities;
 - (h) the identification of any subsidiaries and, where relevant, the group structure;
 - (i) any service, other than the trade repository function, that the applicant intends to provide;
 - (j) any information on any pending judicial, administrative, arbitration or any other litigation proceedings irrespective of their type, that the applicant may be party to, particularly as regards tax and insolvency matters and where significant financial or reputational costs may be incurred, or any non-pending proceedings, that may still have any material impact on trade repository costs.

3. Upon request by ESMA, trade repositories shall also send to it additional information during the examination of the application for registration where such information is needed for the assessment of the applicants capacity to comply with the requirements set out in Articles 56 to 59 of Regulation (EU) No 648/2012 and for ESMA to duly interpret and analyse the documentation to be submitted or already submitted.
4. If a requirement of this Regulatory Technical Standard is not applicable to a specific applicant, the latter shall clearly indicate in the application the requirements that do not apply and also provide an explanation on why such requirements do not apply.

Article 2

Policies and procedures

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

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

SECTION 2

OWNERSHIP

Article 3

Ownership of the trade repository

1. An application for registration as a trade repository shall contain:
 - (a) a list containing the name each person or entity who directly or indirectly holds 5% or more of the applicants capital or of its voting rights or whose holding makes it possible to exercise a significant influence over the applicants management;
 - (b) a list of any undertakings in which a person referred to in point (a) holds 5% or more of the capital or voting rights or over whose management they exercise a significant influence.
2. Where the trade repository has a parent undertaking, the applicant shall:
 - (a) identify the legal address;

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

Article 4

Ownership chart

1. An application for registration as a trade repository shall contain a chart showing the ownership links between the parent undertaking, subsidiaries and any other associated entities or branches.
2. The undertakings shown in the chart referred to in paragraph 1 shall be identified by their full name, legal status and legal address.

SECTION 3

ORGANISATIONAL STRUCTURE, GOVERNANCE AND COMPLIANCE

Article 5

Organisational chart

1. An application for registration as a trade repository shall contain the organisational chart detailing the organisational structure of the applicant, including that of any ancillary services.
2. That chart shall include information about the identity of the person responsible for each significant role, including senior management and persons who direct the activities of any branches.

Article 6

Corporate governance

1. An application for registration as a trade repository shall contain information regarding the applicant's internal corporate governance policies and the procedures and terms of reference which govern its senior management, including the board, its non-executive members and, where established, committees.
2. That information shall include a description of the selection process, appointment, performance evaluation and removal of senior management and members of the board.
3. Where the applicant adheres to a recognised corporate governance code of conduct, the application for registration as a trade repository shall identify the code and provide an explanation for any situations where the applicant deviates from the code.

Article 7

Internal controls

1. An application for registration as a trade repository shall contain an overview of the internal controls of the applicant. This shall include information regarding its compliance function,

review function, risk assessment, internal control mechanisms and arrangements of its internal audit function.

2. The overview shall include information on the following matters:
 - (a) the applicants' internal control policies and procedures;
 - (b) the monitoring and evaluation of the adequacy and effectiveness of the applicant's systems;
 - (c) the control and safeguard for the applicant's information processing systems;
 - (d) the internal bodies in charge of the evaluation of the findings.
3. An application for registration as a trade repository shall contain the following information with respect to the applicant's internal audit function:
 - (a) an explanation of how its internal audit methodology is developed and applied taking into account the nature of the applicant's activities, complexities and risks;
 - (b) a work plan for three years following the date of application.

Article 8

Regulatory compliance

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

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

Article 9

Senior management and members of the board

1. An application for registration as a trade repository shall contain the following information in respect of each member of the senior management and each member of the board with:
 - (a) a copy of the curriculum vitae in order to enable the assessment on the adequate experience and knowledge to adequately perform their responsibilities;
 - (b) details regarding any criminal convictions in connection with the provision of financial or data services or in relation to acts of fraud or embezzlement, notably via an official certificate if available within the relevant Member State;

- (c) a self-declaration of good repute in relation to the provision of a financial or data service, where each member of the senior management and the board states whether they:
- i. have been convicted of any criminal offence in connection with the provision of financial or data services or in relation to acts of fraud or embezzlement;
 - ii. have been subject to an adverse finding in any proceedings of a disciplinary nature brought by a regulatory authority or government bodies or agencies or are the subject of any such proceedings which are not concluded;
 - iii. have been subject to an adverse finding in civil proceedings before a court in connection with the provision of financial or data services, or for impropriety or fraud in the management of a business;
 - iv. have been part of the board or senior management of an undertaking whose registration or authorisation was withdrawn by a regulatory body;
 - v. have been refused the right to carry on activities which require registration or authorisation by a regulatory body;
 - vi. have been part of the board or senior management of an undertaking which has gone into insolvency or liquidation while this person was connected to the undertaking or within a year of the person ceasing to be connected to the undertaking;
 - vii. have been part of the board or senior management of an undertaking which was subject to an adverse finding or penalty by a regulatory body;
 - viii. have been otherwise fined, suspended, disqualified, or been subject to any other sanction in relation to fraud, embezzlement or in connection with the provision of financial or data services, by a government, regulatory or professional body ;
 - ix. have been disqualified from acting as a director, disqualified from acting in any managerial capacity, dismissed from employment or other appointment in an undertaking as a consequence of misconduct or malpractice.
- (d) a declaration of any potential conflicts of interests that the senior management and the members of the board may have in performing their duties and how these conflicts are managed.
2. Any information received by ESMA under paragraph 1 shall only be used for the purpose of registration and compliance at all times with the conditions for registration of the applicant trade repository.

SECTION 4

STAFFING AND REMUNERATION

Article 10

Staffing policies and procedures

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

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

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

Article 11

Fitness and properness

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

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

SECTION 5

FINANCIAL RESOURCES FOR THE PERFORMANCE OF THE TRADE REPOSITORY

Article 12

Financial reports and business plans

- 3. An application for registration as a trade repository shall contain the following financial and business information about the applicant:
 - (a) a complete set of financial statements, prepared in conformity with international standards adopted in accordance with Article 3 of Regulation (EC) No 1606/2002 on the application of international accounting standards;
 - (b) where the financial statements of the applicant are subject to statutory audit within the meaning given in Article 2(1) of the Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, the financial reports shall include the audit report on the annual and consolidated financial statements;
 - (c) if the applicant is audited, the name and the national registration number of the external auditor;
 - (d) a financial business plan contemplating different business scenarios for the trade repository services, over a minimum three years reference period.

4. Where historical financial information referred to in paragraph 1 is not available, an application for registration as a trade repository shall contain the following information about the applicant:
 - (a) the pro-forma statement demonstrating proper resources and expected business status in six months after registration is granted;
 - (b) an interim financial report where the financial statements are not yet available for the requested period of time;
 - (c) a statement of financial position, such as a balance sheet, income statement, changes in equity and of cash flows and notes comprising a summary of accounting policies and other explanatory notes.
5. An application for registration as a trade repository shall contain the audited annual financial statements of any parent undertaking for the three financial years preceding the date of the application.
6. An application for registration as a trade repository shall also contain the following financial information about the applicant:
 - (a) an indication of future plans for the establishment of subsidiaries and their location;
 - (b) a description of the business activities which the applicant plans to carry out, specifying the activities of any subsidiaries or branches.

SECTION 6

CONFLICTS OF INTEREST

Article 13

Management of conflicts of interest

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

- (a) policies and procedures with respect to the identification, management and disclosure of conflicts of interest and a description of the process used to ensure that the relevant persons are aware of the policies and procedures;
- (b) any other measures and controls put in place to ensure the requirements referred to in point (a) on conflicts of interest management are met;
- (c) the process used to ensure that the relevant persons are aware of the policies and procedures referred to in point (a).

Article 14

Confidentiality

1. An application for registration as a trade repository shall contain the internal policies and mechanisms preventing any use of information stored in the prospective trade repository for:
 - (a) illegitimate purposes;
 - (b) disclosure of confidential information;
 - (c) not permitted for commercial use.
2. The latter shall include a description of the internal procedures on the staff permissions for using passwords to access the data, specifying the staff purpose, the scope of data being viewed and any restrictions on the use of data.
3. Applicants shall provide ESMA with information on the processes to keep a log identifying each staff member accessing the data, the time of access, the nature of data accessed and the purpose.

Article 15

Inventory and mitigation of conflicts of interest

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

SECTION 7

RESOURCES AND PROCEDURES

Article 16

Information Technology resources and outsourcing

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

- (a) the systems and user facilities developed by the applicant in order to provide services to the clients, including a copy of any user manual and internal procedures;
- (b) the investment and renewal policies on information technology resources of the applicant;
- (c) outsourcing arrangements entered into by the applicant, together with the methods employed to monitor the service level of the outsourced functions and a copy of the contracts governing such arrangements.

Article 17

Ancillary services

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

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

SECTION 8

ACCESS RULES

Article 18

Transparency about access rules

An application for registration as a trade repository shall contain:

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

Article 19

Transparency about compliance arrangements and accuracy of data

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

- (a) the compliance of the reporting counterparty or submitting entity with the reporting requirements;
- (b) the correctness of the information reported;

- (c) that data can be reconciled between trade repositories if counterparties report to different trade repositories.

Article 20

Pricing policy transparency

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

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

SECTION 9

OPERATIONAL RELIABILITY

Article 21

Operational risk

An application for registration as a trade repository shall contain:

- (a) a detailed description of the resources available and procedures designed to identify and mitigate operational risk and any other material risk to which the applicant is exposed to, including a copy of any relevant manuals and internal procedures;
- (b) a description of the liquid net assets funded by equity to cover potential general business losses in order to continue providing services as a going concern, and an assessment of the sufficiency of its financial resources with the aim of covering the operational costs of a wind-down or reorganisation of the critical operations and services over at least a 6 month period;
- (c) the applicant's business continuity plan and an indication of the policy for updating the plan. In particular, the plan shall include:
 - i. all business processes, escalation procedures and related systems which are critical to ensuring the services of the trade repository applicant, including any relevant outsourced service and including the trade repository strategy, policy and objectives towards the continuity of these processes;
 - ii. the arrangements in place with other financial market infrastructure providers including other trade repositories;
 - iii. the arrangements to ensure a minimum service level of the critical functions and the expected timing of the completion of the full recovery of those processes;

- iv. the maximum acceptable recovery time for business processes and systems, having in mind the deadline for reporting to trade repositories as provided for in Article 9 of Regulation (EU) No 648/2012 and the volume of data that the trade repository needs to process within that daily period;
 - v. the procedures to deal with incident logging and reviews;
 - vi. testing programme and the results of any tests;
 - vii. the number of alternative technical and operational sites available, their location, the resources when compared with the main site and the business continuity procedures in place in the event that alternate sites need to be used;
 - viii. information on access to a secondary business site to allow staff to ensure continuity of the service if a main office location is not available.
- (d) a description of the arrangements for ensuring the applicant's trade repository activities in case of disruption and the involvement of trade repository users and other third parties in them.

SECTION 10

RECORDKEEPING

Article 22

Recordkeeping policy

1. An application for registration as a trade repository shall contain information about the receipt and administration of data, including any policies and procedures put in place by the applicant to ensure:
 - (a) a timely and accurate registration of the information reported;
 - (b) that the data is maintained both online and offline;
 - (c) that the data is adequately copied for business continuity purposes.
2. An application for registration as a trade repository shall contain a description of the recordkeeping systems, policies and procedures that are used in order to ensure that information is modified appropriately and that positions are calculated correctly in accordance with relevant legislative or regulatory requirements.

SECTION 11

DATA AVAILABILITY

Article 23

Data availability mechanisms

1. An application shall contain a description of the resources, methods and channels that the applicant will use to facilitate access to the information in accordance with Article 81(1, 3 and 5) of Regulation (EU) No 648/2012 on transparency and data availability, together with:
 - (a) a description of the resources, methods and channels that the trade repository will employ in order to facilitate the access to the data contained therein to the public in accordance with Article 81(1), and the frequency of updates, along with a copy of the specific manuals and internal policies;
 - (b) a description of the resources, methods and facilities that the trade repository will employ in order to facilitate the access to its information to the relevant authorities in accordance with Article 81(3) of Regulation (EU) No 648/2012, the frequency of the update and the controls and verifications that the trade repository may establish for the access filtering process, along with a copy of the specific manuals and internal procedures.
 - (c) a description of the resources, methods and channels that the trade repository will employ in order to facilitate the access to its information to counterparties to contracts in accordance with Article 80(5) of Regulation (EU) No 648/2012 and the frequency of updates, along with a copy of the specific manuals and internal policies.

Article 24

Verification of the accuracy and completeness of the application

1. Any information submitted to ESMA during the registration process shall be accompanied by a letter signed by a member of the board of the trade repository and of the senior management, attesting that the submitted information is accurate and complete to the best of their knowledge, as of the date of that submission.
2. The information shall also be accompanied, where relevant, with the relevant corporate legal documentation certifying the accuracy of the data.

Article 25

Entry into force

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

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

Done at Brussels, []
The President]

[For the Commission

[On behalf of the President]

[Position]

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

of []

supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories, with regard to regulatory technical standards specifying the data to be published and made available by trade repositories and operational standards for aggregating, comparing and accessing the data

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories¹⁹, and in particular Article 81 thereof,

Whereas:

- (1) It is essential to clearly identify relevant contracts and the respective counterparties. Following a functional approach, entities accessing data held by trade repositories should be considered according to the competences they have and the functions they perform.
- (2) The European Securities and Markets Authority (ESMA) should have access to all the transaction level data held by trade repositories, for the purpose of trade repository supervision, to be able to make information requests, take appropriate supervisory measures and also monitor whether registration as a trade repository should be kept or withdrawn.
- (3) ESMA should have access under several responsibilities under Regulation (EU) No 1095/2012 establishing a European Supervisory Authority (European Securities and Markets Authority) its Regulation and Regulation (EU) No 648/2012. The access to data by individual staff members of ESMA should be in line with each of those specific mandates.
- (4) The European Systemic Risk Board (ESRB), ESMA and the relevant members of the ESCB, including some national central banks and relevant Union securities and markets authorities, have a mandate for monitoring and preserving financial stability in the Union, and should therefore have access to transaction data for all counterparties for the purpose of their respective tasks in that regard.
- (5) Supervisors and overseers of CCPs need access to enable the effective exercise of their duties over of such entities, and should therefore have access to all the information necessary for such mandate.
- (6) Access by the relevant ESCB members serves to fulfil their basic tasks, most notably the functions of a central bank of issue, their financial stability mandate, and in some cases prudential supervision over some counterparties. Since certain ESCB members have

¹⁹ OJ L 201, 27.7.2012.

different mandates under national legislation and to fulfil their tasks under these mandates, they should be granted access to data in accordance to the different mandates listed in Article 81(3) of Regulation (EU) No 648/2012.

- (7) The relevant Union securities and market authorities, amongst other duties, mainly have duties of investor protection in their respective jurisdictions and should be granted access to transaction data on markets, participants, products and underlyings covered under by their surveillance and enforcement mandates.
- (8) The authorities appointed under Article 4 of Directive 2004/25/EC on takeover bids²⁰ should be granted access to the transactions in equity derivatives where the underlying is either admitted to trading on a regulated market in their jurisdiction, has their legal address within their jurisdiction or is an offeror for a company for such an undertaking and the consideration offered by the offeror includes securities.
- (9) The Agency for the Cooperation of Energy Regulators (ACER) should be granted access for the purpose of monitoring wholesale energy markets in order to detect and deter market abuse in cooperation with national regulatory authorities, and the monitoring of wholesale energy markets to detect and deter market abuse under Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency (REMIT)²¹. ACER should therefore have access to all data held by a trade repository as regards energy derivatives.
- (10) Regulation (EU) No 648/2012 covers only trade data and not pre-trade data such as orders to trade as required under Regulation (EU) No 1227/2011. Therefore, trade repositories will not be the appropriate source of information to ACER in that regard.
- (11) Under a functional approach for accessing data held by trade repositories, prudential supervision is an essential component. Similarly, different authorities might have a prudential supervisory mandate. Therefore, access to the transaction data on the relevant entities should be ensured to all authorities listed under Article 81(3) of Regulation (EU) No 648/2012.
- (12) Entities accessing trade repository data under Article 81 (3) of Regulation (EU) No 648/2012 should ensure that they keep and enforce policies in order to ensure that only the relevant persons access the information for a well-defined and legally founded purpose, also being clear on the possible other persons authorised to access such data.
- (13) The access to data is considered within three aggregation levels. Transaction data includes individual trade details; position data regards aggregate position data by underlying/product for individual counterparties; and aggregate notional data corresponds to overall positions by underlying/product with no counterparty details. Access to transaction data would also grant access to position level and aggregate data. Access to position data would also grant access to aggregate data, but not transaction level data. Conversely, access to aggregate notional data would be the less granular category and would not enable access to position or transaction level data.
- (14) ESMA has consulted the relevant authorities and the members of the European System of Central Banks (ESCB) before submitting the draft technical standards on which this Regulation is based. In accordance with Article 10 of Regulation (EU) No 1095/2010, of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)²² ESMA has conducted open public consultations on these draft regulatory technical standards, analysed the

²⁰ OJ L 142, 30.4.2004, p.12.

²¹ OJ L 326, 8.12.2011, p. 1.

²² OJ L 331, 15.12.2010, p.84.

potential related costs and benefits and requested the opinion of the ESMA Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation.

HAS ADOPTED THIS REGULATION:

Chapter I
ACCESS TO TRADE REPOSITORIES-HELD DATA

Article 1

Publication of aggregate data

1. Trade repositories shall publish data under Article 81(1) of Regulation (EU) No 648/2012, including at least:
 - (a) a breakdown of the aggregate open positions per derivative class as follows:
 - (i) commodities;
 - (ii) credit;
 - (iii) foreign exchange;
 - (iv) equity;
 - (v) interest rate;
 - (vi) other.
 - (b) a breakdown of aggregate transaction volumes per derivative class as follows:
 - (i) commodities;
 - (ii) credit;
 - (iii) foreign exchange;
 - (iv) equity;
 - (v) interest rate;
 - (vi) other.
 - (c) a breakdown of aggregate values per asset class, as follows:
 - (i) commodities;
 - (ii) credit;

- (iii) foreign exchange;
 - (iv) equity;
 - (v) interest rate;
 - (vi) other.
2. The data shall be published on a website or an online portal which is easily accessible by the public and updated at least weekly.

Article 2

Data access by relevant authorities

1. A trade repository shall provide access to all transaction data to ESMA for the purpose of fulfilling its supervisory competences.
2. ESMA shall enact internal procedures in order to ensure the appropriate staff access and any relevant limitations of access as regards non-supervisory activities under ESMA's mandate.
3. A trade repository shall provide the Authority for the Cooperation of Energy Regulators (ACER) with access to all transaction data regarding derivatives where the underlying is energy.
4. A trade repository shall provide a competent authority supervising a CCP and the relevant member of the ESCB overseeing the CCP, where applicable, with access to all the transaction data cleared or reported by the CCP.
5. A trade repository shall provide a competent authority supervising the venues of execution of the reported contracts with access to all the transaction data on contracts executed on those venues.
6. A trade repository shall provide a supervisory authority appointed under Article 4 of Directive (EC) 2004/25 on take-over bids²³ with access to all the transaction data on derivatives where the underlying is a security issued by a company which meets one of the following conditions:
 - (a) it is admitted to trading on a regulated market within their jurisdiction;
 - (b) it has its registered office or, where it has no registered office, its head office, in their jurisdiction;
 - (c) it is an offeror for a company within (a) or (b) and the consideration offered by the offeror includes securities.
7. The data to be provided in accordance with paragraph 6 shall include the following information on:
 - (a) the underlying securities;

²³ OJ L 142, 30.4.2004, p.12

- (b) the derivative class;
 - (c) the sign of the position;
 - (d) the number of reference securities;
 - (e) the counterparties to the derivative.
8. A trade repository shall provide the relevant Union securities and markets authorities referred to in Article 81(3)(h) of Regulation (EU) No 648/2012 with access to all transaction data on markets, participants, contracts and underlyings that fall within the scope of that authority according to its respective supervisory responsibilities and mandates.
 9. A trade repository shall provide the ESRB, ESMA and the relevant members of the ESCB with transaction level data:
 - (a) for all counterparties within their respective jurisdictions;
 - (b) for derivatives contracts where the reference entity of the derivative contract is located within their respective jurisdiction or where the reference obligation is sovereign debt of the respective jurisdiction.
 10. A trade repository shall provide a relevant ESCB member with access to position data for derivatives contracts in the currency issued by that member.
 11. A trade repository shall provide, for the prudential supervision of counterparties subject to the reporting obligation, the relevant entities listed in Article 81(3) of Regulation (EU) No 648/2012 with access to all transaction data of such counterparties.

Article 3

Third country authorities

1. In relation to a relevant authority of a third country that has entered into an international agreement with the Union as referred to in Article 75 of Regulation (EU) No 648/2012, a trade repository shall provide access to the data, taking account of the third country authority's mandate and responsibilities.
2. In relation to a relevant authority of a third country that has entered into a cooperation arrangement with ESMA as referred to in Article 76 of Regulation (EU) No 648/2012, a trade repository shall provide access to the data, taking account of the third country authority's mandate and responsibilities.

Article 4

Operational standards for aggregation and comparison of data across trade repositories

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

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

Article 5

Operational standards for access to data

1. A trade repository shall record information regarding the access to data given to the entities listed in Article 81(3) of Regulation (EU) No 648/2012.
2. The information referred to in paragraph 1 shall include:
 - (a) the scope of data accessed;
 - (b) a reference to the legal provisions granting access to such data under Regulation (EU) No 648/2012 and this Regulation.

Article 6

Entry into force

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

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

Done at Brussels, []
The President]

[For the Commission

[On behalf of the President]

[Position]

ANNEX VII - Draft implementing technical standards on trade repositories

Annex VII.I

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

of []

laying down implementing technical standards with regard to the format and frequency of trade reports to trade repositories according to Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 648/2012 of 4 July 2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories²⁴ and in particular Article 9(6) thereof,

Whereas:

- (1) To avoid inconsistencies, all data sent to trade repositories under Article 9 of Regulation (EU) No 648/2012 should follow the same rules, standards and formats for all trade repositories, all counterparties and all types of derivatives. A unique data set should therefore be used for describing a derivatives trade.
- (2) Since OTC derivatives are typically neither uniquely identifiable by existing codes which are widely used in financial markets, such as the International Securities Identification Numbers (ISIN), nor describable by using the ISO Classification of Financial Instruments (CFI) code, a new and universal method of identification has to be developed. If a unique product identifier (UPI) is available and follows the principles of uniqueness, neutrality, reliability, open source, scalability, accessibility, has a reasonable cost basis, is offered under an appropriate governance framework and is endorsed within the EU, it should be used. If a UPI meeting these requirements is not available, an interim taxonomy, should be used.
- (3) The underlying should be identified by using a single identifier, however there is currently no market wide standardised code to identify the underlyings within a basket. Counterparties should therefore be required to indicate at least that the underlying is a basket and use ISINs for standardised indices where possible.
- (4) To ensure consistency, all parties to a derivatives contract should be identified by a unique code. A global legal entity identifier or an interim entity identifier, to be defined under a governance framework which is compatible with the FSB recommendations on data requirements and is endorsed within the EU, should be used to identify all financial and non-financial counterparties, brokers, central counterparties, and beneficiaries once available, in particular to ensure consistency with the Committee on Payment and Settlement Systems

²⁴ OJ L 201, 27.7.2012.

(CPSS) and International Organisation of Securities Commissions (IOSCO) report on OTC Derivatives Data Reporting and Aggregation Requirements that describes legal entity identifiers as a tool for data aggregation. In the case of agency trades, the beneficiaries should be identified as the individual or entity on whose behalf the contract was concluded.

- (5) The approach being taken in other jurisdictions and also taken by trade repositories themselves as they start their businesses should be taken into account. Therefore, to ensure a cost-effective solution for counterparties and to mitigate operational risk for trade repositories, the reporting start date should include phase-in dates for different derivatives classes, beginning with the most standardised asset classes and then extending to the other asset classes. The derivative contracts which were entered into before, on or after the date of entry into force of Regulation (EU) No 648/2012, that are not outstanding on or after the reporting start date, are not of major relevance for regulatory purposes. Still, they must be reported under Article 9(1)(a) of Regulation (EU) No 648/2012. To ensure an efficient and proportionate reporting regime in those cases and taking into account the difficulties in reconstructing data of terminated contracts, a longer deadline should be provided for such reporting.
- (6) This Regulation is based draft implementing technical standards submitted by the European Securities and Markets Authority (hereinafter ESMA) to the Commission.
- (7) In accordance with Article 15 of Regulation (EU) No 1095/2010, of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)²⁵ ESMA has conducted open public consultations on such draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the ESMA Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation.

HAS ADOPTED THIS REGULATION:

Article 1

Format of derivative contract reports

The information contained in a report under Article 9 of Regulation (EU) No 648/2012 shall be provided in the format specified in specified in the Annex.

Article 2

Frequency of derivative contract reports

Mark to market or mark to model valuations of contracts reported to a trade repository shall be done on a daily basis, where provided for in Article 11(2) of Regulation (EU) No 648/2012. Any other reporting elements as provided for in the Annex to this Regulation and the Annex to Regulation (EC) xx/2012 [Commission regulation endorsing draft regulatory technical standards on format of reporting to trade repositories] shall be reported as they occur and taking into account the time limit foreseen under Article 9 of Regulation (EU) No 648/2012, notably as regards the conclusion, modification or termination of a contract.

²⁵ OJ L 331, 15.12.2010, p.84.

Article 3

Identification of counterparties and other entities

1. A report shall use a legal entity identifier (LEI) to identify:
 - (a) a beneficiary which is a legal person;
 - (b) a broking entity;
 - (c) a CCP;
 - (d) a clearing member beneficiary which is a legal person;
 - (e) a counterparty which is a legal entity if legal entities;
 - (f) a submitting entity.

2. Where a legal entity identifier is not available, the report shall include an interim entity identifier as defined at the Union level which is:
 - (a) unique;
 - (b) neutral;
 - (c) reliable
 - (d) open source;
 - (e) scalable;
 - (f) accessible;
 - (g) available at a reasonable cost basis;
 - (h) subject to an appropriate governance framework.

3. Where neither a legal entity identifier nor an interim entity identifier is available, a report shall use a Business Identifier Code in accordance with ISO 9362 where available.

Article 4

Identification of Derivatives

1. A report shall identify a derivative contract using a unique product identifier which is:
 - (a) unique;
 - (b) neutral;
 - (c) reliable
 - (d) open source;
 - (e) scalable;
 - (f) accessible;
 - (g) available at a reasonable cost basis;
 - (h) subject to an appropriate governance framework.

2. Where a unique product identifier does not exist, a report shall identify a derivative contract by using the combination of the assigned ISO 6166 ISIN code or Alternative Instrument Identifier code with the corresponding ISO 10962 CFI code.
3. Where the combination referred to in paragraph 2 is not available, the type of derivative shall be identified on the following basis:
 - (a) the class of the derivative shall be identified as one of the following:
 - (i) commodities;
 - (ii) credit;
 - (iii) foreign exchange;
 - (iv) equity;
 - (v) interest rate;
 - (vi) other.
 - (b) the derivative type shall be identified as one of the following:
 - (i) contracts for difference;
 - (ii) forward rate agreements
 - (iii) forwards;
 - (iv) futures;
 - (v) options;
 - (vi) swaps;
 - (vii) other.
 - (c) in the case of derivatives not falling into a specific derivative class or derivative type, the report shall be made on the basis of the derivative class or derivative type that the counterparties agree the derivative contract most closely resembles.

Article 5

Reporting start date

1. For credit derivative and interest rate derivative contracts, the date by which a derivative contract shall be reported:
 - (a) where a trade repository for that particular derivative class has been registered under Article 55 of Regulation (EU) No 648/2012 before 1 April 2013, 1 July 2013;
 - (b) if there is no trade repository registered for that particular derivative class under Article 55 of Regulation (EU) No 648/2012 before or on 1 April 2013, 90 days after the registration of a trade repository for that particular derivative class under Article 55 of Regulation (EU) No 648/2012;
 - (c) If there is no trade repository registered for that particular derivative class under Article 55 of Regulation (EU) No 648/2012 by 1 July 2015, the reporting obligation shall commence on this date and contracts shall be reported to ESMA in accordance with Article 9(3) of that Regulation.
2. For all other derivative contracts, the date by which a derivative contract shall be reported shall be the earlier of:
 - (a) where a trade repository for that particular derivative class has been registered under Article 55 of Regulation (EU) No 648/2012 before 1 October 2013, 1 January 2014;

- (b) if there is no trade repository registered for that particular derivative class under Article 55 of Regulation (EU) No 648/2012, on 1 October 2013, 90 days after the registration of a trade repository for that particular derivative class under Article 55 of Regulation (EU) No 648/2012;
 - (c) if there is no trade repository registered for that particular derivative class under Article 55 of Regulation (EU) No 648/2012 by 1 July 2015, the reporting obligation shall commence on this date and contracts shall be reported to ESMA in accordance with Article 9(3) of that Regulation.
3. In paragraph 1, a 'derivative class' shall be considered to be of the asset classes as specified in Article 4 (3) of Regulation (EC) No xx/2012 [Commission delegated regulation endorsing draft regulatory technical standards on reporting to trade repositories].
 4. Those derivative contracts which were outstanding on 16 August 2012 and are still outstanding on the reporting start date shall be reported to a trade repository within 90 days of the reporting start date for a particular derivatives class.
 5. Those derivative contracts which were entered into before, on or after 16 August 2012, that are not outstanding on or after the reporting start date shall be reported to a trade repository within 3 years of the reporting start date for a particular derivatives class.
 6. The reporting start date shall be extended by 180 days for the reporting of information referred to in Article 3 of Regulation (EC) xx/2012 [Commission delegated regulation endorsing draft regulatory technical standards on reporting to trade repositories].

Article 6

Entry into force

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

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

Done at Brussels, []

[For the Commission

The President]

[On behalf of the President]

[Position]

ANNEX

Table 1 - Counterparty Data

	FIELD	FORMAT
	Parties to the contract	
1	Reporting timestamp	ISO 8601 date format / UTC time format.
2	Counterparty ID	Legal Entity Identifier (LEI) (20 alphanumerical digits), interim entity identifier (20 alphanumerical digits), BIC (11 alphanumerical digits) or a client code (50 alphanumerical digits).
3	ID of the other Counterparty	Legal Entity Identifier (LEI) (20 alphanumerical digits), interim entity identifier (20 alphanumerical digits), BIC (11 alphanumerical digits) or a client code (50 alphanumerical digits).
4	Name of the counterparty	100 alphanumerical digits or blank in case of coverage by Legal Entity Identifier (LEI).
5	Domicile of the counterparty	500 alphanumerical digits or blank in case of coverage by Legal Entity Identifier (LEI).
6	Corporate sector of the counterparty	<p>Taxonomy:</p> <p>A=Assurance undertaking authorised in accordance with Directive 2002/83/EC;</p> <p>C=Credit institution authorised in accordance with Directive 2006/48/EC;</p> <p>F=Investment firm in accordance with Directive 2004/39/EC;</p> <p>I=Insurance undertaking authorised in accordance with Directive 73/239/EEC;</p> <p>L=Alternative investment fund managed by AIFMs authorised or registered in accordance with Directive 2011/61/EU;</p> <p>O=Institution for occupational retirement provision within the meaning of Article 6(a) of Directive 2003/41/EC;</p> <p>R=Reinsurance undertaking authorised in accordance with Directive 2005/68/EC;</p> <p>U=UCITS and its management company, authorised in accordance with Directive 2009/65/EC; or</p> <p>blank in case of coverage by Legal Entity Identifier (LEI) or in case of non-financial counterparties.</p>
7	Financial or non-financial nature of the counterparty	F=Financial Counterparty, N=Non-Financial Counterparty.
8	Broker ID	Legal Entity Identifier (LEI) (20 alphanumerical digits), interim entity identifier (20 alphanumerical digits), BIC (11 alphanumerical digits) or a client code (50 alphanumerical digits).
9	Reporting entity ID	Legal Entity Identifier (LEI) (20 alphanumerical digits), interim entity identifier (20 alphanumerical digits),

		BIC (11 alphanumerical digits) or a client code (50 alphanumerical digits).
10	Clearing member ID	Legal Entity Identifier (LEI) (20 alphanumerical digits), interim entity identifier (20 alphanumerical digits), BIC (11 alphanumerical digits) or a client code (50 alphanumerical digits).
11	Beneficiary ID	Legal Entity Identifier (LEI) (20 alphanumerical digits), interim entity identifier (20 alphanumerical digits), BIC (11 alphanumerical digits) or a client code (50 alphanumerical digits).
12	Trading capacity	P=Principal, A=Agent.
13	Counterparty side	B=Buyer, S=Seller.
14	Trade with non-EEA counterparty	Y=Yes, N=No.
15	Directly linked to commercial activity or treasury financing	Y=Yes, N=No.
16	Clearing threshold	Y=Above, N=Below.
17	Mark to market value of contract	Up to 20 numerical digits in the format xxxx,yyyyy.
18	Currency of mark to market value of the contract	ISO 4217 Currency Code, 3 alphabetical digits.
19	Valuation date	ISO 8601 date format.
20	Valuation time	UTC time format.
21	Valuation type	M=mark to market / O=mark to model.
22	Collateralisation	U=uncollateralised, PC= partially collateralised, OC=one way collateralised or FC- fully collateralised.
23	Collateral portfolio	Y=Yes, N=No.
24	Collateral portfolio code	Up to 10 numerical digits.
25	Value of the collateral	Specify the value the total amount of collateral posted; up to 20 numerical digits in the format xxxx,yyyyy.
26	Currency of the collateral value	Specify the currency of field 25; ISO 4217 Currency Code, 3 alphabetical digits.

Table 2 -Common Data			
	FIELD	FORMAT	APPLICABLE TYPES OF DERIVATIVE CONTRACT
	Section 2a - Contract type		All contracts
1	Taxonomy used	Identify the taxonomy used: U=Product Identifier [endorsed in Europe] I=ISIN/AII + CFI E=Interim taxonomy	
2	Product ID 1	For taxonomy = U: Product Identifier (UPI), to be defined For taxonomy = I: ISIN or AII, 12 digits alphanumerical code For taxonomy = E: Derivative class: CO=Commodity CR=Credit CU=Currency EQ=Equity IR=Interest Rate OT= Other	
3	Product ID 2	For taxonomy = U: Blank For taxonomy = I: CFI, 6 characters alphabetical code For taxonomy = E: Derivative type: CD= Contracts for difference FR= Forward rate agreements FU= Futures FW=Forwards OP=Option SW=Swap OT= Other	

4	Underlying	ISIN (12 alphanumerical digits); LEI (20 alphanumerical digits); Interim entity identifier (20 alphanumerical digits); UPI (to be defined); B= Basket; I=Index.	
5	Notional currency 1	ISO 4217 Currency Code, 3 alphabetical digits.	
6	Notional currency 2	ISO 4217 Currency Code, 3 alphabetical digits.	
7	Deliverable currency	ISO 4217 Currency Code, 3 alphabetical digits.	
Section 2b - Details on the transaction			All contracts
8	Trade ID	Up to 52 alphanumerical digits.	
9	Transaction reference number	An alphanumeric field up to 40 characters	
10	Venue of execution	ISO 10383 Market Identifier Code (MIC), 4 digits alphabetical. Where relevant, XOFF for listed derivatives that are traded off-exchange or XXXX for OTC derivatives.	
11	Compression	Y = if the contract results from compression; N= if the contract does not result from compression.	
12	Price / rate	Up to 20 numerical digits in the format xxxx,yyyyy.	
13	Price notation	E.g. ISO 4217 Currency Code, 3 alphabetical digits, percentage.	
14	Notional amount	Up to 20 numerical digits in the format xxxx,yyyyy.	
15	Price multiplier	Up to 10 numerical digits.	
16	Quantity	Up to 10 numerical digits.	
17	Up-front payment	Up to 10 numerical digits in the format xxxx,yyyyy for payments made by the reporting counterparty and in the format xxxx,yyyyy for payments received by the reporting counterparty.	
18	Delivery type	C=Cash, P=Physical, O=Optional for counterparty.	
19	Execution timestamp	ISO 8601 date format / UTC time format.	
20	Effective date	ISO 8601 date format.	

21	Maturity date	ISO 8601 date format.	
22	Termination date	ISO 8601 date format.	
23	Settlement date	ISO 8601 date format.	
24	Master Agreement type	Free Text, field of up to 50 characters, identifying the name of the Master Agreement used, if any.	
25	Master Agreement version	Year, xxxx.	
	Section 2c - Risk mitigation / Reporting		All contracts
26	Confirmation timestamp	ISO 8601 date format, UTC time format.	
27	Confirmation means	Y=Non-electronically confirmed, N=Non-confirmed, E=Electronically confirmed.	
	Section 2d - Clearing		All contracts
28	Clearing obligation	Y=Yes, N=No.	
29	Cleared	Y=Yes, N=No.	
30	Clearing timestamp	ISO 8601 date format / UTC time format.	
31	CCP ID	Legal Entity Identifier (LEI) (20 alphanumerical digits) or, if not available, interim entity identifier (20 alphanumerical digits) or, if not available, BIC (11 alphanumerical digits).	
32	Intragroup	Y=Yes, N=No.	
	Section 2e - Interest Rates		Interest rate derivatives
33	Fixed rate of leg 1	Numerical digits in the format xxxx,yyyyy.	
34	Fixed rate of leg 2	Numerical digits in the format xxxx,yyyyy.	
35	Fixed rate day count	Actual/365, 30B/360 or Other.	
36	Fixed leg payment frequency	An integer multiplier of a time period describing how often the counterparties exchange payments, e.g. 10D, 3M, 5Y.	
37	Floating rate payment frequency	An integer multiplier of a time period describing how often the counterparties exchange payments, e.g. 10D, 3M, 5Y.	
38	Floating rate reset frequency	An integer multiplier of a time period describing how often the counterparties exchange payments, e.g. 10D, 3M, 5Y.	
39	Floating rate of leg 1	The name of the floating rate index, e.g. 3M Euribor.	
40	Floating rate of leg 2	The name of the floating rate index, e.g. 3M Euribor.	
	Section 2f – Foreign Exchange		Currency derivatives
41	Currency 2	ISO 4217 Currency Code, 3 alphabetical digits.	
42	Exchange rate 1	Up to 10 numerical digits in the format xxxx,yyyyy.	
43	Forward exchange rate	Up to 10 numerical digits in the format	

		xxxx,yyyyy.	
44	Exchange rate basis	E.g. EUR/USD or USD/EUR.	
	Section 2g - Commodities	If a UPI is reported and contains all the information below, this is not required unless to be reported according to Regulation (EU) No 1227/2011.	Commodity derivatives
	General		
45	Commodity base	AG=Agricultural EN=Energy FR=Freights ME=Metals IN= Index EV= Environmental EX= Exotic	
46	Commodity details	<u>Agricultural</u> GO= Grains oilseeds DA= Dairy LI= Livestock FO= Forestry SO= Softs <u>Energy</u> OI= Oil NG = Natural gas CO= Coal EL= Electricity IE= Inter-energy <u>Metals</u> PR= Precious NP = Non-precious <u>Environmental</u> WE=Weather EM= Emissions	
	Energy		
47	Delivery point or zone	EIC code, 16 character alphanumeric code.	
48	Interconnection Point	Free text, field of up to 50 characters.	
49	Load type	Repeatable section of fields 50-54 to identify the product delivery profile; BL=Base Load PL=Peak Load OP=Off-Peak BH= Block Hours OT=Other	
50	Delivery start date and time	ISO 8601 date format.	
51	Delivery end date and time	ISO 8601 date format.	
52	Contract capacity	Free text, field of up to 50 characters.	
53	Quantity Unit	10 numerical digits in the format xxxx,yyyyy.	
54	Price/time interval quantities	10 numerical digits in the format xxxx,yyyyy.	

	Section 2h - Options		Contracts that contain an option
55	Option type	P=Put, C=Call.	
56	Option style (exercise)	A=American, B=Bermudan, E=European, S=Asian.	
57	Strike price (cap/floor rate)	Up to 10 Numerical digits in the format xxxx,yyyyy.	
	Section 2i -		All contracts
	Modifications to the contract		
58	Action type	N=New M=Modify E=Error, C=Cancel, Z=Compression, V=Valuation update, O=Other.	
59	Details of action type	Free text, field of up to 50 characters.	

Annex VII.II

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

of []

laying down implementing technical standards with regard to the format of applications for registration of trade repositories according to Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 648/2012 of 4 July 2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories²⁶ and in particular Article 56(4) thereof,

Whereas:

- (1) Any information submitted to ESMA in an application for registration of a trade repository should be provided in a durable medium, which enables its storage for future use and reproduction. In order to facilitate the identification of the information submitted by a trade repository, documents included with an application should bear a unique reference number.
- (2) This Regulation is based on the draft implementing technical standards submitted by ESMA to the European Commission, pursuant to the procedure in Article 10 of Regulation 1095/2010.
- (3) In accordance with Article 15 of Regulation (EU) No 1095/2010, of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)²⁷ ESMA has conducted open public consultations on such draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the ESMA Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation.

HAS ADOPTED THIS REGULATION:

²⁶ OJ L 201, 27.7.2012.

²⁷ OJ L 331, 15.12.2010, p.84.

Article 1

Format of the application

1. An application for registration shall be provided in an instrument which stores information in a durable medium.
2. Each trade repository application shall contain a cover sheet containing the information specified in the general information section of the Annex.
3. A trade repository shall give a unique reference number to each document it submits and shall ensure that the information submitted clearly identifies which specific requirement of the Regulation (EC) No xx/2012 [Commission delegated regulation endorsing draft regulatory technical standards on application for registration of trade repositories] refers to, in which document that information is provided and also provides a reason if the information is not submitted as outlined in the document references section of the Annex.

Article 2

Entry into force

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

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

Done at Brussels, []

[For the Commission
The President]

[On behalf of the President]

[Position]

ANNEX

FORMAT OF APPLICATION

GENERAL INFORMATION

Date of application	...
Corporate name of trade repository	...
Legal address	...
The classes of derivatives for which the trade repository is applying to be registered	...
Name of the person assuming the responsibility of the application	...
Contact details of the person assuming the responsibility of the application	...
Name of other person responsible for the trade repository compliance	...
Contact details of the person(s) responsible for the trade repository compliance	...
Identification of any parent company	...

DOCUMENT REFERENCES

(Article 2)

Article of Regulation (EC) No xx/2012 [Commission delegated regulation endorsing draft regulatory technical standards on application for registration of trade repositories]	Unique reference number of document	Title of the document	Chapter or section or page of the document where the information is provided or reason why the information is not provided
...			

...			
...			