AMENDMENTS 001-001
by the Committee on Economic and Monetary Affairs

Report
Danuta Maria Hübner **A9-0398/2023**
Measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets

Proposal for a regulation (COM(2022)0697 – C9-0412/2022 – 2022/0403(COD))

Amendment 1

AMENDMENTS BY THE EUROPEAN PARLIAMENT*

to the Commission proposal

2022/0403 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol ▌.

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

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

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

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3 Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

providing the necessary flexibility to CCPs and other financial actors to compete within the single market.

(3) ***It is essential for the clearing system to benefit from more clearing options and alternatives in order to ensure that banks and the real economy have continuous access to safe and efficient clearing solutions. The Union needs to make a significant contribution by developing and offering safe, efficient and innovative clearing infrastructures. The evolution of clearing markets brings with it new product offerings, risk profiles and approaches to risk management. That requires supervisory and regulatory approaches to be adapted and regulators and the industry to work closely together.*** To attract business, CCPs must be safe and resilient. Regulation (EU) No 648/2012 lays down measures to increase the transparency of derivatives markets and mitigate risks through clearing and the exchange of margin. In that respect, CCPs play an important role in mitigating financial risks. Rules should therefore be laid down to further enhance the stability of Union CCPs, notably by amending certain aspects of the regulatory framework. In addition, and in recognition of Union CCPs' role in preserving the Union's financial stability, it is necessary to strengthen further their supervision, with particular attention to their role within the broader financial system and the fact they provide services across borders.

(4) Central clearing is a global business and Union market participants are active internationally. However, since the Commission adopted the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority) and amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs in 2017[1], concerns have been expressed repeatedly, including by the European Securities and Markets Authority (ESMA)[2], about the ongoing risks to the Union financial stability arising from the excessive

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1 COM(2017)331.

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

concentration of clearing in some third-country CCPs, in particular due to the potential risks that can arise in a stress scenario. In the short-term, to mitigate the risk of cliff edge effects related to the withdrawal of the UK from the Union due to an abrupt disruption of Union market participants' access to UK CCPs, the Commission adopted a series of equivalence decisions to maintain access to UK CCPs. However, the Commission called on Union market participants to reduce their excessive exposures to systemic CCPs outside the Union in the medium term. The Commission reiterated that call in its communication "The European economic and financial system: fostering openness, strength and resilience"[1] in January 2021. The risks and effects of excessive exposures to systemic CCPs outside the Union were considered in the report published by ESMA in December 2021[2] following an assessment conducted in accordance with Article 25(2c) of Regulation (EU) No 648/2012. That report concluded that some services provided by those systemically important UK CCPs were of such substantial systemic importance that the current arrangements under Regulation (EU) No 648/2012 were insufficient to manage the risks to the Union financial stability. To mitigate the potential financial stability risks to the Union due to the continued excessive reliance on systemic third-country CCPs, but also to enhance the proportionality of measures for those third-country CCPs that present less risks for the financial stability of the Union, it is necessary to further tailor the framework introduced by Regulation (EU) 2019/2099 to the risks presented by different third-country CCPs. ***At the same time, it is necessary that the changes be well calibrated, in light of the potential impact of regulatory measures on the competitiveness of the Union's market participants.***

(5) Article 4(2) and Article 11(5) to (10) of Regulation (EU) No 648/2012 exempt intragroup transactions from the clearing obligation and the margin requirements. To provide more legal certainty and predictability concerning the framework for intragroup

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

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

transactions, the equivalence decisions in Article 13 of that Regulation should be replaced by a simpler framework. Article 3 of that Regulation should therefore be amended to replace the need for an equivalence decision with a list of third countries for which an exemption should not be granted. Consequently, Article 13 of that Regulation should be deleted. Since Article 382 of Regulation (EU) No 575/2013 of the European Parliament and of the Council[1] refers to intragroup transactions as provided for in Article 3 of Regulation (EU) No 648/2012, that Article 382 should also be amended accordingly.

(6) Given the fact that entities that are established in countries that are listed as high-risk third countries that have strategic deficiencies in their regime on anti-money laundering and counter terrorist financing, as referred to in Article 9 of Directive (EU) 2015/849 of the European Parliament and of the Council[2], or in third countries that are listed in Annex***es*** I ***and II*** to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes[3] are subject to a less stringent regulatory environment, their operations may increase the risk, including due to increased counterparty credit risk and legal risk, for the Union financial stability. Consequently, such entities should not be eligible to be considered in the framework of intragroup transactions.

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

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

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

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

third countries whose entities may not benefit from those exemptions despite not being identified in those lists. Considering that intragroup transactions benefit from reduced regulatory requirements, regulators and supervisors should carefully monitor and assess the risks associated with transactions involving entities from third countries.

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

(9) Regulation (EU) No 648/2012 promotes the use of central clearing as the main risk-mitigation technique for OTC derivatives. The risks associated with an OTC derivative contract are therefore best mitigated when that derivative contract is cleared by a CCP authorised under Article 14 or recognised under Article 25 of that Regulation. It follows that in the calculation of the position that is compared to the thresholds specified pursuant to Article 10(4), point (b), of Regulation (EU) No 648/2012, only those derivative contracts that are not cleared by a CCP authorised under Article 14 or recognised under Article 25 of that Regulation should be includedin that calculation.

(9a) Post-trade risk reduction services generate non price-forming transactions to reduce risk in derivatives portfolios without changing the market risk. Post-trade risk reduction services include portfolio compression, portfolio optimisation and rebalancing services. Post-trade risk reduction services reduce systemic risk and operational risk, and are therefore a valuable tool in improving the resilience of the derivatives market. As explained by ESMA in its Report to the European Commission

of 10 November 2020[1] as well as in its letter to the Commission of 1 April 2022[2], the application of the clearing obligation to transactions resulting from post-trade risk reduction services limits the use of those services to uncleared portfolios, and can lead to an increase in the use of complex products that are not subject to the clearing obligation. To facilitate the use of post-trade risk reduction services, a targeted and conditional exemption from the clearing obligation for transactions resulting from post-trade risk reduction services should be introduced. Such an exemption should concern only the risk neutral transactions resulting from the post-trade risk reduction exercise, while it would leave the original trades, in respect of which the risk reduction exercises are performed, subject to the clearing obligation where applicable. Accordingly, the exemption would remove barriers to the use of post-trade risk reduction services in portfolios to be cleared, allow a broader range of counterparties to have access to those risk reduction techniques, and reduce market complexity. By facilitating risk reduction, the increased use of post-trade risk reduction services would decrease collateral requirements for counterparties, and thus improve the overall availability of liquidity in the Union derivatives market. To avoid any circumvention of the clearing obligation, the exemption should be targeted and conditional. In other words, it should be limited to post-trade risk reduction services that mitigate or reduce risks and that are performed by a third party post-trade risk reduction service provider independently and under certain conditions. ESMA should be mandated to develop regulatory technical standards to further specify and ensure the uniform application of such conditions. In addition, to ensure that ESMA and national competent authorities can carry out their supervisory tasks in relation to the clearing obligation, counterparties should notify their intention to apply the exemption.

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1 Report on post trade risk reduction services with regards to the clearing obligation (EMIR Article 85(3a) ***https://www.esma.europa.eu/sites/default/files/library/esma70-156-3351_report_on_ptrr_services_with_regards_to_the_clearing_obligation_0.pdf***

2 ***https://www.esma.europa.eu/sites/default/files/library/esma91-372-2125_letter_chair_esma_response_to_ec_consultation_on_targeted_emir_review.pdf***

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

(10a) Given the novelty of the requirement on financial and non-financial counterparties that are subject to the clearing obligation to hold, directly or indirectly, accounts at CCPs established in the Union and its potential impact on the competitiveness of clearing members established in the Union and on clients, it is appropriate that the requirement is phased in gradually. Initially, financial and non-financial

counterparties should be required to exchange initial and variation margins in an account at a CCP established in the Union, and to ensure that the necessary IT connectivity and legal documentation is in place. In order to ensure the resilience of those accounts in the face of a significant and sudden increase of clearing activity, it is also appropriate to regularly stress test those accounts, and to report to ESMA on the outcome of those stress tests. Finally, it is also appropriate that the requirement only applies to derivative contracts that are entered into after the entry into force of this Regulation, so as not to compromise the existing positions of the counterparties subject to the requirement.

(11) ***The financial stability risks associated with excessive exposures of clearing members established in the Union and clients to systemically important third-country CCPs (Tier 2 CCPs) may not be sufficiently addressed by the requirement to hold active accounts at CCPs established in the Union. It is therefore appropriate to provide for the possibility of the Commission adopting a delegated act in order to supplement that requirement by*** specifying the details of the level of substantially systemic clearing services to be maintained in the active accounts in Union CCPs by financial and non-financial counterparties subject to the clearing obligation. Such calibration should not go beyond what is necessary and proportionate to reduce clearing in the identified clearing services at Tier 2 CCPs concerned. ***The Commission should consider the goal of the capital markets union, and should only adopt the delegated act if the identification of the level of substantially systemic clearing services to be maintained in the active accounts in the Union clearly contributes to financial stability without distorting competition dynamics in the Union by, amongst other things, incentivising the creation of vertical silos in market infrastructures, and without affecting the international competitivneess of Union counterparties.*** In that regard, ***the Commission, supported by an*** ESMA ***report if necessary,*** should ***carry out a cost-benefit analysis to better*** consider the costs, risks and the burden such calibration entails for financial and non-financial counterparties, the ***risk of reduction of their market share***, and the risk that those costs are passed on to non-financial firms ***or end investors***. In addition, suitable phase-in periods for the progressive implementation of the

requirement to hold a certain level of the clearing activity in the accounts at Union CCPs should be foreseen.

(11a) Financial stability considerations are strongly interlinked with an adequate supervisory framework, and specifying the details of the level of substantially systemic clearing services to be maintained in active accounts at CCPs in the Union can only be effective if it is accompanied by proportionate measures related to the supervision of Union CCPs. It is therefore appropriate that the Commission adoption of the delegated act supplementing the requirement to hold an active account at CCPs established in the Union is subordinated to the direct supervision of Union CCPs by ESMA.

(12) To ensure that clients are aware of their options and can take an informed decision as where to clear their derivative contracts, clearing members and clients that provide clearing services in both Union and recognised third-country CCPs should inform their clients about the option to clear a derivative contract in a Union CCP***, and should clearly disclose the costs associated with*** clearing services ***in the different CCPs where it is possible to clear those contracts. Such obligation to inform should be distinct from the active account requirement. Relevant clearing members should also systematically propose Union clearing alternatives to clients even for services that are not determined as being of substantial systemic importance by ESMA.***

(13) To ensure that ***ESMA has*** the necessary information on the clearing activities undertaken by clearing members or clients in recognised CCPs, a reporting obligation should be introduced for such clearing members or clients. The information to be reported should distinguish between securities transactions, derivative transactions traded on a regulated market and over-the-counter (OTC) derivatives transactions. ***ESMA should, in close cooperation with the ESCB, specify the precise content and format of the information to be reported, and in doing so should ensure that the obligation does not create additional reporting requirements, unless necessary, so that the administrative burden for clearing members or clients is minimised. It is also appropriate to consider the concerns raised by the supervisory community about the data quality of the reporting made by financial and non-financial counterparties***

pursuant to Regulation (EU) No 648/2012. Entities subject to the reporting obligation pursuant to that Regulation should therefore be required to exercise due diligence by applying data quality checks before submitting their data. ESMA should be able to adopt appropriate penalties in the case of infringements of that due diligence requirement.

(13a) Under the current framework, ESMA receives transaction data under Regulation (EU) No 648/2012 and Regulation (EU) 2015/2365 of the European Parliament and of the Council[1], which provide a Union-wide view on markets, but not on CCPs' risk management. That lack of data creates substantial issues for ESMA, which requires timely and reliable information on CCPs' activities and practices to fulfill its financial stability mandate. It is therefore necessary that a formal reporting requirement regarding CCP risk management data by Union CCPs to ESMA be introduced. That would also help to further strengthen standardisation and comparability across data and ensure it is delivered on time, while the fact that it covers similar data as the reports prepared by Union CCPs and shared with the college on a monthly basis means that it would not be an additional burden for CCPs. In addition to the possibility for ESMA to request data directly from CCPs, clearing members and clients during periods of market turmoil, the data received in the monthly voluntary data reports via the college should be formalised to ensure higher standardisation, comparability and timely delivery.

(14) ***Macroprudential supervision is not restricted to transactions between financial counterparties, but also requires the monitoring of exposures between financial and non-financial counterparties belonging to the same consolidation.*** Regulation (EU) 2019/834 of the European Parliament and of the Council[2] amended Regulation (EU) No

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1 Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (OJ L 337, 23.12.2015, p.1, ELI: http://data.europa.eu/eli/reg/2015/2365/o)

2 Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the

648/2012 to introduce, *inter alia*, an exemption from reporting requirements for OTC derivative transactions between counterparties within a group, where at least one of the counterparties is a non-financial counterparty. That exemption has been introduced because intragroup transactions involving non-financial counterparties represent a relatively small fraction of all OTC derivative transactions and are used primarily for internal hedging within groups. As such, those transactions do not significantly contribute to systemic risk and interconnectedness with the rest of the financial system. The exemption for those transactions from reporting requirements has, however, limited the ability of ESMA, the ESRB and other authorities to clearly identify and assess the risks taken by non-financial counterparties. To ensure more visibility on intragroup transactions, considering their potential interconnectedness with the rest of the financial system and taking into account recent market developments, in particular strains on energy markets as a result of Russia's unprovoked and unjustified aggression against Ukraine, ***while maintaining a proportionate approach that does not result in a substantial increase of the costs for non-financial counterparties,*** that exemption should be ***first*** removed ***for non-financial counterparties subject to the clearing obligation. ESMA should be required to assess whether the removal of the exemption for those non-financial counterparties results in a sufficiently clear improvement of its supervisory tasks and, if necessary, should propose to extend the reporting obligation to all non-financial counterparties***.

(15) To ensure that competent authorities are at all times aware of exposures at entity and group level and are able to monitor such exposures, competent authorities should establish effective cooperation procedures to calculate the positions in contracts not cleared at an authorised or recognised CCP andto actively evaluate and assess the level of exposure in OTC derivative contracts at entity and group level.

(16) It is necessary to ensure that Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council[1] relating to the criteria for establishing which OTC

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registration and supervision of trade repositories and the requirements for trade repositories (OJ L 141, 28.5.2019, p. 42).

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

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

(18) To ensure a uniform application of the risk-management procedures requiring the timely, accurate and appropriately segregated exchange of collateral with respect to OTC derivative contracts entered into by financial counterparties and non-financial counterparties, the European Supervisory Authorities (ESAs) should take the necessary actions to ensure such uniform application.

(18a) A number of public entities, such as central government, local authorities and other public sector entities, clear on a voluntary basis. When using clearing services, public entities should, in principle, use Union CCPs clearing services. In its letter of 1st April

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[1] Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP (OJ L 52, 23.2.2013, p.11).

2022, ESMA stressed that the modalities of public entities participation in CCPs vary across Member States. In particular, ESMA identified diverging practices regarding the calculation of the exposures of public entities to Union CCPs and their contributions to the financial resources of the CCP. Therefore, ESMA should be invited to work on further harmonisation and coordination regarding public entities' clearing activities.

(18b) In order to avoid market fragmentation and ensure a level playing field, while acknowledging the fact that in some jurisdictions the exchange of variation and initial margin for single-stock options and equity index options is not subject to equivalent margin requirements, the treatment of those products should be phased in. That phase-in period would give ESMA time to monitor regulatory developments in other jurisdictions and for the Commission to ensure that appropriate requirements are in place in the Union to mitigate counterparty credit risk in respect of such contracts whilst avoiding any scope for regulatory arbitrage.

(18c) In order to comply with the initial margin requirements set out in Regulation (EU) No 648/2012, many Union market participants use industry-wide initial margin models, such as the standard initial margin model (SIMM) developed by the International Swaps and Derivatives Association (ISDA). The design of those models is centrally decided and cannot be significantly affected by the preferences of every single user or by the different assessments of each competent authority validating the use of those models by entities it supervises. In practice, since the same model is used by a large number of Union counterparties, the resulting need for that model to be validated by a plurality of competent authorities gives rise to a coordination problem. To address that problem, EBA should be given the task of operating as the central validator of the general elements of such industry-wide models. In its role as central validator, EBA should develop a common view on the general aspects of those models, such as their calibration, design, and instruments and assets class coverage. To assist EBA in its work, EBA should collect feedback from competent authorities, ESMA and EIOPA, and coordinate their views. Given that competent authorities would continue to be responsible for validating the implementation of those models at the supervised

entity level, EBA should assist them in their approval processes regarding the general aspects of the implementation of those models. In addition, EBA should serve as a single point of discussion with the industry to help ensure a more effective Union influence on the design of those models.

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

(20) ***It is necessary to explore additional means of enhancing the attractiveness of Union CCPs and increasing the competitiveness of Union firms. To achieve a proportionate approach that bolsters Union capital markets, maintains financial stability and strengthens the competitiveness of the Union's clearing system on a global scale, it is necessary to implement an incentives regime to encourage international counterparties to clear in the Union. However,*** Union CCPs face challenges in expanding their product offer and experience difficulties in bringing new products to the market. Those challenges and difficulties can be explained by certain provisions of Regulation (EU) No 648/2012 that render some authorisation procedures too long, complex and uncertain in their outcome. The process of authorising Union CCPs or extending their authorisation should therefore be simplified, while ensuring the appropriate involvement of ESMA and the college referred to in Article 18 of Regulation (EU) No 648/2012. First, to avoid significant, and potentially indefinite, delays when ***ESMA assesses*** the completeness of an application for an authorisation, ***ESMA*** should swiftly acknowledge receipt of that application and quickly verify whether the CCP has provided the documents required for the assessment. To ensure that Union CCPs submit all required documents with their applications, ESMA should

develop draft regulatory and implementing technical standards specifying which documents should be provided, what information those documents should contain and in which format they should be submitted. ***When preparing the draft regulatory technical standards, ESMA should take into account existing documentation requirements and practices under Regulation (EU) No 648/2012 and streamline their submission where possible, as well as the importance of avoiding an excessive time to market and of ensuring that the information to be provided by the CCP applying for an extension of authorisation is proportional to the materiality of the change for which the CCP is applying.*** Second, to ensure an efficient and concurrent assessment of applications, CCPs should be able to submit all documents via a central database where they should be shared instantaneously with the CCP's competent authority, ESMA and the college. Third, a CCP's competent authority, ESMA and the college should, during the assessment period, engage and ask the CCP any questions to ensure a swift, flexible, and cooperative process for a comprehensive review. To avoid duplication and unnecessary delays, all questions and subsequent clarifications should also be shared simultaneously between the CCP's competent authority, ESMA and the college.

(21) There is currently uncertainty as to when an additional service or activity is covered by a CCP's existing authorisation. It is necessary to address that uncertainty and to ensure proportionality when the proposed additional service or activity does not increase the risks for the CCP. It is therefore necessary to lay down that applications in those cases should not undergo the full assessment procedure. For that reason, it should be specified which additional clearing services and activities are non-material, and thus do not increase the risks for a Union CCP, and should be approved through a non-objection procedure by ***ESMA***. That non-objection procedure should be applied where the CCP intends to clear ***a new currency in a class of financial instruments already covered by the CCP's authorisation for which the CCP does not have in place the relevant payment facility, or where it intends to offer a new settlement or delivery mechanism or service which involves establishing links with a different securities settlement system, central securities depository or payment system, or where it intends to offer***

contracts that cannot be liquidated in the same manner or together with contracts already cleared by it. In addition, a CCP should also be able to ask ***ESMA*** for the non-objection procedure to apply where that CCP considers that the proposed additional service or activity would not increase its risks, in particular where the new clearing service or activity is similar to the services the CCP is already authorised to provide. The non-objection procedure should not require a separate opinion from ESMA and the college since such requirement would be disproportionate. ***There are also a number of changes that a CCP adopts on a regular basis ('business as usual' changes) that might not qualify as material or non-material. For those changes, the CCPs should not be subject to the procedures to extend the authorisations, but should notify ESMA before implmenting them directly. ESMA should regularly check those changes as part of the CCP annual review. That measure should significantly alleviate the burden on competent authorities, and greatly increase the capacity of CCPs to implement changes that do not modify their overall risk profile. Nonetheless, ESMA should regularly review how the changes in the authorisation and assessment procedures are implemented in practice, to ensure that they do not increase the financial stability risk for the Union.***

(22) To foster a cooperative supervision of CCPs on an ongoing basis, the college should issue an opinion where ***ESMA*** considers withdrawing a CCP's authorisation and when ***ESMA*** conducts the annual review and evaluation of that CCP.

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(24) ***The clearing landscape in the Union has undergone major changes since 2019, when amending regulations to Regulation (EU) No 1095/2010 and Regulation (EU) No 648/2012 were adopted, and a more coordinated and integrated approach to the supervision of Union CCPs now appears necessary, especially as more systemic activity is expected to shift towards the Union due to the requirement to hold active accounts at Union CCPs for services of substantial systemic importance. ESMA should therefore be the direct supervisor of Union CCPs, and enhanced cooperation and integration between all relevant authorities is necessary to ensure that risks concentrated in Union CCPs are adequately monitored and managed, in order to***

minimise systemic risk and spill-over effects across Member States. Empowering ESMA with a direct supervisory role vis-a-vis Union CCPs requires adapting the existing supervisory framework under Regulation (EU) No 648/2012 , providing ESMA with decision-making powers over Union CCPs, but also clarifying how those new powers would interact with the supervisory role of the national competent authorities. Under a new and more integrated approach, relevant supervisory decisions should be drafted and adopted by ESMA, having taken into account the opinion of the college. The competent authority of the CCP may be requested by ESMA to assist with drafting decisions, the verification of activities of the CCP, and the day-to-day assessments. ESMA should be empowered to delegate specific supervisory tasks to competent authorities. ESMA should be in charge of coordinating the joint supervisory activities, including in relation to on-site inspections of Union CCPs. The change in approach should also cover the annual reviews.

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

(26) ESMA should have the means to identify potential risks to the Union's financial stability. ESMA should therefore, in cooperation with the ***ESRB,*** EBA, EIOPA, and the ECB in the framework of the tasks concerning the prudential supervision of credit institutions within the single supervisory mechanism conferred upon it in accordance with Council Regulation (EU) No 1024/2013[1], identify the interconnections and interdependencies between different CCPs and legal persons, including***, as far as***

[1] […]

possible, shared clearing members, clients and indirect clients, shared material service providers, shared material liquidity providers, cross-collateral arrangements, cross-default provisions and cross-CCP netting, cross-guarantee agreements and risks transfers and back-to-back trading arrangements.

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

(28) It is necessary to ensure a prompt exchange of information, knowledge sharing and effective cooperation between the authorities involved in the supervision of authorised CCPs, ***and in the monitoring of risks to the financial stability of the Union,*** and in particular where a swift decision by ***ESMA*** is required. It is therefore appropriate to ***create a framework for*** joint supervisory ***activities*** for each Union CCP to assist those supervisory authorities, including by providing input to ***ESMA*** within the context of the non-objection procedure for extending a CCP's existing authorisation, assisting in establishing the frequency and depth of a CCP's review and evaluation, and participating to on-site inspections. ▌

(29) To enhance the ability of relevant Union bodies to have a comprehensive overview of market developments relevant for clearing in the Union, monitor the implementation of certain clearing related requirements of Regulation (EU) No 648/2012 and collectively discuss the potential risks arising from the interconnectedness of different financial actors and other issues related to the financial stability it is necessary to establish a cross-

sectoral monitoring mechanism bringing together the relevant Union bodies involved in the supervision of Union CCPs, clearing members and clients. Such Joint Monitoring Mechanism should be managed and chaired by ESMA as the Union authority ***supervising*** Union CCPs and supervising systemically important third-country CCPs. Other participants should include representatives from the Commission, the EBA, EIOPA, the ESRB, the ECB and the ECB in the framework of the tasks concerning the prudential supervision of credit institutions within the single supervisory mechanism conferred upon it in accordance with Council Regulation (EU) No 1024/2013.

(30) To inform future policy decisions, ESMA, in cooperation with the other bodies participating in the Joint Monitoring Mechanism, should submit an annual report to the European Parliament, the Council and the Commission on the results of their activities.

(31) The 2020 market turmoil as a result of the Covid-19 pandemic and the 2022 high prices on energy wholesale markets following Russia's unprovoked and unjustified aggression against Ukraine showed that, while it is essential for competent authorities to cooperate and exchange information to address ensuing risks when events with cross-border impacts emerge, ESMA still lacks the necessary tools to ensure such coordination and a convergent approach at Union level. ESMA should therefore be able to convene meetings of the CCP Supervisory Committee, either on its own initiative or upon request, potentially with an enlarged composition, to coordinate effectively competent authorities' responses in emergency situations. ESMA should also be able to ask, by simple request, information from market participants which is necessary for ESMA to perform its coordination function in those situations and to be able to issue recommendations to the competent authority. ***Finally, given that developments in financial markets could have direct implications for the banking system or for monetary policy decisions, representatives of relevant central banks of issue should always be invited to participate in the coordination meetings of the CCP Supervisory Committee in response to such emergency situations.***

(32) To reduce the burden on CCPs and ESMA, it should be clarified that where ESMA undertakes a review of a third-country CCP's recognition pursuant to Article 25(5), first

subparagraph, point (b), that third-country CCP should not be obliged to submit a new application for recognition. It should, however, provide ESMA with all information necessary for such review. Consequently, ESMA's review of a third-country CCP's recognition should not constitute a new recognition of that CCP.

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

(34) To ensure that cooperation arrangements between ESMA and the relevant competent authorities of third countries are proportionate, such arrangements should reflect the specific features of the scope of services provided, or intended to be provided, within the Union by CCPs authorised in that third-country and whether those services entail specific risks to the Union or to one or more of its Member States. The cooperation arrangements should therefore reflect the degree of risk that the CCPs established in a third country potentially present to the financial stability of the Union or of one or more of its Member States.

(35) ESMA should therefore tailor its cooperation arrangements to different third-country jurisdictions based on the CCPs established in the respective jurisdiction. In particular, Tier 1 CCPs cover a wide range of CCP profiles hence ESMA should ensure that a cooperation arrangement is proportionate to the CCPs established in each third-country jurisdiction. ESMA should consider, amongst others, the liquidity of the markets concerned, the degree to which the CCPs' clearing activities are denominated in euro or other Union currencies and the extent to which Union entities use the services of such CCPs. Considering that the vast majority of Tier 1 CCPs provide clearing services to a limited extent to clearing members and trading venues established in the Union,

ESMA's scope of assessment and information to be requested should also be limited in all those jurisdictions. To limit information requests for Tier 1 CCPs, a pre-defined range of information should in principle be requested by ESMA annually. Where the risks from a Tier 1 CCP or jurisdiction are potentially greater, more, and at least quarterly, requests and a wider scope of information requested would be justified. However, any cooperation arrangements in place when this Regulation enters into force should not be required to be adjusted unless the relevant third-country authorities so request.

(36) Where recognition is provided under Article 25(2b) of Regulation (EU) No 648/2012, considering that those CCPs are of systemic importance for the Union or one or more of its Member States, the cooperation arrangements between ESMA and the relevant third-country authorities should cover the exchange of information for a broader range of information and with increased frequency. In that case, the cooperation arrangements should also entail procedures to ensure such a Tier 2 CCP is supervised pursuant to Article 25 of that Regulation. ESMA should ensure it can obtain all information necessary to fulfil its duties under that Regulation, including information necessary to ensure compliance with Article 25(2b) of that Regulation and to ensure that information is shared where a CCP has been granted, partially or fully, comparable compliance. ***ESMA should also, where comparable compliance is granted, regularly assess the continued compliance by Tier 2 CCPs with the conditions for their recognition through comparable compliance, by monitoring CCPs' compliance with the requirements set out in Article 16 and Titles IV and V under the Commission dDelegated Regulation (EU) 2020/1304[1]. In undertaking that assessment ESMA, should also be able, in addition to receiving the relevant information and confirmations from the Tier 2 CCP, to cooperate and agree on administrative***

[1] Commission Delegated Regulation (EU) 2020/1304 of 14 July 2020 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to the minimum elements to be assessed by ESMA when assessing third-country CCPs' requests for comparable compliance and the modalities and conditions of that assessment (OJ L 305, 21.9.2020, p.13, ELI: http://data.europa.eu/eli/reg_del/2020/1304/oj)

procedures with the third country authority to ensure ESMA has the relevant information and to reduce the administrative and regulatory burdens for those Tier 2 CCPs. To enable ESMA to carry out full and effective supervision of Tier 2 CCPs, it should be clarified that those CCPs should provide ESMA with information periodically.

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

(38) To mitigate potential risks for the financial stability of the Union, or of one or more of its Member States, CCPs and clearing houses should not be allowed to be clearing members of other CCPs nor should CCPs be able to accept to have other CCPs as clearing members or indirect clearing members. ***That exclusion should not affect interoperability arrangements, or other arrangements such as sponsored-memberships or direct access to cleared repo markets, between CCPs.***

(39) The recent events on commodity markets as a result of Russia's unprovoked and unjustified aggression against Ukraine illustrate the fact that non-financial counterparties do not have the same access to liquidity as financial counterparties. Therefore, non-financial counterparties should not be allowed to offer client clearing services and should be only allowed to keep accounts at the CCP for assets and positions held for their own account. Where a CCP has or intends to accept non-financial counterparties as clearing members that CCP should ensure that the non-financial

counterparties can fulfil the margin requirements and default funds contributions, including in stressed conditions. Considering non-financial counterparties are not subject to the same prudential requirements and liquidity safeguards as financial counterparties, their direct access to CCPs should be monitored by the competent authorities of CCPs accepting them as clearing members. . The competent authority for the CCP should report to ESMA and the college on a regular basis on the appropriateness of accepting non-financial counterparties as clearing members. ESMA might issue an opinion on the appropriateness of such arrangements following an ad-hoc peer review.

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

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

(42) To ensure the liquidity risk is accurately defined, the entities whose default a CCP should take into account to determine such risk should be expanded to cover not only the default of clearing members but also of liquidity service providers, settlement service providers or any other service providers.

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

(44) To facilitate CCPs' ability to respond promptly to market developments that may require amendments to their risk models, the process of the validation of changes to such models should be simplified. Where a change is non-significant, a non-objection validation procedure should apply. To ensure supervisory convergence, Regulation (EU) No 648/2012 should specify the changes that should be considered as significant. This should be the case where certain conditions would be met referring to different aspects of the CCP's financial position and overall risk level.

(44a) The Report on the Functioning of Regulation (EU) No 575/2013 with the related obligations under Regulation (EU) No 648/2012 jointly issued by EBA and ESMA in January 2017 identifies multiple potentially duplicative and inconsistent requirements for CCPs holding a banking license. Consequently, the report recommends a number of clarifications to avoid increased regulatory risk, unnecessary burdens and costs for monitoring by the competent authorities. The duplication of capital requirements identified in that report has not yet been fully addressed. Therefore, as recommended in the report, it should be clarified that CCPs

authorised in accordance with Article 14 of Regulation (EU) 648/2012, are not required to set aside own funds for their activities where the incumbent risks are already covered through the CCP-specific financial resources referred to in Articles 41 to 44 of that Regulation. Whilst the Eurosystem is looking into the issue of convergent central bank access policies for Union CCPs, the central banks of issue of the Eurosystem under the lead of the ECB should, at the request of the European Parliament, provide a report assessing the state of play and, if appropriate, provide recommendations how to ensure generalised central bank access for EMIR-authorised Union CCPs without the condition of maintaining a banking licence.

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

(46) To ensure consistency of Regulation (EU) 2017/1131 of the European Parliament and of the Council[1] with Regulation (EU) No 648/2012 and to preserve the integrity and stability of the internal market, it is necessary to lay down in Regulation (EU) 2017/1131 a uniform set of rules to address counterparty risk in financial derivative transactions performed by money market funds (MMF), when the transactions have been cleared by a CCP that is authorised or recognised under Regulation (EU) No 648/2012. As central clearing arrangements mitigate counterparty risk that is inherent in financial derivative contracts, it is necessary to take into consideration whether a derivative has been centrally cleared by a CCP that is authorised or recognised under that Regulation, when determining the applicable counterparty risk limits. It is also necessary for regulatory

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

and harmonisation purposes, to lift counterparty risk limits only where the counterparties use CCPs which are authorised or recognised in accordance with that Regulation, to provide clearing services to clearing members and their clients.

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

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

(49) To ensure the list of third countries whose entities may not benefit from those exemptions despite not being identified in those lists is relevant for the objectives of Regulation (EU) No 648/2012, to ensure the consistent harmonisation of the obligation

to clear certain transactions in an account with an authorised CCP where ESMA undertakes an assessment pursuant to Article 25(2c) and to ensure the list of non-material changes for the non-objection procedure to apply remains relevant, the power to adopt acts in accordance with Article 290 of the TFEU should be delegated to the Commission to adjust the transactions in scope of the obligation and to change the list of non-material changes. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[1]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts

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

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

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

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) No 648/2012

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

(-1) in Article 1, paragraph 5, the following subparagraph is added:

'Notwithstanding point (b) of the first subparagraph of this paragraph, by ... [18 months from the date of entry into force of this amending Regulation], ESMA shall issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 to further specify the modalities of public sector entities' participation in Union CCPs, in particular regarding the calculation of the exposures of public sector entities to Union CCPs and public sector entities' contributions to Union CCPs' financial resources, duly taking account of the role and mandate of public entities and the objective of encouraging central clearing by them.";

(-1a) Article 2 is amended as follows:

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

'(1) "CCP" means a legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets or commodity (spot) markets, including wholesale energy markets, as well as on one or more markets in crypto-assets, as defined in Article 3(5) of Regulation (EU) 2023/1114 of the European Parliament of Council, becoming the buyer to every seller and the seller to every buyer;';

(b) the following subparagraph is added:

'The Commission shall be empowered to adopt delegated acts in accordance with Article 82 to specify certain technical elements of the definitions laid down in the first paragraph of this Article, to adjust them to market and technological developments.';

(1) Article 3 is replaced by the following:

'Article 3

Intragroup transactions

1. In relation to a non-financial counterparty, an intragroup transaction shall be an OTC derivative contract entered into with another counterparty which is part of the same group provided that both counterparties are included in the same consolidation on a full basis and they are subject to an appropriate centralised risk evaluation, measurement and control procedures and that counterparty is established in the Union or, if it is established in a third country that third country is not listed pursuant to paragraphs 4 and 5.

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

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

(a) the financial counterparty is established in the Union or, if it is established in a third country, that third country is not listed pursuant to paragraphs 4 and 5;

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

(c) both counterparties are included in the same consolidation on a full basis;

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

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

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

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

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

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

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

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

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

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

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

(b) where the third country is listed in Annex I to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes[*2] and their subsequent updates which are specifically approved twice a year, customarily in February and October, and published in series C of the *Official Journal of the European Union*.

For the purposes of this paragraph, a third country that has been continuously mentioned in Annex II to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes for a period of at least three years shall be considered to be listed in Annex I to those conclusions.

5. Where appropriate in the light of the legal, supervisory and enforcement arrangements of a third country with regard to risks, including counterparty credit risk and legal risk, the Commission is empowered to adopt delegated acts in accordance with Article 82 to supplement this Regulation to identify the third countries whose entities may not benefit from any of the exemptions for intragroup transactions despite not being listed pursuant to paragraph 4.

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

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

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

'The obligation to clear all OTC derivative contracts does not apply to contracts concluded in situations as referred to in the first subparagraph, point (a)(iv), between,

on one side, a financial counterparty that meets the conditions set out in Article 4a(1), second subparagraph, or a non-financial counterparty that meets the conditions set out in Article 10(1), second subparagraph, and, on the other side, a pension scheme arrangement established in a third country and operating on a national basis, provided that such entity or arrangement is authorised, supervised and recognised under national law and where its primary purpose is to provide retirement benefits and is exempted from the clearing obligation under its national law.';

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

(a) paragraph 1 is replaced by the following:

'1. Every 12 months, a financial counterparty taking positions in OTC derivative contracts may calculate its aggregate month-end average position in uncleared contracts for the previous 12 months in accordance with paragraph 3.

Where a financial counterparty does not calculate its positions, or where the result of the calculation of its aggregate month-end average position in uncleared contracts for the previous 12 months exceeds any of the clearing thresholds specified pursuant to Article 10(4), point (b), or where the result of the calculation of its aggregate month-end average position in OTC contracts for the previous 12 months exceeds any activity threshold specified pursuant to Article 10(4), point (b), the financial counterparty shall:

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

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

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

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

'In calculating the ***aggregate month-end average*** positions ***in uncleared contracts***

referred to in paragraph 1, the financial counterparty shall include all OTC derivative contracts that are not cleared in a CCP authorised under Article 14 or recognised under Article 25, entered into by that financial counterparty or entered into by other entities within the group to which that financial counterparty belongs.';

(3a) the following article is inserted:

'Article 4aa

Exemption from clearing obligation for post-trade risk reduction services

1. Without prejudice to risk-mitigation techniques under Article 11, Article 4(1) shall not apply to OTC derivative contracts that initiated and concluded as the result of a post-trade risk reduction services exercise where agreed by both parties to the transaction.

2. Post-trade risk reduction transactions shall only be exempted from the clearing obligation under Article 4 where the post-trade risk reduction service provider and each participant in the post-trade risk reduction exercise comply with the requirements laid down in this Article.

3. A post-trade risk reduction exercise shall meet all of the following conditions:

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

(b) be market risk neutral;

(c) not contribute to price formation;

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

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

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

(g) be either accepted or rejected in its entirety with the result that the participants to the exercise are not able to choose which trades to execute under the exercise;

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

4. A post-trade risk reduction service shall be provided by entities authorised in accordance with Directive 2014/65/EU(PTRR service provider).

In providing post-trade risk reduction services, a PTRR service provider shall:

(a) observe pre-agreed rules, methods and algorithms in pre-scheduled cycles and in a reasonable, transparent and non-discriminatory manner;

(b) ensure that entities participating in a post-trade risk reduction exercise have no influence over the result of the exercise;

(c) in order to prevent a build-up of transactions in portfolios, conduct portfolio compression after every post-trade risk reduction exercise that results in new transactions;

(d) keep records of all transactions executed pursuant to a post-trade risk reduction exercise, including:

(i) information on transactions entered within the exercise,

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

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

(e) monitor the transactions resulting from the post-trade risk reduction exercise in order to ensure, to the extent possible, that the post-trade risk reduction exercise does not result in any misuse or circumvention of the clearing obligation.

5. The competent authority that authorised the PTRR service provider shall notify ESMA of the authorisation. ESMA shall publish and maintain a list of all authorised PTRR service providers in the Union.

The competent authority that authorised the PTRR service provider shall, on a yearly basis, confirm that that PTRR service provider complies with the requirements laid down in paragraph 4.

Where a PTRR service provider no longer complies with the requirements laid down in paragraph 4, the competent authority may withdraw its authorisation.

6. Before entities begin using the clearing exemption for post-trade risk reduction transactions referred to in paragraph 1, they shall notify their respective competent authorities, providing them with a description of the type of post-trade risk reduction exercise they plan to use and a written explanation of how the conditions set out in paragraphs 3 and 4 are complied with on an ongoing basis. The use of the notified type of post-trade risk reduction exercise and the clearing exemption for the relevant post-trade risk reduction transactions shall be deemed approved unless the notified competent authority informs the entity it supervises that it does not validate the use of the exemption within 30 calendar days of the date of the receipt of the notification. Competent authorities shall notify ESMA of any entity having been validated to participate in post-trade risk reduction exercises or having its validation withdrawn by the authority.

7. ESMA shall develop draft regulatory technical standards to further specify the conditions set out in paragraphs 3 and 4, including aspects such as market neutrality in the PTRR exercise, the type of transactions which can be included in a PTRR exercise and benefit from an exemption from the clearing obligation, the requirements of the management of the PTRR exercise and how to monitor the correct application of the exemption granted, ensuring the clearing obligation is not circumvented. ESMA shall submit those draft regulatory technical standards to the Commission by ... [12 months from the date of entry into force of this amending Regulation].

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

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

'(fa) the clearing rate for derivatives contracts concluded in the Union, on aggregate basis and for different asset classes;'

(4) the following Articles 7a and 7b are inserted:

'Article 7a

Active Account

1. Financial counterparties or a non-financial counterparties that are subject to the clearing obligation in accordance with Articles 4a and 10 and clear any of the categories of the derivative contracts referred to in paragraph 2 shall clear at least a proportion of such contracts at accounts at CCPs authorised under Article 14.

1a. For the purposes of paragraph 1 of this Article, an account at a CCP authorised under Article 14 shall be deemed active where:

(a) initial and daily variation margins are posted against existing positions;

(b) the necessary IT connectivity, internal processes and legal documentation are in place; and

(c) the CCP demonstrates to ESMA through regular stress tests that in the event of a significant and sudden increase of clearing activity, the regular functioning of that account and the internal functioning of the CCP would not be affected.

Financial or non-financial counterparties subject to the requirement laid down in paragraph 1 shall ensure that their active accounts are fully operational by ... [6 months from the date of entry into force of this amending Regulation].

ESMA shall develop draft regulatory technical standards to further specify how the conditions listed in the first subparagraph of this paragraph are to be applied in order for that account to be considered active.

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

1b. By ... [24 months after the date of entry into force of this amending Regulation] the Commission shall adopt a delegated act in accordance with Article 82 supplementing this Regulation by introducing a requirement for financial counterparties or non-financial counterparties as referred to in paragraph 1 of this Article to clear a proportion of contracts in any of the categories of the derivative contracts referred to in paragraph 2 at a CCP authorised under Article 14. If necessary, the delegated act shall also specify the relevant reporting obligations related to the introduction of that requirement.

The Commission shall only adopt the delegated act referred to in the first subparagraph of this paragraph if it has received the notification from ESMA as referred to in Article 22a, and where it considers that the introduction of a requirement to have a specific proportion of contracts cleared at a CCP authorised under Article 14 meets all of the following criteria:

(a) the requirement would not result in a distortion of competition in the Union;

(b) the requirement would contribute to the financial stability of the Union; and

(c) the international competitiveness of the financial and non-financial counterparties subject to this Regulation would not be adversely affected by the introduction of the requirement.

For the purposes of assessing point (c) of the second subparagraph of this paragraph, the Commission shall assess whether the requirement would result in a reduction of market share of clearing members established in the Union and counterparties and, for those counterparties which are subject to the best execution obligation under Article 27 of Directive 2014/65/EU, whether the requirement would lead to an

increase in the prices that would be offered to end investors as a result of differences in liquidity and prices between CCPs authorised under Article 14 and under Article 25 would be significantly affected. In particular, the Commission shall carry out a cost-benefit analysis, including a measurement of the differences in prices of the instruments cleared at one CCP versus another, as well as their volatility.

The Commission may also request ESMA to provide a report on the proportion of contracts to be cleared at a CCP authorised under Article 14 that would meet the criteria set out in the second subparagraph of this paragraph and on whether different proportions should be set for different sub-types of derivative contracts, for different types of counterparty, and for different types of activity.

1c. By 24 months after the adoption of the delegated act as referred to in paragraph 1b of this Article the Commission shall conduct an assessment of whether the proportion of contracts to be cleared at a CCP authorised under Article 14, specified in that delegated act, still meets the criteria listed in paragraph 1b of this Article, and whether it needs to be adjusted. In such a case, the Commission is empowered to adopt a delegated act amending the delegated act referred to in paragraph 3 of this Article.

2. ***In determining its obligations with regard to paragraphs 1 and 1b, a financial or a non-financial counterparty belonging to a group subject to consolidated supervision in the Union shall consider all derivative contracts referred to in paragraph 3 that are cleared by that counterparty or by other entities within the group to which that counterparty belongs.***

3. ***The obligation laid down in paragraphs 1 and 1b shall apply to the following:***

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

(b) short-term interest rate derivatives (STIR) denominated in euro;

(c) other categories of derivative contracts pertaining to clearing services identified by ESMA as being of substantial systemic importance in accordance with Article 25(2c).

Where ESMA undertakes an assessment pursuant to Article 25(2c), as referred to in point (c) of the first subparagraph of this paragraph, and concludes that certain services or activities provided by Tier 2 CCPs that were previously identified by ESMA as being of substantial systemic importance for the Union or one or more of its Member States no longer are of such importance, the Commission is empowered to adopt a delegated act to amend paragraph 3 of this Article accordingly, in accordance with Article 82.

The obligation referred to in paragraphs 1 and 1b shall remain for as long as the derivative contracts referred to in the first subparagraph of this paragraph are being cleared.

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

Where a financial or non-financial counterparty is found to be in breach of its obligations under this Article, ESMA shall, by decision, impose periodic penalty payments in order to compel that counterparty to put an end to its infringement.

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

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

5. ***ESMA shall monitor the implementation of the obligation set out in paragraph***

1 and 1b and report on it on an annual basis to the European Parliament, the Council and the Commission.

Article 7b

Information on clearing services

1. Clearing members and clients that provide clearing services both at a CCP authorised under Article 14 and at a CCP recognised under Article 25 shall, when one of their clients submits a contract for clearing, inform that client about the possibility to clear such contract at the CCP authorised under Article 14.

The clearing members and clients that provide clearing services shall also disclose, in a clear and understandable manner, the costs associated with clearing services of the different CCPs at which it is possible to clear the contract.

1a. ESMA shall, in consultation with EBA, develop draft regulatory technical standards specifying the type of information to be provided by clearing members and clients providing clearing services on costs to their clients.

(4a) the following article is inserted:

'Article 7c

Information on CCPs established in the Union

1. CCPs authorised under Article 14 shall report on a monthly basis to ESMA at least the following information:

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

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

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

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

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

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

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

ESMA shall promptly provide the information referred to in the first subparagraph of this paragraph to the college of the CCP referred to in Article 18.

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

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

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

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

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

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

(5) Article 9 is amended as follows:

(-a) paragraph 1 is amended as follows:

i. the first subparagraph is replaced by the following:

'Counterparties, including those established outside the Union and belonging to a group subject to consolidated supervision in the Union, and CCPs shall ensure that the details are reported of any derivative contract that they have concluded and of any modification or termination of the contract, in accordance with paragraphs 1a to 1f of this Article, to a trade repository registered in accordance with Article 55 or recognised in accordance with Article 77. The details shall be reported no later than on the working day following the conclusion, modification or termination of the contract.'

ii. the third and fourth subparagraphs are ***replaced by the following:***;

'Notwithstanding Article 3, the reporting obligation shall not apply to derivative contracts within the same group where at least one of the counterparties is a non-

financial counterparty that is not subject to the clearing obligation, or would be qualified as a non-financial counterparty not subject to the clearing obligation, if it were established in the Union, provided that:

(a) both counterparties are included in the same consolidation on a full basis;

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

(c) the parent undertaking is not a financial counterparty.

Counterparties shall notify their competent authorities of their intention to apply the exemption referred to in the third subparagraph. The exemption shall be valid unless the notified competent authorities do not agree upon the fulfilment of the conditions set out in the third subparagraph within three months of the date of notification.'

(b) in paragraph 1a, fourth subparagraph,

- point (a) is replaced by the following:

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

- point (b) is deleted.

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

"'1f. Counterparties and CCPs that are subject to the reporting obligation referred to in paragraph 1 may delegate that reporting obligation. Where they do so, counterparties and CCPs remain fully responsible, and legally liable, for reporting the details of derivatives as well as for ensuring the correctness of the details reported.";

(bb) the following paragraphs are added:

"6a. Where the data reported in accordance with Article 9 contain manifest errors or where financial or non-financial counterparties have not exercised due diligence when checking and reporting those data, ESMA shall, by decision, impose periodic penalty payments in order to compel that counterparty to put an end to its infringement.

The periodic penalty payment shall be effective and proportionate, not exceeding a maximum 1% of the average daily turnover in the preceding business year.

By ... [12 months from the date of entry into force of this amending Regulation] ESMA shall draft guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 further specifying the due diligence checks and procedures expected from financial and non-financial counterparties subject to the reporting obligation in accordance with Article 9 of this Regulation and the maximum penalties that can be imposed, which shall in any case not exceed the maximum laid down in the second subparagraph of this paragraph.

6b. By … [24 months from the date of entry into force of this amending Regulation] ESMA shall submit a report to the Commission on whether the changes under Article 9(1) and paragraph 1 of this Article have resulted in a sufficiently clear improvement in the conduct of ESMA's supervisory tasks and whether they have had an excessive negative impact on market participants. The report shall be accompanied by a cost-benefit analysis."

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

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

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

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

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

(b) values of the clearing thresholds ***for uncleared derivatives***, which are determined taking into account the systemic relevance of the ***sum of net*** positions and future net exposures per counterparty. ***ESMA shall also assess whether an aggregate activity threshold, taking into account the overall aggregate position in*** OTC derivatives ***of a financial counterparty, is necessary to ensure a prudent coverage of financial counterparties under the clearing obligation and set a level for such a threshold***;

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

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

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

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

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

5. Each Member State shall designate an authority responsible for ensuring that the obligations of non-financial counterparties under this Regulation are met. That authority shall report to ESMA at least once a year, and more frequently where an emergency situation is identified under Article 24, on the activity in OTC derivatives of the non-financial counterparties it is responsible for as well as that of the group they belong to. At least every 2 years, ESMA shall present a report to the European Parliament, the Council and the Commission on the activities of Union non-financial counterparties in OTC derivatives, identifying areas where there is a lack of convergence and coherence in the application of this Regulation as well as potential risks to the financial stability of the Union.';

(7) Article 11 is amended as follows:

(a) in paragraph 2, the following subparagraph is added:
'A non-financial counterparty becoming subject for the first time to the obligations laid down in the first subparagraph shall set up the necessary arrangements to comply with those obligations within four months following the notification referred to in Article 10(1), second subparagraph, point (a). A non-financial counterparty shall be exempted from those obligations for contracts entered into during the four months following that notification.';

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

'***Financial and non-financial counterparties shall notify EBA and their competent authorities about the models used for initial margin calculation with regard to risk management procedures laid down in the regulatory technical standards referred to in paragraph 15, point (a). Where EBA or the national competent authorities object, the counterparty is entitled to continue using the initial margin model for a period of up to one year following receipt of the objection. Where counterparties cease using such models, they shall notify EBA and their competent authorities thereof by the end of the quarter in which they ceased using the model.***

Financial counterparties shall report information on the risk-management procedures referred in the first subparagraph, including, where relevant, in

relation to initial margin models used, to EBA and their competent authorities.

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

(ba) the following paragraph is inserted:

“3a. Notwithstanding paragraph 3, single-stock options and equity index options not cleared by a CCP shall be temporarily exempted from risk-management procedures that require the timely, accurate and appropriately segregated exchange of collateral.

ESMA shall monitor the impact of the exemption under the first subparagraph on financial stability, as well as regulatory developments in relation to the treatment of single-stock options and equity index options in non-EU jurisdictions, and shall, at least every two years, submit a report thereon to the Commission. After submission of the report by ESMA, the Commission shall assess whether international developments have led to more convergence in the treatment of single-stock options and equity index options and whether the temporary exemption of such options is still justified. The Commission may adopt a delegated act specifying that, after the expiry of an adaptation period, the exemption is to be removed. The adaptation period shall not exceed two years.

The Commission is empowered to adopt the delegated act referred to in the second subparagraph of this paragraph in accordance with Article 82.”

(bb) the following paragraph is inserted:

‘12a. EBA shall set up a central validation function for industry-wide models used for the purpose of complying with the requirements set out in paragraph 3.

In its role as central validator, EBA shall provide guidance on the general aspects of those models, such as their calibration, design, and instruments and assets class coverage.

EBA shall collect feedback from competent authorities, from ESMA and from EIOPA, and coordinate their views, and shall serve as a single point of discussion with the industry.

EBA shall also assist competent authorities in their approval processes regarding the general aspects of the implementation of those models. Competent authorities shall be solely responsible for validating the implementation of those models at the supervised entity level.

EBA shall charge a fee to counterparties using industry-wide models referred to in the first subparagraph. The fee shall be proportionate to the turnover of the counterparties concerned and shall cover all costs incurred by EBA for the performance of its tasks in accordance with the first subparagraph.';

▌

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

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

(c) in paragraph 15, first subparagraph ***is amended as follows***:

i. point (aa) is ***replaced by the following:***.

'(aa) the supervisory procedures, to ensure initial and ongoing validation of the risk-management procedures referred to in paragraph 3, applied by the largest credit institutions authorised in accordance with Directive 2013/36/EU and the largest investment firms authorised in accordance with Directive 2014/65/EU as defined under paragraph 15(a);'

ii. the following point is inserted:

'(ab) the data standards, formats and type of information to be reported and disclosed on risk-management procedures, including where relevant on initial margin models, in accordance with the supervisory requirements referred to in point (aa);

iii. the following subparagraph is inserted after point (c):
'In specifying the scope of application of the obligation under point (aa) of the first subparagraph, EBA shall ensure that only those counterparties that are particularly active in uncleared OTC derivatives are subject to initial and ongoing validation of the risk management procedures referred to in that paragraph.''

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

'***Article 13***

Mechanism to avoid duplicative or conflicting rules

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

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

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

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

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

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

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

(9) Article 14 is amended as follows:

(-a) paragraph 1 is replaced by the following:

'Where a legal person established in the Union intends to provide clearing services as a CCP, it shall apply for authorisation to ESMA in accordance with the procedure set out in Article 17.

ESMA shall inform the competent authority of the Member State where that legal person is established without delay.'

(a) paragraph 3 is replaced by the following:

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

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

Where a CCP authorised pursuant to this Article intends to clear classes of non-

financial instruments suitable for clearing, it shall apply for an extension of its authorisation pursuant to Article 15.';

(aa) paragraph 4 is replaced by the following:

'4. A CCP shall comply at all times with the conditions necessary for authorisation. A CCP shall, without undue delay, notify ***ESMA and*** the competent authority of any material changes affecting the conditions for authorisation.'

(b) the following paragraphs 6 and 7 are added:

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

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

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

7. ESMA shall develop draft implementing technical standards specifying the electronic format of the application to be submitted to the central database for authorisation referred to in paragraph 1.

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

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

(10) Article 15 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. A CCP wishing to extend its business to additional services or activities not covered by the existing authorisation***, or a CCP that has not, during the previous 12 months, provided clearing services or activities in a class of financial instrument or a class of non-financial instrument covered by the existing authorisation and that wishes to offer clearing services or activities for those instruments,*** shall submit a request for extension ***ESMA***. The offering of clearing services or activities for which the CCP has not already been authorised***, or for which it has been authorised but which it has not provided during the previous 12 months,*** shall be considered to be an extension of that authorisation.
The extension of authorisation shall be made in accordance with either of the following:

(a) the procedure set out in Article 17;

(b) the procedure set out in Article 17a where the applicant CCP so requests pursuant to Article 17a(3).’;

(b) paragraph 3 is replaced by the following:
‘3. ESMA shall, in close cooperation with the ESCB, develop draft regulatory technical standards specifying the list of required documents that shall accompany an application for an extension of authorisation pursuant to paragraph 1 and specifying the information such documents shall contain with a view to demonstrating that the CCP meets all relevant requirements of this Regulation.
ESMA shall submit those draft regulatory technical standards to the Commission by … [PO: please insert the date = 12 months after the date of entry into force of this Regulation].
Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.’;

(c) the following paragraph 4 is added:
‘4. ESMA shall develop draft implementing technical standards specifying the electronic format of the application to be submitted to the central database for an extension of the authorisation referred to in paragraph 1.

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

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

(11) Article 17 is amended as follows:

(a) the title of the Article is replaced by the following:

'Procedure for granting and refusing an application for authorisation or for an extension of authorisation'

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

'1. The applicant CCP shall submit an application for authorisation as referred to in Article 14(1) or an application for an extension of its authorisation as referred to in Article 15(1) in an electronic format via the central database referred to in paragraph 7. The application shall be immediately shared with ***ESMA,*** the CCP's competent authority, and the college referred to in Article 18(1).

ESMA shall, within 5 working days after such application has been received, acknowledge receipt of the application, stating to the CCP whether it contains the documents required pursuant to Article 14(6) and (7) or, where the CCP has applied for an extension of its authorisation, pursuant to Article 15(3) and (4).

Where ***ESMA*** determines that not all documents required pursuant to Article 14(6) and (7) or Article 15(3) and (4) have been submitted, it shall reject the CCP's application.

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

3. Within 40 working days of the end of the period set out in the second subparagraph of paragraph 1 (“the risk assessment period”), the CCP’s competent authority, ESMA and the college shall each conduct risk assessments of the CCP’s compliance with the relevant requirements laid down in this Regulation. By the end of the risk assessment period***, the college shall transmit its opinion and report to ESMA and the CCP’s competent authority, and ESMA shall transmit its draft decision and report to the CCP's competent authority and the college.***

▌

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

‘3a. During the risk assessment period referred to in paragraph 3, the CCP’s competent authority, ESMA or any of the college members may submit questions directly to the CCP. Where the CCP does not respond to such questions within the time period set by the requesting authority, ▌ ESMA or the college may take a decision in the absence of the CCP’s response or may decide to extend the assessment period by a maximum of 10 working days, if, in their view, the question is material for the assessment. ***A CCP shall not be required to respond more than once to a specific question, provided that the question has been answered correctly.***

3b. Within ***15*** working days of receipt of both the ESMA opinion and the college opinion, ***ESMA*** shall adopt its decision and transmit it to ***the applicant CCP, the CCP’s competent authority*** and the college.

Where ***ESMA*** does not agree with an opinion of ESMA or the college, including any conditions or recommendations contained therein, its decision shall contain full reasons and an explanation of any significant deviation from that opinion or conditions or recommendations.

▌

(e) paragraph 4 is replaced by the following:

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

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

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

Where an applicant CCP requests an extension of authorisation pursuant to Article 15, ESMA may rely on part of the assessment previously carried out pursuant to this Article to the extent that no change to such part would arise as a result of such request for extension of authorisation. The CCP shall confirm to ESMA that there is no change to the underlying facts of the part of the assessment on which ESMA chooses to rely.

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

▌

(f) paragraph 7 is replaced by the following:‘7. ESMA shall maintain a central database providing access to the CCP’s competent authority, ESMA, and the members of the college for that CCP

▌, to all documents registered within the database for that CCP. The CCP shall submit the application referred to in Article 14, Article 15(1), second subparagraph, point (a), and Article 49 via that database.

Questions submitted by ESMA and the members of the college during the risk assessment period referred to in Article 17(3a) shall be included in the central

database.

The registered recipients shall upload promptly all documents they receive from the CCP in relation to an application pursuant to paragraph 1 and the central database shall automatically inform the registered recipients when changes have been made to its content. The central database shall contain all documents provided by an applicant CCP under paragraph 1 and all other documents relevant for the assessment by the CCP's competent authority, ESMA and the college. Members of the CCP Supervisory Committee shall also have access to the central database for the performance of their tasks pursuant to Article 24a(7). The Chair of the CCP Supervisory Committee may limit access to some of the documents for the members of the CCP Supervisory Committee referred to in Article 24a, points (c) and (d)(ii), where justified based on confidentiality concerns.';

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

'*Article 17a*

Non-objection procedure for granting a request for extension of activities or services

1. The non-objection procedure shall apply to non-material changes to a CCP's existing authorisation in any of the following cases where the proposed additional clearing service or activity ***does one or more of the following***:

▌

(***a***) adds a new ▌ currency ***to*** a class of financial instruments already covered by the CCP's authorisation ***for which the CCP does not have in place the relevant payment facility***;

(b) offers a new settlement or delivery mechanism or service which involves establishing links with a different securities settlement system, central security depositories or payment system that the CCP did not previously use;

(c) ***offers contracts that cannot be liquidated in the same manner, such as via direct offer or auction, or together with contracts already cleared by the CCP.***

2. ***The proposed additional clearing service or activity shall be considered a material change and subject to the procedure set out in Article 17 where it results in the CCP doing*** any of the following:

(a) ▌significantly ***adapting*** its operational structure, at any point in the contract cycle:

(b) ▌offering ***a service or performing an activity relating to a new class of financial instruments or a new type of products or a new type of transactions***;

(c) ***offering a service or performing an activity for contracts traded on a trading venue, where the CCP was previously providing a service or performing an activity for those contracts traded on a bilateral basis only***;

(d) ***offering a service or performing an activity for contracts traded on a bilateral basis, where the CCP was previously providing a service or performing an activity for those contracts on a trading venue only***;

(e) ***taking into account material new contract specifications, such as a new option exercise styles within a category of contracts***;

(f) the introduction of materially new risks, linked to the different characteristics of the assets referenced.

2a. ESMA shall, in close cooperation with the ESCB, develop draft regulatory technical standards further specifying the criteria referred to in paragraphs 1 and 2.

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

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the second subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010. (AM 366 and 373 Lalucq, et al.; AM 374 Gruffat)

2b. Where a proposed additional clearing service or activity meets a condition under paragraph 1 of this Article at the same it meets a condition under paragraph 2 of this Article, the procedure set out in Article 17 shall apply.

3. A CCP that submits a request for extension requesting that the non-objection procedure be applied, shall demonstrate why the proposed extension of its business to additional clearing services or activities qualifies under paragraphs 1 or 2 to be assessed under the non-objection procedure. The CCP shall submit its application in an electronic format via the central database referred to in Article 17(7) and shall provide all information necessary to demonstrate that it has established, at the time of authorisation, all the necessary arrangements to meet the relevant requirements laid down in this Regulation.

A CCP that applies for an extension of its authorisation requesting that the non-objection procedure be applied and the proposed additional clearing services or activities fall within the scope of paragraph 1, may start clearing such additional financial instruments or non-financial instruments suitable for clearing before the decision of the CCP's competent authority pursuant to paragraph 4.

4. ***Where ESMA, after considering the input of the college, has not expressed its objection to the CCP's proposed additional services or activities within*** 10 working days of receipt of ***the*** application***, the authorisation shall be deemed granted***.

5. ***The CCP requesting the extension of activities and services in accordance with Article 15 shall not be permitted to start the new activity or service that has been requested before the authorisation is deemed granted.***

6. The Commission is empowered to adopt delegated acts in accordance with Article 82 to supplement this Regulation by specifying any changes to the list of non-material changes listed under paragraph 1, where such a change would not bring an increased risk to the CCP.

Article 17b

Procedure for seeking the opinion from ▌ the college

1. ***Where it intends to adopt a decision in relation to Article 20, 21, 30, 31, 32, 35,***

41, 49, 51 or 54, ESMA shall submit in electronic format via the central database referred to in Article 17(7) a request for an opinion ***by the college pursuant to this Article and Article 19.***

The request for an opinion ***referred to in the first subparagraph, together with all relevant documents,*** shall be shared immediately with the ***members of the college***.

2. Unless otherwise specified under the relevant Article, ESMA and the college shall, within 30 working days of receipt of the request referred to in paragraph 1 ('the assessment period'), assess the CCP's compliance with the respective requirements. By the end of the assessment period ***, ESMA shall transmit its draft decision to the CCP's competent authority and the college, and the college shall adopt an opinion pursuant to Article 19 and transmit it to ESMA and the CCP's competent authority. The college may include in its opinion any conditions or recommendations that it considers necessary to mitigate any shortcomings in the CCP's risk management***.

3. Within 10 working days of receipt of the college opinion, ***ESMA*** shall, after duly considering the opinions of the college, including any conditions or recommendations contained therein, adopt its decision and transmit it to ***the CCP's competent authority*** and the college.

Where ***ESMA*** does not agree with ***the*** opinion of ESMA or the college, including any conditions or recommendations contained therein, its decision shall contain full reasons and an explanation of any significant deviation from that opinion or conditions or recommendations.

(12 a) the following article is inserted:

'Article 17ba

Procedures for implementation by CCPs of 'business as usual' changes

1. After having duly notified its intentions to ESMA, a CCP shall be able to directly implement any change to its services or activities without being subject to the procedures referred to in Articles 17 and 17a, where such a change does not qualify

as material pursuant to Article 17 or as non-material pursuant to Article 17a(1).2.

The changes implemented by a CCP in accordance with this Article shall be subject to review and evaluation in accordance with Article 21. In addition, ESMA shall regularly review the implementation by CCPs of changes that meet the requirements of paragraph 1 of this Article and report to the college of each CCP in the Union on their appropriateness.'

(13) Article 18 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Within 30 calendar days of the submission of a complete application in accordance with Article 17, ***ESMA*** shall establish a college to facilitate the exercise of the tasks referred to in Articles 15, 17 , 20, 21, 30, 31, 32, 35, 41, 49, 51 and 54.';

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

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

(b a) in paragraph 4, the following subparagraph is added:

"For the purpose of adding points to the agenda, the members of the college shall consider the outcome of the work carried out by the Joint Monitoring Mechanism."

(14) Article 19 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

If no joint opinion is reached in accordance with the first subparagraph, the college shall adopt a majority opinion within the same period.';

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

'The members of the college referred to in Article 18(2), points (ca) and (i), shall

have no voting rights on the opinions of the college.';

(c) paragraph 4 is deleted;

(15) ▌Article 20 ***is*** replaced by the following:

'1. Without prejudice to Article 22(3), ESMA shall withdraw authorisation where the CCP:

(a) has not made use of the authorisation in full or in part within 12 months, expressly renounces the authorisation or has provided no services or performed no activity for the preceding six months;

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

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

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

2. Where ESMA considers that at least one of the circumstances referred to in paragraph 1 applies, it shall, within five working days, notify the CCP's competent authority and the members of college accordingly.'

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

4. ***The CCP's competent authority*** or any member of the college may, at any time, request that ***ESMA*** examine whether the CCP remains in compliance with the conditions under which authorisation was granted.5. ***ESMA*** may limit the withdrawal to a particular service, activity, or class of financial instruments or non-financial instruments.

6. Before ***ESMA*** takes a decision to withdraw a particular service, activity, or class of financial instruments or non-financial instruments, it shall request the ***opinion of*** the

college in accordance with Article 17b.

7. Where ***ESMA*** takes a decision on the withdrawal of authorisation in full or in relation to a particular service, activity, or class of financial instruments or non-financial instruments, that decision shall take effect throughout the Union.';

(16) Article 21 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. ***ESMA*** shall do ***at least*** all of the following:

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

(b) review the services or activities the CCP has started providing following the non-objection procedures pursuant to Article 17a***, 17ba*** or pursuant to Article 49;

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

(c a) prepare a plan for joint supervisory activities pursuant to Article 23b.";

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

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

CCPs shall be subject to on-site inspections. ***ESMA*** shall invite the ***college and the participants to*** the joint supervisory ***activities as referred to in*** Article 23b, to participate in on-site inspections.

ESMA shall forward to the ***college the*** information received from the CCPs during or in relation to on-site inspections.

4 ***ESMA*** shall regularly, and at least annually, submit a report to the college

that includes the following;

a) the results of the review and evaluation as referred to in paragraph 1, including whether***ESMA*** has taken any remedial action or imposed penalties***; and***

(b) a plan for joint supervisory activities pursuant to Article 23b for the following calendar year.

ESMA shall communicate the report covering a calendar year to ***the CCP's competent authority and the college*** by 30 March of the following calendar year. That report shall be subject to an opinion of the college pursuant to Article 19 and an opinion by ESMA pursuant to Article 24a(7), first subparagraph, point (bc), issued in accordance with the procedure set out in Article 17b.';

(c) the following paragraph is inserted:

'4a. For the purposes of carrying out the review and evaluation referred to in paragraph 1 of this Article, as well as establishing its frequency, depth and substantive focus in accordance with paragraph 3 of this Article, ESMA shall consider the outcome of the work the Joint Monitoring Mechanism has carried out pursuant to Article 23c, to the extent that such outcome is relevant for the CCP subject to such review and evaluation.';

(d) paragraph 5 is replaced by the following:

'5. ESMA shall require any CCP that does not meet the requirements laid down in this Regulation to take the necessary action or steps at an early stage to address the situation.';

(16 a) in Article 22(1), the first subparagraph is amended as follows:

"1. Each Member State shall designate the competent authority responsible for carrying out the duties resulting from this Regulation for CCPs established in its territory and shall inform the Commission and ESMA thereof.";

(16b) the following articles are inserted:

'Article 22a

Powers of ESMA

1. ESMA shall be responsible for carrying out its duties under this Regulation for the authorisation and supervision of CCPs established in the Union.

2. ESMA shall ensure on an ongoing basis the compliance by CCPs established in the Union with Articles 7 to 8, Articles 14 to 17ba, Article 20, 21, and 24 and Titles IV and V.

3. ESMA shall be empowered with the supervisory, investigatory and enforcement powers necessary for the exercise of its functions under this Regulation.

4. The powers referred to in paragraph 3 shall include at least powers to:

(a) authorise a CCP for a particular clearing service or activity in financial instruments or non-financial instruments;

(b) supervise the CCP's compliance with the requirements laid down in this Regulation and adopt decisions and conduct supervisory assessments in relation to Articles 7 to 8, 14 to 17ba, 20, 21, and 24 and Titles IV and V;

(c) have access to any document or other data from the CCP in a form which ESMA considers relevant for the performance of its duties and to receive or take a copy of such documents or data;

(d) require or demand the provision of information from any person related to the CCP and if necessary to summon and question a person with a view to obtaining information;

(e) carry out joint on-site inspections or investigations with the CCP competent authority;

(f) require the auditors of authorised CCPs to provide information ;

(g) require, the temporary or permanent cessation of any practice or conduct that ESMA considers to be contrary to the provisions of this Regulation or where such practise or conduct may have an adverse effect on the CCPs cross-border activities or a possible cross-border impact;

(h) require the removal of a natural person from the management board of an authorised CCP;

(i) impose fines and periodic penalty payments;

(j) issue public notices; and

(k) withdraw the authorisation of the CCP, or its authorisation for a particular service, activity or class of financial instruments or non-financial contract.

ESMA shall charge fees for undertaking their duties as set out under paragraph 1 and in accordance with the delegated act adopted pursuant to the next subparagraph of this paragraph.

By ... [6 months from the date of entry into force of this amending Regulation] the Commission shall adopt a delegated act in accordance with Article 82 in order to specify further the following:

(a) the types of fees;

(b) the matters for which fees are due;

(c) the amount of the fees;

(d) the manner in which fees are to be paid. (AM 121 and 409 Hübner)

ESMA shall duly notify the Commission once it considers that the provisions under this Article and Articles 22b, 23b and 23c are fully implemented.

Article 22b

Delegation of tasks by ESMA to competent authorities

1. Where necessary for the proper performance of a supervisory task, ESMA may by decision delegate specific supervisory tasks to the competent authority of a Member State in accordance with the guidelines issued by ESMA pursuant to Article 16 of Regulation (EU) No 1095/2010.

2. Prior to the delegation of a task referred to in paragraph 1, ESMA shall consult the relevant competent authority about all of the following:

(a) the scope of the task to be delegated;

(b) the timetable for the performance of the task;

(c) the transmission of necessary information by and to ESMA.

3. ESMA shall review the decision to delegate referred to in paragraph 1 at appropriate intervals. A delegation may be revoked at any time.

4. A delegation of tasks shall not affect the responsibility of ESMA nor limit ESMA's ability to conduct and oversee the delegated activity.';

(17) Article 23a is amended as follows:

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

'1. ***Without prejudice to Article 22a***, ESMA shall fulfil a coordination role between competent authorities and across colleges to:

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

(b) ensure uniform procedures and consistent approaches;

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

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

(b) paragraphs 2, 3 and 4 are deleted;

(18) the following Articles are inserted:

'Article 23b

Joint supervisory activities

1. Each CCP authorised under Article 14 shall be subject to joint supervisory activities. Those activities shall be coordinated by ESMA and the college in the

context of the annual review and evaluation process, and shall be open for the participation of each college member on a voluntary basis.

2. Participants in the joint supervisory activities shall be tasked with duties that include, but are not limited to, all of the following:

(a) participating to on-site inspections pursuant to Article 21(3);

(b) participating in relevant supervisory assessments;

(c) contributing to the annual review and evaluation process, carried out by ESMA in accordance with Article 21(1).

2 a. ESMA may also coordinate, with input from the college, joint supervisory activities in areas not foreseen at the time of the previous annual review, notably in assessing the CCP's compliance with the requirements of this Regulation and assessing any material supervisory concerns that may have arisen since.

3. ESMA shall be in charge of establishing and coordinating the joint supervisory activities.

4. ESMA and authorities participating to the joint supervisory activities shall consult each other and agree on the use of resources with regard to the joint supervisory activities.";

Article 23c

Joint Monitoring Mechanism

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

The Joint Monitoring Mechanism shall be composed of:

(a) representatives of ESMA;

(b) representatives of EBA and EIOPA;

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

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

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

2. The Joint Monitoring Mechanism shall:

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

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

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

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

(b) monitor client clearing relationships, including portability and clearing members and clients' interdependencies and interactions with other financial market infrastructures;

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

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

different clearing members of that CCP, or due to clients maintaining large positions in markets of products that the CCP clears, or due to several clients clearing through few clearing members;

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

The bodies participating in the Joint Monitoring Mechanism and national competent authorities shall cooperate and share the information necessary to carry out the monitoring activities referred to in the first subparagraph.

Where the required information is not made available, including information referred to in Article 7a(4), ESMA may, by simple request, require authorised CCPs, their clearing members and their clients to provide the necessary information enabling ESMA and the other bodies participating to Joint Monitoring Mechanism to perform the assessment referred to in the first subparagraph.

3. ESMA shall, in cooperation with the other bodies participating to the Joint Monitoring Mechanism, submit an annual report to the European Parliament, the Council and the Commission on the results of its activities pursuant to paragraph 2. ***Where appropriate, this report shall include recommendations for potential Union-level action to address identified horizontal risks.***

▌

▌

(19) Article 24 is replaced by the following:

‘*Article 24*

Emergency situations

1. ***ESMA*** shall inform ESMA, the college, the relevant members of the ESCB, the Commission and other relevant authorities without undue delay of any emergency situation relating to a CCP, including all of the following:

(a) situations or events which impact, or are likely to impact, the prudential or financial soundness or the resilience of CCPs authorised in accordance with

Article 14, their clearing members or clients;

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

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

2. ESMA shall coordinate competent authorities, the resolution authority designated pursuant to Article 3(1) of Regulation (EU) 2021/23 and colleges to build a common response to emergency situations relating to a CCP.

3. In case of emergency situations, except where a resolution authority has taken a resolution action in relation to a CCP pursuant to Article 21 of Regulation (EU) No 2021/23, and to coordinate the responses of competent authorities, a meeting of the CCP Supervisory Committee:

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

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

4. Any of the following authorities may also be invited to the meeting referred to in the paragraph 3, where relevant, considering the issues to be discussed at the meeting:

(a) the relevant central banks of issue;

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

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

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

known;

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

Where a meeting of the CCP Supervisory Committee is held pursuant to the first subparagraph, the Chair shall inform EBA, EIOPA, the ESRB and the Commission thereof who shall also be invited to participate to that meeting upon their request. ***Where a meeting is held following an emergency situation as specified in paragraph 1, point (c), the Chair shall always invite the relevant central banks of issue to participate in that meeting.***

5. ESMA may, by simple request, require authorised CCPs, their clearing members and clients, connected financial market infrastructures and related third parties to whom those CCPs have outsourced operational functions or activities to provide all necessary information to enable ESMA to carry out its coordination function under this Article.

▌

(20) Article 24a is amended as follows:

(-a) in paragraph 1, the following point is inserted:

'(e) the competent authorities responsible for the supervision of the three clearing members with the largest contributions, calculated on an aggregate basis over a one-year period, to the default fund, referred to in Article 42 of this Regulation, of each of the CCPs authorised in accordance with Article 14 or recognised in accordance with Article 25 of this Regulation, including, where relevant, the ECB in the framework of the tasks concerning the prudential supervision of credit institutions within the single supervisory mechanism conferred upon it in accordance with Council Regulation (EU) No 1024/2013, who shall be non-voting.'

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

'(ii) where the CCP Supervisory Committee convenes in relation to CCPs authorised in accordance with Article 14, in the context of discussions pertaining to paragraph 7 of this Article, the central banks of issue of the

Union currencies of the financial instruments cleared by authorised CCPs that have requested membership of the CCP Supervisory Committee, who shall be non-voting.';

(b) paragraph 3 is replaced by the following;

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

(c) paragraph 7 is amended as follows:

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

'In relation to CCPs authorised or applying for authorisation in accordance with Article 14, the CCP Supervisory Committee shall, for the purpose of Article 23a(2), prepare decisions and carry out the tasks entrusted to ESMA in the following points:';

(ii) the following points (ba), (bb) and (bc) are inserted:

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

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

(bc) prepare draft ***decisions*** for adoption by the Board of Supervisors ***and supervisory assessments conducted*** in ***relations to*** Articles ***7, 8, 14 to 17ba, 20, 21, and 24 and Titles IV and V of this Regulation;***' ;

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

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

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

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

(iii) draft decisions submitted by ESMA in accordance with point (bc);'

(iii) the following subparagraph is added:

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

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

'1. With regard to supervisory assessments conducted in relation to and decisions to be taken pursuant to Articles 41, 44, 46, 49, 50 and 54 in relation to Tier 2 CCPs, the CCP Supervisory Committee shall consult the central banks of issue referred to in point (f) of Article 25(3). Each central bank of issue may respond. Any response shall be received within 10 working days of transmission of the draft decision. In emergency situations, that period shall not exceed 24 hours. Where a central bank of issue proposes amendments or objects to draft assessments related to, or draft decisions pursuant to, Articles 41, 44, 46, 50 and 54, it shall provide full and detailed reasons in writing. Upon the conclusion of the period for consultation, the CCP Supervisory Committee shall duly consider the response from the central banks of issue.

2. Where the CCP Supervisory Committee does not reflect in its draft

assessment or draft decision the response from a central bank of issue, the CCP Supervisory Committee shall inform that central bank of issue in writing stating its full reasons for not taking into account the response of that central bank of issue, providing an explanation for any deviations from that response. The CCP Supervisory Committee shall submit to the Board of Supervisors the responses from central banks of issue and its explanations for not taking them into account together with its draft decision.'

(21) Article 25 is amended as follows:

(-a) in paragraph 2, the following point is inserted:

'(ca) the CCP has provided ESMA with a written statement, signed by its legal representative, expressing the unconditional consent of the CCP to pay the applicable fees in accordance with Article 25d';

(a) in paragraph 4, the third subparagraph is replaced by the following;
'The recognition decision shall be based on the conditions set out in paragraph 2 for Tier 1 CCPs and in paragraph 2, points (a) to (d), and paragraph 2b for Tier 2 CCPs. Within 180 working days of the determination that an application is complete in accordance with the second subparagraph, ESMA shall inform the applicant CCP in writing, with a fully reasoned explanation, whether the recognition has been granted or refused.';

(b) in paragraph 5, the second subparagraph is replaced by the following:
'Where the review is undertaken in accordance with point (a) of the first subparagraph, it shall be conducted in accordance with paragraphs 2 to 4. Where the review is undertaken in accordance with point (b) of the first subparagraph, it shall also be conducted in accordance with paragraphs 2 to 4, however the CCP referred to in paragraph 1 shall not be required to submit a new application but shall provide ESMA with all information necessary for the review of its recognition.';

(c) in paragraph 6, the following subparagraph is added:
'Where in the interests of the Union and considering the potential risks for the

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

(d) paragraph 7 is replaced by the following:

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

(e) the following paragraphs 7a, 7b and 7c are added:

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

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

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

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

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

(b) exceptionally, the mechanism for the exchange of information on a quarterly basis requiring detailed information covering the aspects referred to in paragraph 2a ***, as well as the mechanism for the exchange of information on market developments that could have consequences for the financial***

stability of the Union, and in particular information on significant changes to risk models and parameters, extension of CCP activities and services and changes in the client account structure, with the aim to detect if a CCP is potentially close to becoming or is potentially likely to become systemically important for the financial stability of the Union or one or more of its Member States.

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

(ca) the mechanism for prompt notification to ESMA by the third-country competent authority where a third-country CCP intends to extend and reduce its activities and services;

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

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

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

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

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

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

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

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

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

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

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

(i***i***) ***promptly inform ESMA of*** the establishment of recovery plans and resolution plans and any subsequent material changes to such plans ***in relation to aspects relevant for the Union or one or more of its Member States***;

(ii***i***) ***promptly inform ESMA*** if a Tier 2 CCP intends to activate its recovery plan or where the third-country authorities have determined that there are indications of an emerging crisis situation that could affect the operations of that CCP, in particular, its ability to provide clearing services

or where the third-country authorities envisage to take a resolution action in the near future.

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

(21a) in Article 25a paragraphs 1 and 2 are replaced by the following:

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

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

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

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

effect of the decision to withdraw comparable compliance, ESMA shall endeavour to provide for an appropriate adaptation period which shall not exceed 6 months.

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

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

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

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

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

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

(22a) Article 25f is replaced by the following:

"1. ESMA may require recognised CCPs and related third parties to whom those CCPs have outsourced operational functions or activities to provide all necessary information to enable ESMA to carry out its duties under this Regulation.

2. The information referred to in paragraph 1 may be of a periodic or one-off nature.

3. When requiring that information is provided under paragraph 1, ESMA shall indicate all of the following:

(a) a reference to this Article as the legal basis of the request;

(b) the purpose of the request;

(c) the information required;

(d) the time limit within which the information is to be provided;

(e) where the information is of a periodic nature, the periodicity at which the information is to be provided;

(f) the periodic penalty payments provided for in Article 25k where the production of the required information is incomplete;

(g) the fine provided for in Article 25j in conjunction with point (a) of Section V of Annex III, for failing to provide the required information or where the answers to questions asked are incorrect or misleading.

4. The persons referred to in paragraph 1 or their representatives and, in the case of legal persons or associations having no legal personality, the persons authorised to represent them by law or by their constitution, shall supply the information requested. Lawyers duly authorised to act may supply the information on behalf of their clients. Those clients shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.

5. ESMA shall, without delay, send a copy of the request to the relevant third-country competent authority where the persons referred to in paragraph 1 concerned by the request for information are domiciled or established.'

(22b) the following article is inserted:

'Article 25fa

Periodic reporting by third-country CCPs

1. Recognised CCPs shall report to ESMA the scope of their clearing activity on an annual basis, specifying at least all of the following:

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

(b) the values, volumes and margin posted over one year per currency and per asset class;

(c) its annual global turnover resulting from the clearing services provided;

(d) updated figures regarding the indicators of minimum exposure referred to in Article 6 Commission Delegated Regulation (EU) 2020/1303;

(e) per clearing member established in the Union or part of a group subject to consolidated supervision in the Union:

(i) the amount of margins collected;

(ii) the default fund contributions;

(iii) the largest payment obligation;

(iv) the amount of total liquid financial resources committed to the CCP. 2. ESMA shall transmit the information to the Joint Monitoring Mechanism referred to in Article 23c.

3. ESMA shall, after consulting the ESCB and the ESRB, develop draft regulatory technical standards further specifying the details and type of the reports as well as the methods and arrangements for reporting of the information to be provided in accordance with paragraph 1 of this Article, taking into account which information is already available to ESMA under the existing reporting framework, including under Article 9 of this Regulation.

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

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

4. To ensure uniform conditions of application of paragraph 2, ESMA shall develop draft implementing technical standards, in close cooperation with the ESCB, specifying the data standards and formats for the information to be reported.

In developing those draft implementing technical standards, ESMA shall take into account international developments and standards agreed upon at Union or global

level, and their consistency with the reporting requirements laid down in Article 9 of this Regulation.

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

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

(*23) Article 25p(1) is amended as follows:*

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

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

(b) the following point is added:

'(f) the CCP concerned has not paid the applicable fees in accordance with Article 25d and has not remedied the situation within an appropriate timeframe set by ESMA.';

(24) the following Article 25r is inserted:

'*Article 25r*

Public notice

Without prejudice to Articles 25p and 25q, ESMA may issue a public notice where all of the following conditions have been fulfilled:

(a) a third-country CCP has not paid the fees due under Article 25d or it has not paid fines due under Article 25j or periodic penalty payments due under Article 25k;

(b) the CCP has not taken any remedial action requested by ESMA in any of the situations laid down in Article 25p(1), point (c) within an appropriately set timeframe of up to six months.';

(25) in Article 26(1), the first subparagraph is replaced by the following:

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

(25 a) in Article 26, paragraph 8 is replaced by the following:

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

(25 b) Article 27 is amended as follows:

(a) the following paragraph is inserted:

"2a. The composition of the CCP's Board shall duly take into account the principle of gender balance";

(b)paragraph 3 is replaced by the following:

'3. A CCP shall clearly determine the roles and responsibilities of the board and shall make the minutes of the board meetings available to ESMA, the CCP's competent authority and auditors.';

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

'Article 28

Risk committee

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

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

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

4. Without prejudice to the right of ESMA and of the competent authorities to be duly informed, the members of the risk committee shall be bound by confidentiality.

Where the chairman of the risk committee determines that a member has an actual or potential conflict of interest on a particular matter, that member shall not be allowed to vote on that matter.

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

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

"Article 30

Shareholders and members with qualifying holding

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

2. ESMA shall refuse to authorise a CCP where it is not satisfied as to the suitability of the shareholders or members that have qualifying holdings in the CCP, taking into account the need to ensure the sound and prudent management of a CCP.

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

4. Where the persons referred to in paragraph 1 exercise an influence which is likely to be prejudicial to the sound and prudent management of the CCP, ESMA shall take appropriate measures to terminate that situation, which may include the withdrawal of the authorisation of the CCP.

5. ESMA shall refuse authorisation where the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with

which the CCP has close links, or difficulties involved in their enforcement, prevent the effective exercise of the supervisory functions of ESMA.";

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

"Article 31

Information to ESMA and competent authorities

1. A CCP shall notify ESMA and its competent authority of any changes to its management, and shall provide ESMA with all information necessary to assess compliance with Article 27(1) and Article 27(2), second subparagraph.

Where the conduct of a member of the board is likely to be prejudicial to the sound and prudent management of the CCP, ESMA shall take appropriate measures, which may include removing that member from the board.

2. Any natural or legal person or such persons acting in concert (the 'proposed acquirer'), who have taken a decision either to acquire, directly or indirectly, a qualifying holding in a CCP or to further increase, directly or indirectly, such a qualifying holding in a CCP as a result of which the proportion of the voting rights or of the capital held would reach or exceed 10 %, 20 %, 30 % or 50 % or so that the CCP would become its subsidiary (the 'proposed acquisition'), shall first notify in writing ESMA and the competent authority of the CCP in which they are seeking to acquire or increase a qualifying holding, indicating the size of the intended holding and relevant information, as referred to in Article 32(4).

Any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in a CCP (the 'proposed vendor') shall first notify the competent authority in writing thereof, indicating the size of such holding. Such a person shall likewise notify ESMA and the competent authority where it has taken a decision to reduce a qualifying holding so that the proportion of the voting rights or of the capital held would fall below 10 %, 20 %, 30 % or 50 % or so that the CCP would cease to be that person's subsidiary.

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

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

3. The competent authority, ESMA and the college may, during the assessment period, where necessary, but no later than on the 50th working day of the assessment period, request any further information that is necessary to complete the assessment. Such request shall be made in writing and shall specify the additional information needed.

The assessment period shall be interrupted for the period between the date of request for information by ESMA and the receipt of a response thereto by the proposed acquirer. The interruption shall not exceed 20 working days. Any further requests by the competent authority for completion or clarification of the information shall be at its discretion but may not result in an interruption of the assessment period.

4. ESMA may extend the interruption referred to in the second subparagraph of paragraph 3 up to 30 working days where the proposed acquirer or vendor is either:

(a) situated or regulated outside the Union;

(b) a natural or legal person not subject to supervision under this Regulation or Directive 73/239/EEC, Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance (17) or Directives 2002/83/EC,

2003/41/EC, 2004/39/EC, 2005/68/EC, 2006/48/EC, 2009/65/EC or 2011/61/EU.

5. Where ESMA, upon completion of the assessment, decides to oppose the proposed acquisition, it shall, within two working days, and not exceeding the assessment period, inform the proposed acquirer in writing and provide the reasons for that decision. ESMA shall notify the comptent authority and the college referred to in Article 18 accordingly. Subject to national law, an appropriate statement of the reasons for the decision may be made accessible to the public at the request of the proposed acquirer. However, ESMA may make such disclosure in the absence of a request by the proposed acquirer.

6. Where ESMA does not oppose the proposed acquisition within the assessment period, it shall be deemed to be approved.

7. ESMA may fix a maximum period for concluding the proposed acquisition and extend it where appropriate."

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

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

(27 a) Article 32 is replaced by the following:

'Article 32

Assessment

"1. Where assessing the notification provided for in Article 31(2) and the information referred to in Article 31(3), ESMA shall, in order to ensure the sound and prudent

management of the CCP in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on the CCP, appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following:

(a) the reputation and financial soundness of the proposed acquirer;

(b) the reputation and experience of any person who will direct the business of the CCP as a result of the proposed acquisition;

(c) whether the CCP will be able to comply and continue to comply with this Regulation;

(d) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

Where assessing the financial soundness of the proposed acquirer, ESMA shall pay particular attention to the type of business pursued and envisaged in the CCP in which the acquisition is proposed.

Where assessing the CCP's ability to comply with this Regulation, ESMA shall pay particular attention to whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, to effectively exchange information among the competent authorities and to determine the allocation of responsibilities among the competent authorities.

The assessment of the competent authority concerning the notification provided for in Article 31(2) and the information referred to in Article 31(3), shall be subject to an opinion of the college pursuant to Article 19.

2. ESMA may oppose the proposed acquisition only where there are reasonable grounds for doing so on the basis of the criteria set out in paragraph 1 or where the information provided by the proposed acquirer is incomplete.

3. Member States shall not impose any prior conditions in respect of the level of holding that shall be acquired.

4. ESMA shall make publicly available a list specifying the information that is necessary to carry out the assessment and that shall be provided to ESMA and the competent authorities at the time of notification referred to in Article 31(2). The information required shall be proportionate and shall be adapted to the nature of the proposed acquirer and the proposed acquisition. ESMA shall not require information that is not relevant for a prudential assessment.

5. Notwithstanding Article 31(2), (3) and (4), where two or more proposals to acquire or increase qualifying holdings in the same CCP have been notified to ESMA and the competent authority, the latter shall treat the proposed acquirers in a non-discriminatory manner.

6. ESMA and the relevant competent authorities shall cooperate closely with each other when carrying out the assessment where the proposed acquirer is one of the following:

(a) another CCP, a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm, market operator, an operator of a securities settlement system, a UCITS management company or an AIFM authorised in another Member State;

(b) the parent undertaking of another CCP, a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm, market operator, an operator of a securities settlement system, a UCITS management company or an AIFM authorised in another Member State;

(c) a natural or legal person controlling another CCP, a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm, market operator, an operator of a securities settlement system, a UCITS management company or an AIFM authorised in another Member State.

7. ESMA and the competent authorities shall, without undue delay, provide each

other with any information which is essential or relevant for the assessment. ESMA and the competent authorities shall, upon request, communicate all relevant information to each other and shall communicate all essential information at their own initiative. A decision of ESMA to authorise the CCP in which the acquisition is proposed shall indicate any views or reservations expressed by ESMA or the competent authority responsible for the proposed acquirer.

(28) Article 35 is amended as follows:

(a) in paragraph 1, the second subparagraph is replaced by the following:
'A CCP shall not outsource major activities linked to risk management unless such outsourcing is approved by ***ESMA***. The decision of ***ESMA*** shall be subject to an opinion of the college pursuant to Article 19 ▌ in accordance with the procedure set out in Article 17b.';

(aa) paragraph 2 is replaced by the following:

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

(b) paragraph 3 is replaced by the following:
'3. A CCP shall make all information necessary to enable the competent authority, ESMA and the college to assess the compliance of the performance of the outsourced activities with this Regulation available on request.';

(ba) the following paragraphs are added:

'4. In order to ensure the consistent application of this Article, ESMA shall develop draft regulatory technical standards specifying the concrete requirements of the outsourcing arrangements and the criteria determining major activities linked to the risk management and to other critical functions of the CCP in accordance with paragraph 1 of this Article. ESMA shall submit those draft regulatory technical standards to the Commission by ... [12 months from the entry into force of this Regulation].

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

5. In order to ensure uniform conditions of application of this Article, ESMA shall develop draft implementing technical standards specifying:

(a) the minimum information to be included in the written agreements in accordance with paragraph 2;

(b) the type of information to be submitted to the competent authority and ESMA in accordance with paragraph 3;

ESMA shall submit those draft implementing technical standards to the Commission by ... [12 months from the date of entry into force of this amedning Regulation]. Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No1095/2010.'

(29) Article 37 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

(b) the following paragraph 1a is inserted:

'1a. A CCP shall accept non-financial counterparties as clearing members only if

they are able to demonstrate that they are able to fulfil the margin requirements and default fund contributions, including in stressed market conditions.

ESMA shall regularly review the arrangements put in place by a CCP accepting non-financial counterparties ***as clearing members*** and report to ***the CCP's competent authority and to*** the college on their appropriateness.

A non-financial counterparty acting as a clearing member shall not be permitted to offer client clearing services and shall only keep accounts at the CCP for assets and positions held for its own account.

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

(c) the following paragraph 7 is added:

'7. ESMA shall, after having consulted the EBA ***and the ESCB***, develop draft regulatory technical standards further specifying the elements to be considered when laying down the admission criteria referred to in paragraph 1 ***and the participation requirements for accepting non-financial counterparties as clearing members in accordance with paragraph 1a***.

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

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

(30) Article 38 is amended as follows:

"Article 38

Transparency

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

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

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

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

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

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

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

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

7. A CCP shall provide its clearing members with information on the margin models it uses in a clear and transparent manner. That information shall:

(a) clearly explain the design of the margin model and how it operates;

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

(c) be documented.

8. ‘Clearing members and clients providing clearing services shall inform their clients in a clear and transparent manner of the way the margin models of the CCP work, including in stress situations, and provide them with ***access to*** a simulation of the margin requirements ***that*** they ***might*** be subject to under different scenarios***, based on the simulation tool provided by the CCP as referred to in paragraph 6.***. ***The clearing members shall ensure that the simulation includes*** both the margins required by the CCP and any additional margins required by the clearing members and the clients providing clearing services themselves.’;
A CCP shall provide its clearing members with any information they require to comply with the provisions under the first subparagraph of this paragraph, unless that information is already provided pursuant to the provisions as referred to in paragraphs 1 to 7 of this Article. Upon request by one of its clearing, the CCP shall transmit that information without delay.

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

10. ESMA shall, in consultation with EBA and the ESCB, develop draft regulatory technical standards further specifying the information to be provided

under paragraphs 1 to 9, as well as the requirements related to the simulation tools as referred to in paragraphs 6 and 8.

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

(31) Article 41 is amended as follows:

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

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

2. A CCP shall adopt models and parameters in setting its margin requirements that capture the risk characteristics of the products cleared and take into account the interval between margin collections, market liquidity and the possibility of changes over the duration of the transaction. The models ***and parameters*** shall be validated by ***ESMA*** and subject to an opinion in accordance with the procedure under Article 17b.

3. A CCP shall call and collect margins on an intraday basis, at least when predefined thresholds are exceeded. In doing so a CCP shall consider the potential impact of its intraday margin collections and payments on the liquidity position of its participants ***and on the resilience of the CCP***';

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

'A CCP shall measure, on a daily basis, its potential liquidity needs. It shall take into account the liquidity risk generated by the default of at least the two entities, ***being either*** clearing members or liquidity providers, to which it has the largest exposures.';

(33) Article 46 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. A CCP shall accept highly liquid collateral with minimal credit and market risk to cover its initial and ongoing exposure to its clearing members. A CCP may accept public guarantees or public bank or commercial bank guarantees, ***including on an uncollateralised basis for non-financial counterparties***, provided that they are unconditionally available upon request within the liquidation period referred to in Article 41. Where bank guarantees are provided to a CCP, that CCP shall take them into account when calculating its exposure to the bank that is also a clearing member***, and shall subject uncollateralised bank guarantees provided by non-financial counterparties to concentration limits***. The CCP shall apply adequate haircuts to asset values and guarantees to reflect the potential for their value to decline over the interval between their last revaluation and the time by which they can reasonably be assumed to be liquidated. It shall take into account the liquidity risk following the default of a market participant and the concentration risk on certain assets that may result in establishing the acceptable collateral and the relevant haircuts. When revising the level of the haircuts it applies to the assets it accepts as collateral, the CCP shall take into account any potential procyclicality effects of such revisions.';

(b) in paragraph 3, first subparagraph, point (b) ***and (c) are*** is replaced by the following:

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

(c) the conditions under which public guarantees, public bank guarantees and commercial bank guarantees may be accepted as collateral under paragraph 1, including the conditions under which uncollateralised bank

guarantees may be accepted as collateral and the concentration limits as referred to in paragraph 1.'

(33a) Article 48 is amended as follows:

(a) paragraph 5 is replaced by the following:

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

(b) paragraph 6 is replaced by the following:

"6. Where assets and positions are recorded in the records and accounts of a CCP as being held for the account of a defaulting clearing member's client in accordance with Article 39(3), the CCP shall, at least, contractually commit itself to trigger the procedures for the transfer of the assets and positions held by the defaulting clearing member for the account of the client to another clearing member designated by the client, on the client's request and without the consent of the defaulting clearing member. That other clearing member shall be obliged to accept these assets and

positions only where it has previously entered into a contractual relationship with the client by which it has committed itself to do so. If the transfer to that other clearing member has not taken place for any reason within a predefined transfer period specified in its operating rules, the CCP may take all steps permitted by its rules to actively manage its risks in relation to those positions, including liquidating the assets and positions held by the defaulting clearing member for the account of the client.

In the case of default of an existing clearing member and for the purposes of porting clients from the defaulting clearing members towards an alternative clearing member, such alternative clearing member, the client subject to porting and the CCP shall be temporary waived from the requirements of Directive (EU) 2015/849, Directive (EU) 2018/843 and Directive (EU) 2019/1153. The alternative clearing member shall be temporarily waived from the requirements of capital for clearing members towards clients under Regulation (EU) No 575/2013.";

(34) Article 49 is amended as follows:

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

'1. A CCP shall regularly review the models and parameters adopted to calculate its margin requirements, default fund contributions, collateral requirements and other risk control mechanisms. It shall subject the models to rigorous and frequent stress tests to assess their resilience in extreme but plausible market conditions and shall perform back tests to assess the reliability of the methodology adopted. The CCP shall obtain independent validation, shall inform ▌ ESMA of the results of the tests performed and shall obtain ***ESMA's*** validation in accordance with paragraphs 1a, to 1e before adopting any significant change to the models ***and parameters***.

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

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

1a. Where a CCP intends to adopt any significant change to the models ***and parameters*** referred to in paragraph 1, it shall submit an application for ***validation*** of such change in an electronic format via the central database referred to in Article 17(7) where it shall be immediately shared with the CCP's competent authority, ESMA and the college. The CCP shall enclose an independent validation of the intended change to its application.

Where a CCP considers that the change to the models ***and parameters*** referred to in paragraph 1 it intends to adopt is not significant as referred to ***in*** paragraph 1g***a***, the CCP shall request that the application be subject to a non-objection procedure under paragraph 1b. In that case, the CCP may start applying such change before the decision of the CCP's competent authority and ESMA pursuant to paragraph 1b.

ESMA shall within ***5*** working days after such application has been received, acknowledge receipt of the application, confirming to the CCP that it contains the required documents. Where ***ESMA*** concludes that the application does not contain the required documents, the application shall be rejected.

1b. Within ***15*** working days of the date referred to in the third subparagraph of paragraph 1a, ***ESMA, after considering the input of the college,*** shall assess if the proposed change qualifies as a significant change pursuant to paragraph 1g. Where ***ESMA*** concludes that the change meets one of the conditions referred to in paragraph 1g, the application shall be assessed under paragraphs 1c, 1d and1e and ***ESMA*** shall inform in writing the applicant CCP thereof.

Where within 10 working days of the date referred to in the third subparagraph of paragraph 1a, the applicant CCP has not been informed in writing that its request for the non-objection procedure to apply has been denied, that change shall be deemed as validated.

Where a request for the non-objection procedure has been denied, the CCP shall, within 5 working days from the notification referred to in the first subparagraph, no longer use that model change. Within 10 working days from that notification, the CCP shall either withdraw the application or complement the application with

the independent validation of the change.

1c. Within 30 working days of the date referred to in the third subparagraph of paragraph 1a, ***ESMA shall conduct a risk assessment of the significant change and transmit its draft decision to the CCP's competent authority and the college. Within 10 working days of receipt of the draft decision of ESMA, the college shall adopt an opinion pursuant to Article 19 and transmit it to ESMA***

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1d. ***Within 10 working days of receipt of the college opinion, ESMA shall, after duly considering the opinion of the college, including any conditions or recommendations contained therein, adopt its final decision and transmit it to the CCP's competent authority and the college.***
Where ESMA does not agree with the opinion of the college, including any conditions or recommendations contained therein, its decision shall contain full reasons and an explanation of any significant deviation from that opinion or conditions or recommendations. Where ESMA decides not to validate the change, the CCP's application for validation shall be refused.

1e. Within 5 working days of the decisions being adopted under paragraph ***1c***, ▌ESMA shall inform the ***CCP's competent authority and the*** CCP in writing, including a fully reasoned explanation, whether the validation has been granted or refused.

(b) the following paragraphs 1f and 1g are inserted:

1f. The CCP may not adopt any significant change to the models ***and parameters*** referred to in paragraph 1, before obtaining the validations by its competent authority and ESMA. The competent authority, in agreement with ESMA, may allow for a provisional adoption of a significant change of those models prior to their validations where duly justified due to an emergency situation under Article 24 of this Regulation. Such a temporary change to the models shall only be allowed for a certain period of time jointly specified by the CCP's

competent authority and ESMA. After the expiry of this period, the CCP shall not be allowed to use such model change unless it has been approved pursuant to paragraphs 1a, 1c, 1d and 1e.

1g. ***Changes to parameters derived from external input or which are within a pre-defined range, where such amendment or range to recalibrate a model is part of the model or methodology approved and validated under this Article, shall not be considered a change to the models and parameters requiring validation in accordance with this Article.*** ."

1ga. A change shall be considered as significant where one or more of the following conditions is met:

(a) the change leads to a decrease or increase of the total pre-funded financial resources, including margin requirements, default fund and skin-in-the-game, of more than 15%;

(b) the methodology for defining and calibrating stress test scenarios for the purpose of determining default fund exposures, is changed, leading to a decrease or increase of more than 20 % of a default fund or of more than 50 % of any individual default fund contribution;

(c) the methodology applied to assess liquidity risk and monitor concentration risk, is changed, leading to a decrease or increase of the estimated liquidity needs in any currency of more than 20 % or the total liquidity needs of more than 20 %;

(d) the methodology applied to value collateral, or calibrate collateral haircut, is changed, such that the total value of collateral decreases or increases by more than 20%;

(e) the change could have a material effect on the overall risk of the CCP.

(c) paragraph 5 is replaced by the following:

'5. ESMA shall, in close cooperation with the ESCB, develop draft regulatory technical standards specifying***:***

(a) the elements to be considered when assessing the conditions referred to in paragraphs 1g and 1ga; and

(b) the list of required documents that shall accompany an application for validation pursuant to paragraph 1a and shall specify the information such documents shall contain to demonstrate that the CCP complies with all relevant requirements of this Regulation.

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

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

(d) the following paragraph 6 is added:

'6. ESMA shall develop draft implementing technical standards specifying the electronic format of the application for validation referred to in paragraph 1a to be submitted to the central database.

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

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

(***35***) ▌Article 54▌ is replaced by the following:

'Article 54

Approval of interoperability arrangements

'1. An interoperability arrangement shall be subject to the prior approval of ***ESMA.*** ***ESMA***. shall request the opinion of ▌the college in accordance with Article 19, and issued in accordance with the procedure set out in Article 17b.';

Interoperability arrangements that were approved prior to the entry into force of this Regulation shall not be subject to the requirements of the first subparagraph.

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

3. Where ESMA considers that the requirements laid down in paragraph 2 are not met, it shall provide explanations in writing regarding its risk considerations to the CCPs involved.

4. By 31 December 2012, ESMA shall issue guidelines or recommendations with a view to establishing consistent, efficient and effective assessments of interoperability arrangements, in accordance with the procedure laid down in Article 16 of Regulation (EU) No 1095/2010.'

(36)iIn Article 81(3), the following point is inserted:

'(s) the designated national macroprudential authorities entrusted with the conduct of macroprudential policy' referred to in Recommendation B1 of the Recommendation of the European Systemic Risk Board (ESRB) of 22 December 2011 on the macroprudential mandate of national authorities (ESRB/2011/3).';

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

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

3. The delegation of power referred to in Article 1(6), Article 3(5), Article 4(3a), Article 7a(6), Article 17a(6), Article 25(2a), Article 25(6a), Article 25a(3), Article 25d(3), Article

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

(38) in Article 84, the following paragraph is inserted:

'3a. The Agency implementing Article 8(2) and (6) of Regulation (EU) No 1227/2011 shall transmit to ESMA the amount of trading taking place and on positions held in wholesale energy products.'

(3***9***) Article 85 is amended as follows;

(a) paragraph 1 is replaced by the following:

'1. By [PO: please insert the date =5 years after the date of entry into force of this Regulation] the Commission shall assess the application of this Regulation and prepare a general report. The Commission shall submit that report to the European Parliament and to the Council, together with any appropriate proposals.';

(b) the following paragraph 1b is inserted:

'1b. By [PO: please insert the date = 1 year after the entry into force of this Regulation] ESMA shall submit a report to the Commission on the possibility and feasibility to require the segregation of accounts across the clearing chain of non-financial and financial counterparties. The report shall be accompanied by a cost-benefit analysis.';

(bb) the following paragraph is inserted:

'1d. By ... [24 months from the date of entry into force of this amending Regulation], the European Commission, after having consulted the ECB and the relevant central banks of issue, shall provide a report to the European Parliament and the Council assessing level playing field and financial stability

considerations in relation to generalized central bank access for EMIR-authorized Union CCPs without the condition of maintaining a banking license. In this context, the Commission shall also take into consideration the situation in third-country jurisdictions. If appropriate, the report shall be accompanied by a legislative proposal.' (AM 532 Ferber);

(bc) the following paragraph is inserted:

'5a. By ... [36 months from the date of entry into force of this amending Regulation] ESMA shall present a report to the European Parliament, the Council and the Commission on the overall activity in derivative transactions of financial and non-financial counterparties subject to this Regulation, providing, inter alia, the following information on those counterparties, differentiating between their financial or non-financial nature:

(a) the potential risks to Union financial stability that may arise from this type of activity;

(b) the positions in OTC commodity derivatives in excess of EUR 1 billion, specifying the exact amount of the positions concerned;

(c) the total volume of energy derivative contracts traded, distinguishing, where relevant, between those used for hedging and non-hedging purposes;

(d) the total volume of agricultural derivative contracts traded, distinguishing, where relevant, between those used for hedging and non-hedging purposes; and

(e) the share of OTC and exchange-traded energy/agriculture derivative contracts that are physically delivered on the expiry date in the total volume of energy derivative contracts traded.

(c) paragraph 7 is ***replaced by the following***:

"7. By ... [5 years from the date of entry into force of this amending Regulation] the Commission, in close cooperation with ESMA and the Joint Monitoring Mechanism,

shall publish a review report on the application of this Regulation. That report shall evaluate, inter alia, the following:

(a) the effectiveness of the provisions under Article 7a in mitigating the financial stability risks for the Union represented by the concentration of outstanding derivative contracts as referred to in paragraph 3 of Article 7a at those Tier 2 CCPs offering services of substantial systemic importance pursuant to Article 25(2c), as well as their impact on the international competitiveness of EU financial counterparties and non-financial counterparties. The report shall also indicate, taking into due account the goals of the capital markets union, whether those provisions should be adjusted or removed altogether;

(b) the effectiveness of the provisions of this Regulation on increasing the attractiveness of the Union clearing framework, looking in particular at the clearing activities of non-EU counterparties in Union CCPs and the amount of clearing volumes in Union CCPs in derivative contracts other than those referred to in paragraph 3 of Article 7a;

(c) an assessment of the developments related to supervisory arrangements and supervisory cooperation between ESMA and third-country authorities, and whether those developments may require changes to Article 25(2c) of this Regulation.

Based on that report, the Commission may submit, where appropriate, a legislative proposal to the European Parliament and the Council."

(ca) the following paragraph is added:

10. By ... [18 months from the date of entry into force of this amending Regulation] ESMA shall, in close cooperation with the ESRB and the Joint Monitoring Mechanism, assess how the provisions of Article 15, Articles 17 to 17ba and Article 49 have been applied.

In particular, that assessment shall establish:

(a) whether the changes introduced by Regulation (EU) .../... of the European Parliament and of the Council*+ have obtained the desired effect with respect to increasing the competitiveness of Union CCPs and reduce the regulatory burden they face;

(b) whether the changes introduced by Regulation (EU) .../...+ have reduced the time-to-market for new services and products without negatively impacting the risk for the CCP or its clearing members or their clients;

(c) whether the introduction of the possibility for CCPs to implement directly changes as referred to in Article 17ba have negatively impacted the risk profile of that CCP or have increased the overall financial stability risks in the Union, and whether they should be amended.

ESMA shall submit that report to the European Parliament, the Council and the Commission.

The Commission shall be empowered to adopt delegated acts in accordance with Article 50 to modify certain elements of the definitions laid down in Article 15, Articles 17 to 17ba and Article 49 to consider the assessment contained in the report pursuant to the first and second subparagraphs of this Article.

**** Regulation (EU) .../... of the European Parliament and of the Council of ... amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets (OJ L ..., ..., p. ....).***

+ OJ: Please insert the year and the number of this amending Regulation in the text and complete the corresponding footnote.

(40b) in Article 89, the following paragraph is added :

" 10. Financial counterparties that are subject to the clearing obligation referred to in Article 4(1) on ... [the date of entry into force of this amending Regulation] or that become subject to the clearing obligation in accordance with Article 4a(1) and non-financial counterparties that are subject to the clearing obligation referred to in Article 4(1) on ... [the date of entry into force of this amending Regulation] or that become subject to the clearing obligation in accordance with Article 10(1), second subparagraph, shall remain subject to that clearing obligation and shall continue clearing until such financial counterparty or non-financial counterparty demonstrates to the relevant competent authority that its aggregate month-end average position for the previous 12 months does not exceed the relevant clearing thresholds set by the regulatory technical standards referred to in Article 10(4), point (b), and where such regulatory technical standards have entered into force providing the levels of the clearing thresholds for uncleared derivatives and the level of any activity threshold."

(***41***) Article 90 is amended as follows:

"By [PO please insert the date = please insert 3 years after the date of entry into force of this Regulation], ESMA shall assess the staffing and resources needs arising from the assumption of its powers and duties in accordance with this Regulation and submit a report to the European Parliament, the Council and the Commission."

Article 2

Amendments to Regulation (EU) No 575/2013

Article 382 of Regulation (EU) No 575/2013 is amended as follows:

(1) in paragraph 4, point (b) is replaced by the following:

'(b) intragroup transactions entered into with financial counterparties as defined in Article 2, point 8, of Regulation (EU) No 648/2012, financial institutions or ancillary services undertakings that are established in the Union or that are established in a third

country that applies prudential and supervisory requirements to those financial counterparties, financial institutions or ancillary services undertakings that are at least equivalent to those applied in the Union, unless Member States adopt national law requiring the structural separation within a banking group, in which case the competent authorities may require those intragroup transactions between the structurally separated entities to be included in the own funds requirements;'

(2) the following paragraph [4c] is inserted:

'[4c]. For the purposes of paragraph 4, point (b), the Commission may adopt, by way of implementing acts, and subject to the examination procedure referred to in Article 464(2), a decision as to whether a third country applies prudential supervisory and regulatory requirements at least equivalent to those applied in the Union.

In the absence of such a decision, institutions may until 31 December 2027 continue to exclude the concerned intragroup transactions from the own funds requirements for CVA risk provided that the relevant competent authorities have approved the third country as eligible for that treatment before 31 December 2026. Competent authorities shall notify the EBA of such cases by 31 March 2027.'

Article 3

Amendments to Regulation (EU) 2017/1131

Regulation (EU) 2017/1131 is amended as follows:

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

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

(1a) in Article 14, point (d) is replaced by the following:

'(d) the cash received by the MMF as part of a non-centrally cleared repurchase agreement does not exceed 10 % of its assets';

(2) Article 17 is amended as follows:

(a) paragraph 4 is replaced by the following:

‘4. The aggregate risk exposure to the same counterparty of an MMF stemming from derivative transactions which fulfil the conditions set out in Article 13 and which are not centrally cleared through a CCP authorised in accordance with Article 14 of Regulation (EU) No 648/2012 or recognised in accordance with Article 25 of that Regulation, shall not exceed 5 % of the assets of the MMF.’;

(aa) paragraph 5 is replaced by the following:

‘5. The aggregate amount of cash provided to the same counterparty of an MMF in a non-centrally cleared reverse repurchase agreements shall not exceed 15 % of the assets of the MMF.’

(b) in paragraph 6, first subparagraph, point (c) is replaced by the following:

‘(c) financial derivative instruments that are not centrally cleared through a CCP authorised in accordance with Article 14 of Regulation (EU) No 648/2012 or recognised in accordance with Article 25 of that Regulation, giving counterparty risk exposure to that body.’.

Article 3 a

Amendments to Regulation (EU) 2010/1095

In Article 1(2), the first subparagraph is replaced by the following:
"2. The Authority shall act within the powers conferred by this Regulation and within the scope of Directives 97/9/EC, 98/26/EC, 2001/34/EC, 2002/47/EC, 2004/109/EC, 2009/65/EC, Directive 2011/61/EU of the European Parliament and of the Council (1), Regulation (EC) No 1060/2009 and Directive 2014/65/EU of the European Parliament and of the Council (2), Regulation (EU) 648/2012 of the European Parliament and of the Council (*), Regulation (EU) 2017/1129 of the European Parliament and of the Council (3), and to the extent that those acts apply to firms providing investment services or to collective investment undertakings marketing their units or shares and the competent authorities that supervise them, within the relevant parts of, Directives 2002/87/EC and 2002/65/EC, including all directives, regulations,

and decisions based on those acts, and of any further legally binding Union act which confers tasks on the Authority.

**** Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).”***

Article 4

Entry into force and application

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

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

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*