COUNCIL OF THE EUROPEAN UNION

Brussels, 23 September 2011

14544/11

Interinstitutional File: 2010/0250 (COD)

EF 128
ECOFIN 611
CODEC 1499

NOTE

From:	General Secretariat of the Council
To:	Delegations
No. Cion prop.:	13917/10 EF 117 ECOFIN 543 CODEC 879
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on OTC derivative transactions, central counterparties and trade repositories - Presidency Compromise

Delegations will find attached a Presidency compromise proposal, with a view to the COREPER II meeting on 28 September.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on OTC derivative transactions, central counterparties and trade repositories

(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 Economic and Social Committee[1],

Having regard to the opinion of the European Central Bank,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) At the request of the Commission, a report published on 25 February 2009 by a high-level group of experts chaired by J. de Larosière concluded that the supervisory framework needed to be strengthened to reduce the risk and severity of future financial crisis and recommended far-reaching reforms to the structure of supervision of the financial sector in Europe, including the creation of a European System of Financial Supervisors, comprising three European Supervisory Authorities, one for the securities sector, one for the insurance and occupational pensions sector and one for the banking sector, and the creation of a European Systemic Risk Board.

[1] OJ C , , p. .

(2) The Commission Communication of 4 March 2009, "Driving European Recovery"[2], proposed to strengthen the Union's regulatory framework for financial services. In its Communication of 3 July 2009[3], the Commission assessed the role of derivatives in the financial crisis, and in its Communication of 20 October 2009[4], the Commission outlined the actions it intends to take to reduce the risks associated with derivatives.

(3) On 23 September 2009, the Commission adopted proposals for three Regulations establishing the European System of Financial Supervisors, including the creation of three European Supervisory Authorities to contribute to a consistent application of Union legislation and to the establishment of high quality common regulatory and supervisory standards and practices. These are the European Banking Authority (EBA) established by Regulation (EU) No 1093/2010, the European Securities and Markets Authority (ESMA) established by Regulation (EU) No 1095/2010, and the European Insurance and Occupational Pensions Authority (EIOPA) established by Regulation (EU) No 1094/2010.

(4) Over-the-counter (OTC) derivatives lack transparency as they are privately negotiated contracts and any information concerning them is usually only available to the contracting parties. They create a complex web of interdependence which can make it difficult to identify the nature and level of risks involved. The financial crisis has demonstrated that such characteristics increase uncertainty in times of market stress and accordingly, pose risks to financial stability. This Regulation lays down conditions for mitigating those risks and improving the transparency of OTC derivative contracts.

---

2 "Driving European Recovery" - COM(2009) 114.

3 "Ensuring efficient, safe and sound derivatives markets" - COM(2009) 332.

4 "Ensuring efficient, safe and sound derivatives markets: Future policy actions" - COM(2009) 563.

(5) At the 26 September 2009 summit in Pittsburgh, G20 Leaders agreed that all standardised OTC derivative contracts should be cleared through central counterparties (CCP) by end-2012 at the latest and that OTC derivative contracts should be reported to trade repositories. In June 2010, G20 Leaders in Toronto reaffirmed their commitment and also committed to accelerate the implementation of strong measures to improve transparency and regulatory oversight of over-the-counter derivatives in an internationally consistent and non-discriminatory way.

(5a) The Commission will monitor and endeavour to ensure that the aforementioned commitments are implemented in a similar way by our international partners. The Commission should cooperate with third country authorities in order to explore mutually supportive solutions to ensure consistency between this Regulation and the requirements established by third countries and thus avoid any possible overlapping in this respect. With the assistance of ESMA, the Commission should monitor and prepare reports to the Council and the European Parliament on the international application of principles laid down in this Regulation. In order to avoid potential duplicative or conflicting requirements the Commission might adopt decisions on equivalence of the legal, supervisory and enforcement framework in third countries, if a number of conditions are met. The purpose of one of these conditions is to avoid the situation where EU entities would suffer from unequal and distortive legal and competitive environment.

(6) The Council, in its Conclusions of 2 December 2009, agreed with the need to substantially improve the mitigation of counterparty credit risk and with the importance of improving transparency, efficiency and integrity for derivative transactions. The European Parliament resolution of 15 June 2010 on "Derivatives markets: future policy actions" called for mandatory clearing and reporting of OTC derivatives.

(7) The European Securities and Markets Authority (ESMA) acts within the scope of this Regulation by safeguarding the stability of financial markets in emergency situations and ensuring the consistent application of Union rules by national supervisory authorities and settling disagreements between them. It is also entrusted with developing draft regulatory and implementing technical standards and has a central role in the authorisation and monitoring of central counterparties and trade repositories.

(7a) One of the basic tasks to be carried out through the European System of Central Banks (ESCB) is to promote the smooth operation of payment systems. In this respect, the members of the ESCB execute oversight by ensuring efficient and sound clearing and payment systems, including CCPs. The members of the ESCB are thus closely involved in (…) the authorisation and ongoing review of CCPs, recognition of third country CCPs and the approval of interoperability arrangements. In addition they are closely involved in respect of the setting of regulatory technical standards as well as guidelines and recommendations. The provisions of this Regulation are without prejudice to the responsibilities of the European Central Bank (ECB) and the national central banks (NCBs) to ensure efficient and sound clearing and payment systems within the Union and with other countries. Consequently, and in order to prevent the possible creation of parallel sets of rules, ESMA and the ESCB should cooperate closely when preparing the relevant draft technical standards. Further, the access to information by the ECB and the NCBs is crucial when fulfilling their tasks relating to the oversight of clearing and payment systems as well as to the functions of a central bank of issue.

(8) Uniform rules are required for derivative contracts set out in Annex I, Section C, numbers (4) to (10) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC[5] that are traded over-the-counter.

[5] OJ L 145, 30.4.2004, p. 1.

(9) Incentives to promote the use of CCPs have not proven to be sufficient to ensure that standardised OTC derivatives are actually cleared. Mandatory CCP clearing requirements for those derivatives that can be cleared are therefore necessary.

(10) It is possible that Member States will adopt divergent national measures which could create obstacles to the smooth functioning of the internal market and be to the detriment of market participants and financial stability. A uniform application of the clearing obligation in the Union is also necessary to ensure a high level of investor protection and to create a level playing field between market participants.

(11) *deleted*

(12) This Regulation sets out the criteria for determining whether or not different classes of OTC derivatives should be subject to a clearing obligation. On the basis of draft implementing technical standards developed by ESMA, the Commission should decide whether a class of OTC derivatives should be subject to a clearing obligation, and from when the clearing obligation takes effect including, where appropriate, phase-in for any frontloaded contracts, the minimum remaining maturity of the contracts to be frontloaded, and any gradual implementation of the clearing obligation which could be in terms of the types of market participants that must comply with the clearing obligation.

(12aa) When taking into account what classes of OTC derivatives should be subject to the clearing obligation, ESMA should also pay due regard to other relevant considerations, most importantly the impact on the levels of counterparty credit risk as well as promote equal conditions of competition within the internal market as referred to in Article 1 paragraph 5 point d of Regulation (EU) No. 1095/2010.

(12a) When ESMA has identified that an OTC derivative product is standardised and suitable for clearing, but no CCP is willing to clear that product, it should investigate the reason for this. If subsequently, ESMA determines that there is insufficient justification for the lack of clearing, it should inform the Commission.

(12b) In determining the subjection to the clearing obligation of classes of derivatives, due account should be taken of the specific nature of the relevant classes of OTC derivatives. The predominant risk for transactions in some classes of OTC derivatives may relate to settlement risk, which is addressed through separate infrastructure arrangements, and may distinguish certain classes (e.g. foreign exchanges) of OTC derivatives from other classes. CCP clearing specifically addresses counterparty risk, and may not be the optimal solution for dealing with settlement risk.

(12c) In order to ensure a uniform and coherent application of the Regulation and a level playing field for market participants when a class of OTC derivatives is declared subject to the clearing obligation, this obligation should also apply to all contracts pertaining to that class of OTC derivatives entered into on or after the date of entry into force of this Regulation but before the date from which the clearing obligation takes effect provided that these contracts have a remaining maturity above the minimum determined by the Commission.

(13) For an OTC derivative contract to be cleared, both parties to that contract must consent. Therefore, exemptions to the clearing obligation should be narrowly tailored as they would reduce the effectiveness of the obligation and the benefits of CCP clearing and may lead to regulatory arbitrage between groups of market participants.

(13a) In order to foster financial stability within the EU, it might be necessary to also subject the transactions entered into by entities established outside the UE to the clearing and risk mitigation techniques obligations, provided that these transactions have a direct, substantial and foreseeable effect within the EU or where such obligations are necessary or appropriate to prevent the evasion of any provisions of this Regulation.

(14) OTC derivatives that are not considered suitable for CCP clearing still entail counterparty credit risk and therefore, rules should be established to manage that risk.

(15) Rules on clearing OTC derivatives, reporting on derivatives transactions and risk mitigation techniques for OTC derivative contracts not cleared by a CCP should apply to financial counterparties, namely investment firms as authorised in accordance with Directive 2004/39/EC, credit institutions as authorised in accordance with Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast)[6], insurance undertakings as authorised in accordance with Directive 73/239/EEC[7], assurance undertakings as authorised in accordance with Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance[8], reinsurance undertakings as authorised in accordance with Directive 2005/68/EC, undertakings for collective investments in transferable securities (UCITS) and their managers as authorised in accordance with Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)[9], institutions for occupational retirement provision as defined in Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision[10] and alternative investment funds managed by alternative investment fund managers authorised or registered under Directive 2011/.../EU.

---

6 OJ L 177, 30.6.2006, p. 1.

7 Directive to be repealed by Directive 2009/138/EC ("Solvency II") with effect from 1 November 2012.

8 OJ L 345, 19.12.2002, p. 1. Directive to be repealed by Directive 2009/138/EC ("Solvency II") with effect from 1 November 2012.

9 OJ L 302, 17.11.2009, p. 32.

10 OJ L 235, 23.9.2003, p. 10.

(15a) Entities operating pension schemes arrangements, the primary purpose of which is to provide benefits upon retirement, usually in the form of payments for life, but also as payments made for a temporary period or as a lump sum, typically minimise their allocation to cash in order to maximise the efficiency and the return for their policy holders. Hence, requiring them to clear OTC derivatives contracts centrally would lead to divesting a significant proportion of their assets for cash in order for them to meet the ongoing margin requirements of CCPs. To avoid a likely negative impact of such a requirement on the retirement income of future pensioners, the clearing obligation should not apply to pension schemes until a suitable technical solution for the transfer of non-cash collateral as variation margins is developed by CCPs to address this problem. This technical solution should take into account a special role of pension schemes arrangements and avoid materially adverse effects on pensioners. During the transitional period, OTC derivatives contracts entered into with a view to decreasing investment risks directly related to the financial solvency of pension schemes arrangements should be subject to bilateral collateralisation requirements. The ultimate aim is, however, central clearing as soon as this is tenable.

(15b) It is important to ensure that only appropriate entities and arrangements get the special treatment as well as to take into account the diversity of pension systems across the Union, while also to provide for a level playing field for all pension schemes arrangements. Therefore, the temporary derogation should apply to institutions for occupational retirement provisions registered in accordance with Directive 2003/41/EC, including any authorised entity responsible for managing such an institution and acting on its behalf as referred to in Article 2(1) of that Directive as well as any legal entity set up for the purpose of investment of such institutions, acting solely and exclusively in their interest; the occupational retirement provision businesses of institutions referred to in Article 3 of Directive 2003/41/EC as well as the occupational-retirement-provision businesses of life insurance undertakings provided that all corresponding assets and liabilities are ring-fenced, managed and organised separately, without any possibility of transfer. The derogation should also apply to any other authorised and supervised entities operating on a national basis only or arrangements that are provided mainly in the territory of one Member State, only if both of them are recognised by national law and their primary purpose is to provide benefits upon retirement. The entities and arrangements included in the last category should be subject to the decision of the relevant competent authority and in order to ensure consistency, remove possible misalignments and avoid any abuse, the opinion of ESMA in consultation with EIOPA. These would possibly cover entities and arrangements that may not necessarily be linked to an employer pension programme but still have the primary purpose of providing income at retirement, either on a compulsory or on a voluntary basis. Examples could include legal entities operating pension schemes on a funded basis under national law, provided that they invest in accordance with the 'prudent person' principle as well as pension arrangements taken up by individuals directly, which may also be provided by life insurers, however, the exemption in this case should not cover OTC derivatives transactions related to other life insurance products of the insurer which do not have the primary purpose of providing an income at retirement.

Further examples might be retirement provision businesses of insurance undertakings covered by Directive 2002/83/EC, provided that all assets corresponding to the businesses are included in a special register in line with the provisions set out in the annex of Directive 2001/17/EC as well as occupational retirement provision arrangements of insurance undertakings based on collective bargaining agreements. Institutions established for the purpose of providing compensation to members of pension schemes arrangements in case of a default should also be treated as a pension scheme for the purpose of this Regulation.

(16) Where appropriate, rules applicable to financial counterparties, should also apply to non-financial counterparties. It is recognised that non-financial counterparties use OTC derivative contracts in order to cover themselves against commercial risks directly linked to their commercial activities. Consequently, in determining whether a non-financial counterparty should be subject to the clearing obligation, consideration should be given to the purpose for which that non-financial counterparty uses OTC derivatives and to the size of the exposures that it has in those instruments. When determining whether a non-financial counterparty has breached the threshold for clearing, it is recognised that OTC derivative transactions, which are objectively measurable as reducing risks directly related to the commercial activity or treasury financing activity of the counterparty or of the group, shall not count towards the clearing threshold. Furthermore, only OTC derivative transactions executed by non-financials after the threshold for clearing is breached shall be subject to the clearing obligation. Hence the concept of front loading shall not apply to non-financial counterparties. When establishing the threshold for the clearing obligation, ESMA should consult all relevant authorities, as for example regulators responsible for commodity markets, in order to ensure that the particularities of these sectors are fully taken into account. Moreover, by 31 December 2015, the Commission shall assess the systemic importance of the transactions of non-financial firms in OTC derivatives in different sectors, including the energy sector.

(16a) In determining whether an OTC derivative contract reduces risks directly related to the commercial activities of a non financial counterparty, due account should be taken of that non-financial counterparty's overall hedging and risk mitigation strategies. In particular, consideration should be given to whether an OTC derivative contract is economically appropriate for the reduction of risks in the conduct and management of a non-financial counterparty, where the risks are related to fluctuations in interest, foreign exchange, inflation rates or commodity prices.

(17) *deleted*

(18) Members of the European System of Central Banks and other EU national bodies performing similar functions, other EU public bodies charged with or intervening in the management of the public debt, (…) multilateral development banks listed in Section 4.2 of Part 1 of Annex VI of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions[11], the Bank for International Settlements, public sector entities as defined in Article 4 point 18 of Directive 2006/48/EC owned by central government that have explicit guarantee arrangements provided by central government, the European Financial Stability Facility and the European Stability Mechanism and the European Company for the Financing of Railroad Rolling Stock should be excluded from the scope of this Regulation in order to avoid limiting their power to perform their tasks of common interest.

[11] OJ L 177, 30.6.2006, p. 1.

(18a) The FSB has identified CCPs as systemically important institutions. There is no common practice internationally or within the European Union regarding the conditions under which CCPs may access central bank liquidity facilities. The implementation of the clearing obligation required by this Regulation may increase the systemic importance of CCPs and the need for enhanced liquidity management. In the preparation of the report the Commission should take into account any results of ongoing work between central banks to assess, in cooperation with the members of the ESCB, the possible need for measures to facilitate CCPs' access to central bank liquidity facilities and report to the European Parliament and the Council. The Commission should also ensure that the possible measures do not encourage excessive risk-taking by the CCPs and that in any event such measures fully respect the right of independent central banks to provide access to central bank liquidity facilities at their own discretion as well as they adhere in full to the principles of non-discrimination and equal regulatory treatment across the Union.

(19) As not all market participants that are subject to the clearing obligation are able to become clearing members of the CCP, they should have the possibility to access CCPs as clients.

(20) The introduction of a clearing obligation along with a process to establish which CCPs can be used for the purpose of this obligation may lead to unintended competitive distortions of the OTC derivatives market. For example, a CCP could refuse to clear transactions executed on certain (…) venues of execution because the CCP is owned by a competing (…) venue of execution. In order to avoid such discriminatory practices, CCPs should accept to clear transactions executed in different venues of execution, to the extent that those venues of execution comply with the operational and technical requirements established by the CCP. Generally, the Commission should continue to closely monitor the evolution of the OTC derivatives market and should, where necessary, intervene in order to prevent competitive distortions from occurring in the Internal Market with the aim of ensuring a level playing field in the financial markets. The provisions of this Regulation with regard to access to post-trade infrastructure should not prevent the Commission from proposing other solutions in future legislation, if necessary.

(21) In order to identify the relevant classes of OTC derivatives that should be subject to the clearing obligation, the thresholds and the systemically relevant non-financial counterparties, reliable data is needed. Therefore, for regulatory purposes, it is important that a uniform derivatives data reporting requirement is established at Union level.

(21a) An intragroup transaction is a transaction between two undertakings which are included in the same consolidation on a full basis and are subject to an appropriate centralised risk evaluation, measurement and control procedures; they are part of the same institutional protection scheme referred to in Article 80(8) of Directive 2006/48/EC or they are credit institutions affiliated to the same central body or such credit institution and the central body, as referred to in Article 3(1) of that Directive. OTC derivatives contracts may be recognised within non-financial or financial groups, as well as within groups composed of both financial and non-financial undertakings, and if such a contract is considered an intragroup transaction in respect of one counterparty, then it should also be considered an intragroup transaction in respect of the other counterparty to that contract. It is recognised that intragroup transactions may be necessary for aggregating risks within a group structure and that intragroup risks are therefore specific. Since the submission of these transactions to the clearing obligation may limit the efficiency of these intragroup risk management processes, an exemption of intragroup transactions from the clearing obligation may be beneficial, provided that this exemption does not increase systemic risk. As a result, adequate exchange of collateral should be substituted to the central counterparty clearing of these transactions, where this is appropriate to mitigate intragroup counterparty risks. However, some of intragroup transactions could be exempted, in some cases on the basis of the decision of its competent authority, from the collateralization requirement provided that their risk management procedures are adequately sound, robust and consistent with the level of complexity of the transaction and there is no impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties. These criteria as well as the procedures for the counterparties and the relevant competent authorities to be followed while applying exemptions should be specified in regulatory technical standards adopted in accordance with the relevant regulations establishing EBA, ESMA and EIOPA.

Before developing the draft regulatory technical standards EBA, ESMA and EIOPA should prepare an impact assessment of their potential impact on the internal market as well as on financial market participants and in particular on the operations and the structure of groups in concern. All the technical standards applicable to the collateral exchanged in intragroup transactions including criteria for the exemption should take into account the prevailing specificities of these transactions and existing differences between non-financial and financial counterparties as well as their purposes and methods of using derivatives.

(22) It is important that market participants report the details regarding derivative contracts they have entered into to trade repositories in order to ensure that information on the risks inherent in derivatives markets is centrally stored. Trade repository should make available to the ESRB, ESMA, the relevant Union competent authorities, Agency for the Cooperation of Energy Regulators, the relevant members of the ESCB and the relevant authorities of third countries that have entered into an international agreement with the Union the information necessary for the exercise of their duties.

(22a) The provision of trade repository services is characterized by economies of scale, which may hamper competition in this particular field. At the same time, the imposition of a comprehensive reporting requirement on market participants may increase the value of the information maintained by trade repositories also for third parties providing ancillary services such as, but not limited to, trade confirmation, trade matching, credit event servicing, portfolio reconciliation or portfolio compression. It is appropriate to ensure that a level playing field in the post-trade sector more generally will not be compromised by a possible natural monopoly in the provision of trade repository services. Therefore, trade repositories should be required to provide access to the information held in the repository on fair, reasonable and non-discriminatory terms, subject to necessary precautions on data protection.

(23) In order to allow for a comprehensive overview of the market, both CCP cleared and non-CCP cleared derivative contracts should be reported to trade repositories.

(24) Counterparties and CCPs that conclude, modify, or terminate a derivative contract should ensure that the details of that contract are reported to a trade repository. They may delegate the reporting of the contract to another entity. An entity or its employees that report the details of a derivative contract to a trade repository on behalf of a counterparty, in accordance with this Regulation, should not be in breach of any restriction on disclosure.

(25) There should be effective, proportionate and dissuasive penalties with regard to the clearing and reporting obligations. Member States should enforce those penalties in a manner that does not reduce the effectiveness of those rules.

(25a) A CCP might be established in accordance with this Regulation in any Member State of the European Union. No Member State or a group of Member States should be discriminated, directly or indirectly, as a venue for clearing services.

(26) Authorisation of a CCP should be conditional on a minimum amount of initial capital. Capital including retained earnings and reserves of a CCP, should be proportionate to the risk stemming from the activities of the CCP at all times in order to ensure that it is adequately capitalised against credit, counterparty, market, liquidity, operational, legal and business risks not already covered by specific financial resources and that it is able to conduct an orderly winding down or restructuring of its operations if necessary.

(27) As this Regulation introduces a legal obligation to clear through specific CCPs for regulatory purposes, it is essential to ensure that those CCPs are safe and sound and comply at all times with stringent organisational, conduct of business and prudential requirements established by this Regulation. They should apply to the clearing of all financial instruments CCPs deal with, in order to ensure a uniform application.

(28) It would therefore be necessary, for regulatory and harmonisation purposes, to ensure that counterparties only use CCPs which comply with the requirements laid down in this Regulation. These requirements should not prevent Member States from adopting or continuing to apply additional requisites in respect of CCPs established in their territory including certain authorisation requirements under Directive 2006/48/EC. However imposing such additional requisites should not influence the right of CCPs authorised in other Member States or recognised, in accordance with this Regulation, to provide clearing services to clearing members and their clients established in the Member State introducing additional requirements, since these CCPs are not subject to those additional requirements and do not need to comply with them.

(29) Direct rules regarding the authorisation and supervision of CCPs are an essential corollary to the obligation to clear OTC derivatives. It is appropriate that national competent authorities should retain the responsibility for all aspects of the authorisation and the supervision of CCPs, including the verification that the applicant CCP is compliant with this Regulation and with Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems[12], in view of the fact that those national competent authorities remain best placed to examine how the CCPs operate on a daily basis, to carry out regular reviews and to take appropriate action, where necessary.

[12] OJ L 166, 11.6.1998, p. 45.

(30) Where a CCP risks insolvency, the fiscal responsibility may lie predominantly with the Member State in which it is established. It follows that authorization and supervision of that CCP should be exercised by the relevant competent authority of that Member State. However, since a CCP's clearing members may be established in different Members States and they will be the first to be impacted by the CCP's default, it is imperative that all relevant competent authorities are involved in the authorization and supervision process and that appropriate cooperation mechanisms, including colleges, are put in place. This will avoid divergent national measures or practices and obstacles to the internal market. Furthermore, no proposal or policy of any member of the college should, directly or indirectly, discriminate against any Member State or group of Member States as a venue for clearing services. ESMA should be a participant in every college in order to ensure the consistent and correct application of this Regulation.

(30a) In view of the role assigned to the colleges, it is important that all the relevant competent authorities as well as members of the ESCB are involved in performing its responsibilities. The college should consist of the competent authorities supervising not only the CCP, but also the entities which might be impacted by its operations, i.e. selected clearing members, venues of execution, interoperable CCPs and central securities depositories. As regards the members of the ESCB, the participation in the college should be enabled for those responsible for the oversight of the CCP and interoperable CCPs and as well as those responsible for issue of the currencies of the financial instruments cleared by the CCP. As the supervised or overseen entities would be established in a limited range of Member States in which the CCP operates, one competent authority or member of the ESCB might be responsible for supervision or oversight of a number of the aforementioned entities. In order to ensure smooth cooperation of all the members of the college, appropriate procedures and mechanisms should be put in place. Since the establishment and functioning of the college is assumed to be based on a written agreement between all its members, it is appropriate to confer the powers to determine the decision-making procedures upon them, given the sensitivity of the issue. Therefore the detailed rules on voting procedures should be bound by the written agreement concluded by all the members of the college.

However, in order to balance the interests of all the relevant market participants and Member States appropriately, when making decisions on the basis of a simple majority the college should vote in accordance with the general principle where each member has one vote, irrespective of the number of functions it performs in accordance with the article specifying the composition of the college. While performing their duties, no action taken by any member of the college should, directly or indirectly, discriminate against any Member State or group of Member States as a venue for clearing services in any currency.

(31) It is necessary to reinforce provisions on exchange of information between competent authorities and to strengthen the duties of assistance and cooperation between them. Due to increasing cross-border activity, competent authorities should provide each other with the relevant information for the exercise of their functions so as to ensure the effective enforcement of this Regulation, including in situations where infringements or suspected infringements may be of concern to authorities in two or more Member States. For the exchange of information, strict professional secrecy is needed. It is essential, due to the wide impact of OTC derivative contracts, that other relevant authorities, such as tax authorities and energy regulators, have access to information necessary to the exercise of their functions.

(32) In view of the global nature of financial markets, ESMA should be directly responsible for recognising CCPs established in third countries and thus allowing them to provide clearing services within the Union, provided that the Commission has recognised the legal and supervisory framework of that third country as equivalent to the Union framework and that certain other conditions are met. Such recognition procedure should only apply to third country CCPs which could create direct risk to financial stability in the Union. Therefore, a CCP established in a third country, providing clearing services to clearing members or venues of execution established in the EU should be recognized by ESMA. However, in order not to hamper the further development of cross-border investment management business in the Union, a third country CCP providing services to clients established in the EU through a clearing member established outside the EU does not have to be recognised by ESMA. In this context, agreements with the Union's major international partners will be of particular importance in order to ensure a global level playing field and ensure financial stability. Furthermore, on 16 September 2010 the European Council agreed on the need for Europe to promote its interest and values more assertively and in a spirit of reciprocity and mutual benefit in the context of the Union's external relations and to take steps to, inter alia, secure greater market access for European business and deepen regulatory cooperation with major trade partners. The Commission will endeavour to ensure that these commitments are implemented in a similar way by our international partners.

(33) CCPs should have robust governance arrangements, senior management of good repute and independent members on its board, irrespective of its ownership structure. However, different governance arrangements and ownership structures of a CCP may influence a CCP's willingness or ability to clear certain products. It is thus appropriate that the independent members of the board and the risk committee to be established by the CCP should address any potential conflict of interests within a CCP. Clearing members and clients need to be adequately represented as they may be impacted by decisions taken by the CCP.

(34) A CCP may outsource functions (…) but only where those outsourced functions do not impact on the proper operation of the CCP and on its ability to manage risks.

(35) The participation requirements for a CCP should therefore be transparent, proportionate, and non-discriminatory and should allow for remote access to the extent that this does not expose the CCP to additional risks.

(36) Clients of clearing members that clear their OTC derivatives with CCPs should be granted a high level of protection. The actual level of protection depends on the level of segregation that those clients choose. Intermediaries should segregate their assets from those of their clients. For this reason, CCPs should keep updated and easily identifiable records, in order to facilitate the transfer of the positions and assets of a defaulting clearing member's clients to a solvent clearing member or, as the case may be, the orderly liquidation of the clients' positions and the return of excess collateral to the clients. Member States shall ensure that their respective national legal, regulatory and administrative framework do neither prevent such transfers nor the orderly liquidation of the positions and the return of excess collateral. Nothing in this Regulation should prevent Member States to impose on the parties an obligation to compensate the clearing member's estate for losses attributable to the transfer or liquidation of the relevant positions and assets.

(37) A CCP should have a sound risk management framework to manage credit risks, liquidity risks, operational and other risks, including the risks that it bears or poses to other entities as a result of interdependencies. A CCP should have adequate procedures and mechanisms in place to deal with the default of a clearing member. In order to minimise the contagion risk of such a default, the CCP should have in place stringent participation requirements, collect appropriate initial margins, maintain a default fund and other financial resources to cover potential losses.

(37a) When defining a sound risk management framework, a CCP should take into account its potential risk and economic impact on the clearing members and their clients. Although the development of a highly robust risk management should remain its primary objective, a CCP may adapt its features to the specific activities and risk profiles of the clients of the clearing members, and if deemed appropriate, may include in the scope of the highly liquid assets accepted as collateral, at least cash, government bonds, covered bonds in accordance with Directive 2006/48/EC subject to adequate haircuts, guarantees callable on first demand granted by a member of the ESCB, commercial bank guarantees under strict conditions notably relating to the creditworthiness of the guarantor, and the guarantor's capital links with CCP's clearing members. CCPs may accept commercial bank guarantees from non-financial counterparties acting as clearing member under strict risk management conditions.

(38) Margin calls and haircuts on collateral may have procyclical effects. CCPs and competent authorities should therefore adopt measures to prevent and control possible procyclical effects in risk management practices adopted by CCPs, to the extent that a CCP's soundness and financial security is not negatively affected.

(39) Exposure management is an essential part of the clearing process. Access to, and use of, the relevant pricing sources should be granted to provide clearing services in general. Such pricing sources should include, but not be limited to, those related to indices that are used as references to derivatives or other financial instruments.

(40) Margins are the primary line of defence for a CCP. Although CCPs should invest the margins received in a safe and prudent manner, they should make particular efforts to ensure adequate protection of margins to guarantee that they are returned in a timely manner to the non-defaulting clearing members or to an interoperable CCP where the CCP collecting these margins defaults.

(40a) To have access to adequate liquidity resources is essential for a CCP. Such liquidity could result from access to central bank liquidity or to creditworthy and reliable commercial bank liquidity, or a combination of these. Access to liquidity could result from an authorisation granted in accordance with Article 6 of Directive 2006/48/EC or other appropriate arrangements. In assessing the adequateness of liquidity resources, especially in stress situations, a CCP should take into consideration the risks of obtaining the liquidity by only relying on commercial banks credit lines.

(41) The "European Code of Conduct for Clearing and Settlement" of 7 November 2006[13] established a voluntary framework for establishing links between CCPs. However, the post-trade sector remains fragmented along national lines, making cross-border trades more costly and hindering harmonisation. It is therefore necessary to lay down the conditions for the establishment of interoperable arrangements between CCPs to the extent these do not expose the relevant CCPs to risks that are not appropriately managed.

(42) Interoperability arrangements are important tools for greater integration of the post-trading market within the Union and regulation should be provided for. However, interoperability arrangements may expose CCPs to additional risks. Given the additional complexities involved in an interoperability arrangement between CCPs clearing OTC derivative contracts, it is appropriate at this stage to restrict the scope of interoperability arrangements to cash securities. However, by 31 December 2014 ESMA should submit a report to the Commission on whether an extension of that scope to other financial instruments would be appropriate.

(43) Trade repositories collect data for regulatory purposes that are relevant to authorities in all Member States. In view of the fact that supervision of trade repositories does not have any fiscal implications and that many authorities across Member States will need access to the data maintained by trade repositories, ESMA should assume responsibility for the registration, withdrawal of registration and supervision of trade repositories.

---

13 http://ec.europa.eu/internal_market/financial-markets/docs/code/code_en.pdf

(44) Given that regulators, CCPs and other market participants rely on the data maintained by trade repositories, it is necessary to ensure that those trade repositories are subject to strict operational and record-keeping (…) requirements.

(45) Transparency of prices, (…) fees, and risk management models associated with the services provided by CCPs and trade repositories is necessary to enable market participants to make an informed choice.

(46) *deleted*

(46a) In order to carry out its duties effectively, ESMA should be able to request all necessary information from trade repositories, related third parties and third parties to whom the trade repositories have outsourced operational functions or activities. If ESMA requests such information by simple request, the addressee is not obliged to provide the information but, in the event of a voluntary reply to the request, the information provided should not be incorrect or misleading. Such information should be made available without delay. ESMA should also be able to conduct investigations and on-site inspections.

(46b) ESMA should be able to delegate specific supervisory tasks to the competent authority of a Member State, for instance where a supervisory task requires knowledge and experience with respect to local conditions, which are more easily available at national level. Possible tasks that may be delegated include the carrying out of specific investigatory tasks and on-site inspections. Prior to the delegation of tasks, ESMA should consult the relevant competent authority about the detailed conditions relating to such delegation of tasks, including the scope of the task to be delegated, the timetable to perform the task, and the transmission of necessary information by and to ESMA. ESMA should compensate the competent authorities for carrying out a delegated task in accordance with delegated acts on fees to be adopted by the Commission. The registration decision should not be subject to such delegation.

(46c) It is necessary to ensure that competent authorities are able to request that ESMA examine whether the conditions for withdrawal of a trade repository's registration are met. ESMA should assess such requests and take any appropriate measures.

(46d) ESMA should be able to impose periodic penalty payments to compel trade repositories to put an end to an infringement that is established by ESMA itself, to supply complete information requested by ESMA or to submit to an investigation or on-site inspection.

(46e) ESMA should also be able to impose fines on trade repositories, where it finds that they have committed an infringement of this Regulation. Fines should be imposed according to the level of seriousness of the infringements. The infringements should be divided into different groups for which specific amounts of fines should be allocated. In order to fix the amount of the fine related to a specific infringement, ESMA should use a two-step methodology consisting of the setting of a basic amount for the fine and the adjustment, if necessary, of that basic amount by certain coefficients. The basic amount should be established by taking into account the annual turnover of the trade repository concerned, and the adjustments should be made by increasing or decreasing the basic amount through the application of the relevant coefficients in accordance with this Regulation.

(46f) Coefficients linked to aggravating and mitigating circumstances should be established in order to give the necessary tools to ESMA to decide on a fine which is proportionate to the seriousness of the infringement committed by a trade repository, taking into account the circumstances under which the infringement has been committed.

(46g) Before taking a decision to impose fines or periodic penalty payments, ESMA should give the persons subject to proceedings the opportunity to be heard.

(46h) Fines and periodic penalty payments imposed by ESMA should be enforceable and the enforcement should be governed by the rules of civil procedure which are in force in the Member State in the territory of which it is carried out. Rules of civil procedure should not include criminal procedural rules but may include administrative procedural rules.

(46i) In the case of an infringement committed by a trade repository, ESMA should be empowered to take a range of supervisory measures, including, but not limited to, requiring the trade repository to bring the infringement to an end, and, as a last resort, withdrawing the registration when the trade repository has seriously or repeatedly infringed this Regulation. The supervisory measures should be applied by ESMA taking into account the nature and seriousness of the infringement and should respect the principle of proportionality. Before taking a decision on supervisory measures, ESMA should give the persons subject to the proceedings an opportunity to be heard in order to respect their rights of defence.

(47) *deleted*

(48) It is essential that Member States and ESMA protect the right to privacy of natural persons when processing personal data, in accordance with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

(49) It is important to ensure international convergence of requirements for central counterparties and trade repositories. This Regulation follows the existing recommendations developed by CPSS-IOSCO[14] and ESCB-CESR[15] noting that the CPSS-IOSCO regulatory standards for financial market infrastructure, including CCPs, are currently under review. It (…) creates a Union framework in which CCPs can operate safely. ESMA should consider these existing standards and their future developments when drawing up or proposing to revise the regulatory technical standards as well as the guidelines and recommendations foreseen in this Regulation.

---

14 Committee on Payment and Settlement Systems (CPSS) of the central banks of the Group of Ten countries and the Technical Committee of the International Organization of Securities Commissions.

15 European System of Central Banks and the Committee of European Securities Regulators.

(50) The Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty in respect of the details to be included in the notification to ESMA by competent authorities, the class of OTC derivatives subject to the clearing obligation and the date(s) from which the clearing obligation takes effect including the minimum maturity of the contracts to be frontloaded, the criteria for the decision of the Commission on the eligibility for the clearing obligation, the details to be included in the public register, the criteria for establishing which OTC derivative contracts are objectively measurable as reducing risks directly related to the commercial activity or treasury financing activity, the value of the clearing threshold, the maximum time lag between the conclusion and the confirmation of an OTC derivative contract, the market conditions that prevent marking-to-market and the criteria for using market-to-model, the level of capital and collateral required in bilateral trades, the characteristics of risk management models which are as robust as those used for central clearing, the procedures to be followed as well as the criteria for the exemption of intra-group trades, the details of the information on exempted intragroup transactions to be included in the notification and to be publicly disclosed, the details to be included in the report to trade repositories and the format and frequency of these reports including any phase in, the requirement regarding capital, the information that an applicant CCP shall provide ESMA, the minimum content of governance rules, the details of record keeping, the minimum content of business continuity policy and the disaster recovery plan, the percentages and time horizon for margin requirements, the extreme but plausible market conditions, the framework for managing CCP's liquidity risk, the methodology for the calculation of the CCP's own resources to be used in the event of the default of a clearing member, the highly liquid collateral and haircuts, the highly liquid financial instruments and concentration limits, the details for performance of tests, the details concerning the application of a trade repository for registration with ESMA, and the details concerning the information that a trade repository should make available to the public and to the relevant authorities as referred to in this Regulation. In defining the delegated acts, the Commission should make use of the expertise of the relevant European Supervisory Authorities (ESMA, EBA and EIOPA).

In view of the expertise of ESMA regarding issues concerning securities and securities markets, ESMA should play a central role in advising the Commission on the preparation of the delegated acts. However, ESMA should involve closely (…) the other two European Supervisory Authorities and the members of the ESCB.

(51) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No. 182/2011 of the European Parliament and of the Council laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers.

(52) Since the objectives of this Regulation, namely to lay down uniform requirements for OTC derivative contracts and to also lay down uniform requirements for the performance of activities of central counterparties and trade repositories, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, 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.

(53) In view of the rules regarding interoperable systems, it was deemed appropriate to amend Directive 98/26/EC to protect the rights of a system operator that provides collateral security to a receiving system operator in the event of insolvency proceedings against that receiving system operator.

HAVE ADOPTED THIS REGULATION:

Title I

Subject matter, scope and definitions

Article 1

Subject matter and scope

1. This Regulation lays down (…) requirements for OTC derivative contracts (...) and lays down uniform requirements for the performance of activities of central counterparties and trade repositories.

2. This Regulation shall apply to central counterparties, financial counterparties, clearing members and to trade repositories. It shall apply to non-financial counterparties, venues of execution where so provided.

3. Title V shall only apply to transferable securities and money-market instruments, as defined in Article 4(1) point 18 (a) and (b) and point 19 of Directive 2004/39/EC.

4. This Regulation shall not apply to:

   (a) the members of the European System of Central Banks and other EU national bodies performing similar functions and other EU public bodies charged with or intervening in the management of the public debt;

   (aa) central banks of third countries, in which derivative contracts entered into with the members of the European System of Central Banks are not subject to clearing obligation and reporting obligation;

   (b) multilateral development banks, as listed under Section 4.2 of Part 1 of Annex VI to Directive 2006/48/EC;

   (ba) the Bank for International Settlements;

(bb) public sector entities as defined in Article 4 point 18 of Directive 2006/48/EC owned by central governments that have explicit guarantee arrangements provided by central governments;

(bc) European Financial Stability Facility and the European Stability Mechanism;

(bd) European Company for the Financing of Railroad Rolling Stock.

Article 2

Definitions

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

(1) 'central counterparty (CCP)' means a legal entity that (...) interposes itself between the counterparties to the contracts traded within one or more financial markets, becoming the buyer to every seller and the seller to every buyer;

(2) 'trade repository' means a legal entity that centrally collects and maintains the records of (…) derivatives;

(3) 'clearing' means the process of establishing positions, including the calculation of net obligations, and ensuring that financial instruments, cash or both are available to secure its exposures arising from these positions;

(3aa) 'venue of execution' means any system operated by a market operator or investment firm as defined in Articles 4.1(1) and 4.1(13) of Directive 2004/39/EC other than a systematic internaliser as defined in Article 4.1(7), which brings together buying or selling interests in financial instruments in the system, in a way that results in a contract in accordance with the provisions of Title II or III of that directive;

(3a) 'derivative contracts' or 'derivatives' means financial instruments as set out in Annex I Section C numbers (4) to (10) of Directive 2004/39/EC as implemented in Article 38 and 39 of Regulation N° 1287/2006;

(3b) 'frontloading' means the process by which OTC derivative contracts entered into on or after the date of entry into force of this Regulation but before the date from which the clearing obligation takes effect, are cleared in a CCP due to the clearing obligation;

(4) 'class of derivatives' means a subset of derivatives with common and essential characteristics including at least the type of underlying and currency of notional;

(5) 'over the counter (OTC) derivatives' means derivative contracts whose execution does not take place on a regulated market as defined by Article 4 (1) point 14 of Directive 2004/39/EC or on a third country market considered as equivalent to a regulated market according to Article 19 (6) of Directive 2004/39/EC;

(6) 'financial counterparties' means investment firms as authorised in accordance with Directive 2004/39/EC, credit institutions authorised in accordance with Directive 2006/48/EC, insurance undertakings authorised in accordance with Directive 73/239/EEC, assurance undertakings authorised in accordance with Directive 2002/83/EC, reinsurance undertakings authorised in accordance with Directive 2005/68/EC, undertakings for collective investments in transferable securities (UCITS) and their managers authorised in accordance with Directive 2009/65/EC, institutions for occupational retirement provision as defined in Directive 2003/41/EC and alternative investment funds managed by alternative investment fund managers authorised or registered in accordance with Directive 2011/.../EU;

(7) 'non-financial counterparty' means an undertaking established in the Union other than the entities referred to in points (1) and (6);

(8) 'counterparty credit risk' means the risk that the counterparty to a transaction defaults before the final settlement of the transaction's cash flows;

(9) 'interoperability arrangement' means an arrangement between two or more CCPs that involves (…) cross-system (…) central counterparty clearing of transactions;

(10) 'competent authority' means the authority designated by each Member State in accordance with Article 18, the authority referred to in Article 5(5) or the authorities as defined in the legislation referred to in point 6 of this Article;

(11) 'clearing member' means an undertaking which participates in a CCP and which is responsible for discharging the financial obligations arising from that participation;

(12) 'client' means an undertaking with a contractual relationship with a clearing member which enables that undertaking to clear its transactions with that CCP;

(12b) 'group' means the group of undertakings consisting of a parent undertaking and its subsidiaries within the meaning of Articles 1 and 2 of the Seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts[16] or the group of undertakings referred to in Article 3(1) and 80(7) and (8) of Directive 2006/48/EC;

(12c) 'financial institution' means an undertaking other than a credit institution, the principal activity of which is to acquire holdings or to carry on one or more of the activities listed in points 2 to 12 of Annex I of Directive 2006/48/EC;

(12d) 'institutions', means credit institutions and investment firms;

(12e) 'financial holding company' means a financial institution, the subsidiary undertakings of which are either exclusively or mainly credit institutions or financial institutions, at least one of such subsidiaries being a credit institution, and which is not a mixed financial holding company within the meaning of Article 2(15) of Directive 2002/87/EC;

(12f) 'ancillary services undertaking' means an undertaking the principal activity of which consists in owning or managing property, managing data-processing services, or any other similar activity which is ancillary to the principal activity of one or more credit institutions;

[16] OJ L 193, 18.7.1983, p. 1.

(13) 'qualifying holding' means any direct or indirect holding in a CCP (…) which represents 10% or more of the capital or of the voting rights, as set out in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market[17], taking into account the conditions regarding aggregation thereof laid down in Article 12(4) and (5) of that Directive, or which makes it possible to exercise a significant influence over the management of the CCP (…) in which that holding subsists;

(14) 'parent undertaking' means a parent undertaking within the meaning of Articles 1 and 2 of Directive 83/349/EEC[18];

(15) 'subsidiary' means a subsidiary undertaking within the meaning of Articles 1 and 2 of Directive 83/349/EEC, including any subsidiary of a subsidiary undertaking of an ultimate parent undertaking;

(16) 'control' means control as defined in Article 1 of Directive 83/349/EEC;

(17) 'close links' means a situation in which two or more natural or legal persons are linked by:

(a) participation which means the ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking;

(b) control which means the relationship between a parent undertaking and a subsidiary, in all the cases referred to in Article 1(1) and (2) of Directive 83/349/EEC, or a similar relationship between any natural or legal person and an undertaking, any subsidiary undertaking of a subsidiary undertaking also being considered a subsidiary of the parent undertaking which is at the head of those undertakings. A situation in which two or more natural or legal persons are permanently linked to one and the same person by a control relationship shall also be regarded as constituting a close link between such persons.

---

17 OJ L 390, 31.12.2004, p. 38.

18 OJ L 193, 18.7.1983, p. 1.

(18) 'capital' means capital within the meaning of Article 22 of Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions[19] in so far it has been paid up, plus the related share premium accounts, it fully absorbs losses in going concern situations, and in the event of bankruptcy or liquidation ranks after all other claims;

(19) 'reserves' means reserves as set out in Article 9 of Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies[20] and profits and losses brought forward as a result of the application of the final profit or loss;

(20) 'the board' means the administrative or supervisory board, or both, in accordance with national company law;

(21) 'independent member of the board' means a member of the board that has no business, family or other relationship that raises a conflict of interest with the CCP, its controlling shareholder(s) (…) or its clearing members or their management;

(22) 'senior management' means the person or persons who effectively direct the business of the CCP or the trade repository, and the executive member or members of the board.

(23) 'pension schemes arrangement' means:

(a) institutions for occupational retirement provision as defined in Article 6 of Directive 2003/41/EC, including any authorised entity responsible for managing such an institution and acting on its behalf as referred to in Article 2(1) of that Directive as well as any legal entity set up for the purpose of investment of such institutions, acting solely and exclusively in their interest;

(b) occupational retirement provision businesses of institutions referred to in Article 3 of Directive 2003/41/EC;

---

[19] OJ L 372, 31.12.1986, p. 1.
[20] OJ L 222, 14.8.1978, p. 11.

(c) occupational retirement provision businesses of insurance undertakings covered by Directive 2002/83/EC, provided that all assets and liabilities corresponding to the business are ring-fenced, managed and organised separately from the other activities of the insurance undertaking, without any possibility of transfer;

(d) any other authorised and supervised entities operating on a national basis only or arrangements provided that:

(i) they are recognised by national law; and

(ii) their primary purpose is to provide retirement benefits.

Article 2a

Intra-group transactions

1. In relation to a non-financial counterparty, an intra-group transaction is an OTC derivative contract entered into with another counterparty which is the part of the same group provided that the 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 this counterparty is established in the EU or in a third-country jurisdiction provided that the Commission has adopted an implementing act as referred to in Article 9a(2).

2. In relation to a financial counterparty, an intra-group transaction is:

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

i) this counterparty is established in the EU or in a third-country jurisdiction for which the Commission has adopted an implementing act as referred to in Article 9a(2); and

ii) the counterparties are either a financial counterparty, an institution, a financial holding company, financial institution or ancillary services undertaking subject to appropriate prudential requirements; and

iii) the counterparties are included in the same consolidation on a full basis; and

iv) the counterparties are subject to an appropriate centralised risk evaluation, measurement and control procedures; or

(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 80(8) of Directive 2006/48/EC, provided that the condition set out in point a) indent ii) is fulfilled; or

(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 3(1) of Directive 2006/48/EC; or

(d) an OTC derivative contract entered into with another counterparty which is the part of the same group provided that the 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 this counterparty is established in a third-country jurisdiction for which the Commission has adopted an implementing act as referred to in Article 9a(2).

Title II

Clearing obligation for OTC derivatives, reporting obligation and risk mitigation for OTC derivatives

Article 3

Clearing obligation

1. Counterparties shall clear all OTC derivative contracts pertaining to a class of OTC derivatives that has been declared subject to the clearing obligation in accordance with the procedure set out in Article 4 paragraphs (2) and (4), if those contracts:

   a) are not intragroup transactions;

   b) have been concluded:

      (i) between two financial counterparties; or

      (ii) between a financial counterparty and a non financial counterparty that meets the conditions referred to in Article 5 paragraph (1b); or

      (iii) between two non financial counterparties that meet the conditions referred to in Article 5 paragraph (1b); or

      (iv) between a financial counterparty or a non financial counterparty meeting the conditions referred to in Article 5 paragraph (1b) and a third country entity that would be subject to the clearing obligation if it was established in the EU;

      (v) between third country entities that would be subject to the clearing obligation if they were established in the EU, provided that the contract has a direct, substantial and foreseeable effect within the EU or where such obligation is necessary or appropriate to prevent the evasion of any provisions of this Regulation;

c) are entered into or novated:

(i) on or after the date from which the clearing obligation takes effect; or

(ii) on or after the date of entry into force of this Regulation but before the date from which the clearing obligation takes effect if the contracts have a remaining maturity higher than the minimum remaining maturity determined by the Commission in accordance with Article 4 paragraph (2) point (c).

2. The OTC derivative contracts that have to be cleared pursuant to paragraph 1 shall be cleared in a CCP authorised under Article 10 or recognised under Article 23 to clear that class of OTC derivatives.

For this purpose counterparties shall become either a clearing member or a client.

3. Powers are delegated to the Commission to adopt regulatory technical standards in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 (ESMA Regulation) specifying the contracts that are considered to have a direct, substantial and foreseeable effect within the EU or the cases where it is necessary or appropriate to prevent the evasion of any provision of this Regulation as referred to in paragraph 1 point (b) indent (v).

ESMA shall submit drafts for those regulatory technical standards to the Commission by 30 June 2012.

Article 4

Clearing obligation procedure

1. Where a competent authority authorises a CCP to clear a class of OTC derivatives under Article 10 or 11, it shall immediately notify ESMA of that authorisation.

Powers are conferred upon the Commission to adopt implementing technical standards in accordance with Article 15 of Regulation (EU) No 1095/2010 specifying the details to be included in the notifications referred to in the first subparagraph and in Article 71 paragraphs (1a) and (1c).

ESMA shall submit drafts for those implementing technical standards to the Commission by 30 June 2012.

2. After receiving a notification in accordance with paragraph (1) or accomplishing a procedure for recognition set out in Article 23, ESMA shall within six months, develop and submit to the Commission for endorsement draft implementing technical standards determining the following:

(a) the class of OTC derivatives that should be subject to the clearing obligation referred to in Article 3;

(b) the date or dates from which the clearing obligation takes effect, including any phase-in for front-loaded contracts and the categories of counterparties to which the obligation applies; and

(c) the minimum remaining maturity of the OTC derivative contracts to be frontloaded.

3. After conducting a public consultation and consulting with the European Systemic Risk Board (ESRB) and, where appropriate, the competent authorities of third countries, ESMA shall prepare the draft implementing technical standards referred to in paragraph 2.

With an overarching aim of reducing systemic risk, the draft implementing technical standards for the part referred to in point (a) of paragraph 2 shall take into consideration the following criteria:

(a) the degree of standardisation of the relevant class of OTC derivative contracts' contractual terms and operational processes;

(b) the volume and the liquidity of the relevant class of OTC derivatives;

(c) the availability of fair, reliable and generally accepted pricing information in the relevant class of OTC derivative contracts;

(d) *deleted*

(e) *deleted*

In the preparation of the draft technical standards, ESMA may take into consideration the anticipated impact on the levels of counterparty credit risk between counterparties as well as the impact on competition across the Union.

The draft implementing technical standards for the parts referred to in point (b) of paragraph 2 shall take into consideration the following criteria:

(f) the expected volume of the relevant class of OTC derivative contracts;

(ga) whether more than one CCP already clear the same class of OTC derivatives;

(g) the ability of the relevant CCPs to handle the expected volume and to manage the risk arising from the clearing of relevant class of OTC derivative contracts;

(h) the type and number of counterparties active, and expected to be active within the market for the relevant class of OTC derivative contracts;

(i) the period of time a counterparty subject to the clearing obligation needs in order to put in place arrangements to clear its OTC derivative contracts through a CCP;

(j) the risk management, legal and operational capacity of the range of counterparties that are active in the market for the relevant class of OTC derivative contracts and that would be captured by the clearing obligation pursuant to Article 3.1.

Powers are delegated to the Commission to adopt regulatory technical standards in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 further specifying the criteria referred to in paragraph 3, second subparagraph points (a) - (c).

ESMA shall submit drafts for those regulatory technical standards to the Commission by 30 June 2012.

4. In order to ensure uniform conditions of application of Article 3, powers are conferred upon the Commission to adopt implementing technical standards that determine:

a) the classes of derivatives that are subject to the clearing obligation;

b) the date or dates from which the obligation takes effect, including any phase-in for front-loaded contracts and the categories of counterparties to which the obligation applies; and

c) the minimum remaining maturity referred to in paragraph 2 point (c).

The implementing technical standards shall be adopted in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 4a

Identification procedure

1. ESMA shall, on its own initiative and after conducting a public consultation and consulting with the European Systemic Risk Board (ESRB) and, where appropriate, the competent authorities of third countries, identify in accordance with the criteria set out in Article 4 paragraph (3) points (a)-(c) and notify to the Commission the classes of derivatives contracts that should be subject to the clearing obligation provided in Article 3, but for which no CCP has yet received authorisation.

2. Following the notification by ESMA, the Commission may ask ESMA to publish a call for development of proposals for the clearing of those classes of derivative contracts.

Article 4b

Public register

1. ESMA shall establish, maintain and keep up to date a register to correctly and unequivocally identify the classes of derivatives subject to the clearing obligation. The register shall be publicly available on ESMA's website.

2. The register shall include at least:

a) the classes of derivatives that are subject to the clearing obligation and, in connection with those classes, the CCPs authorised or recognised under this Regulation to clear them, the date or dates from which the clearing obligation takes effect including any phase in for frontloaded contracts and the categories of counterparties to which the obligation applies and the minimum remaining maturity of the contracts to be frontloaded;

b) the classes of derivatives identified by ESMA in accordance with Article 4a.

3. Powers are conferred upon the Commission to adopt implementing technical standards further specifying the details to be included in the public register referred to in paragraph 1.

The implementing technical standards referred to in the first subparagraph shall be adopted in accordance with Article 15 of Regulation (EU) No 1095/2010.

ESMA shall submit drafts for those implementing technical standards to the Commission by 30 June 2012.

Article 5

Non-financial counterparties

1. When a non-financial counterparty takes positions in OTC derivative contracts and these positions exceed the clearing threshold as specified under paragraph 3, that non-financial counterparty shall:

(a) immediately notify ESMA and the competent authority as referred to in paragraph 5 of that fact; and

(b) become subject to the clearing obligation for future contracts in the terms set out in Article 3 if the positions have exceeded the thresholds for 30 days over a 3 month period. The counterparty shall clear all relevant future contracts within 3 months of becoming subject to the clearing obligation.

2. A non-financial counterparty that has become subject to the clearing obligation in accordance with paragraph 1 b) and that subsequently demonstrates to the authority designated in accordance with paragraph 5 that its positions in OTC derivative contracts pertaining to the same class of OTC derivatives do not exceed the clearing threshold for 30 days over a 3 month period, shall no longer be subject to the clearing obligation set out in Article 3.

3. In calculating the positions referred to in paragraph 1, the non-financial counterparty shall include all the OTC derivative contracts entered into by the counterparty or by other non financial entities within the group to which the non financial counterparty belongs, which are not objectively measurable as reducing risks directly related to the commercial activity or treasury financing activity of the counterparty or of that group.

4. Powers are conferred upon the Commission to adopt implementing technical standards in accordance with Article 15 of Regulation (EU) No 1095/2010 specifying criteria for establishing which OTC derivative contracts are objectively measurable as reducing risks directly related to the commercial activity or treasury financing activity referred to in paragraph (3) and setting values of the clearing thresholds. When doing so, the Commission shall take into account the systemic relevance of the sum of net positions and exposures by counterparty and per class of OTC derivatives over a time period of 6 months.

ESMA shall develop draft for those implementing technical standards in consultation with the ESRB and other relevant authorities, and shall submit drafts to the Commission by 30 June 2012.

ESMA, in consultation with the ESRB and other relevant authorities, shall periodically review the thresholds and each six months propose the necessary implementing technical standards to amend them.

5. Each Member State shall designate an authority to be responsible for ensuring that the obligation under paragraph 1 is met.

Article 6

Risk mitigation techniques for OTC derivative contracts not cleared by a CCP

1. Financial counterparties and non-financial counterparties (…) that enter into an OTC derivative contract not cleared by a CCP, shall ensure that appropriate procedures and arrangements are in place to measure, monitor and mitigate operational and credit risk, including at least:

(a) (…) the timely confirmation of the terms of the OTC derivative contract. Where available, the confirmation should be made via electronic means;

(b) robust, resilient and auditable processes in order to reconcile portfolios, to manage the associated risk and to identify disputes between parties early and resolve them, and to monitor the value of outstanding contracts.

1a. Financial counterparties and the non-financial counterparties referred to in Article 5 (1b) shall mark-to-market on a daily basis the value of outstanding contracts. Where market conditions prevent marking-to-market, reliable and prudent marking-to-model shall be used by the financial and non-financial counterparties referred to in Article 5 (1b).

1aa. Financial counterparties shall have risk management procedures that require the timely, (…) accurate and appropriate exchange of collateral with respect to OTC derivatives contracts that are entered into on or after the entry into force of this Regulation. As regards derivative contracts referred to in Article 71(0), the risk management models shall be as robust as those used for central clearing. Non-financial counterparties referred to in Article 5 (1b) shall have risk management procedures that require the timely, (…) accurate and appropriate exchange of collateral with respect to OTC derivatives contracts entered into on or after the clearing threshold is breached.

1aaa. The requirement laid down in paragraph 1aa shall not apply to an intragroup transaction referred to in Article 2a that is entered into by counterparties which are established in the same Member State provided that there is no current or foreseen practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between counterparties.

1c. An intragroup transaction referred to in Article 2a(2)(a)-(c) that is entered into by counterparties which are established in different Member States shall be exempted totally or partially from the requirement laid down in paragraph 1aa, on the basis of a positive decision of both the relevant competent authorities, provided that the following conditions are fulfilled:

(a) the risk management procedures of the counterparties are adequately sound, robust and consistent with the level of complexity of the derivative transaction;

(b) there is no current or foreseen practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties.

If the competent authorities fail to reach a positive decision within a month of receipt of the application for exemption, the adoption of a decision may be facilitated by ESMA in accordance with its settlement of disagreement powers under Article 19 of Regulation (EU) No 1095/2010.

1cc. An intragroup transaction referred to in Article 2a(1) that is entered into by non-financial counterparties which are established in different Member States shall be exempted from the requirement laid down in paragraph 1aa, provided that the following conditions are fulfilled:

(a) the risk management procedures of the counterparties are adequately sound, robust and consistent with the level of complexity of the derivative transaction;

(b) there is no current or foreseen practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties.

The non-financial counterparties shall communicate any such decision to the competent authorities referred to in Article 5(5). The exemption is valid until either of the notified competent authorities does not agree upon fulfilment of the conditions referred to in points a) or b). The notified competent authorities have the power to do so within three months from the communication.

1ccc. An intragroup transaction referred to in Article 2a(2)(a)-(d) that is entered into by a counterparty which is established in the EU and a counterparty which is established in a third-country jurisdiction shall be exempted totally or partially from the requirement laid down in paragraph 1aa, on the basis of a decision of the relevant competent authority responsible for supervision of the counterparty which is established in the EU, provided that the following conditions are fulfilled:

(a) the risk management procedures of the counterparties are adequately sound, robust and consistent with the level of complexity of the derivative transaction;

(b) there is no current or foreseen practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties.

1cccc. An intragroup transaction referred to in Article 2a(1) that is entered into by a non-financial counterparty which is established in the EU and a counterparty which is established in a third-country jurisdiction shall be exempted from the requirement laid down in paragraph 1aa, provided that the following conditions are fulfilled:

(a) the risk management procedures of the counterparties are adequately sound, robust and consistent with the level of complexity of the derivative transaction;

(b) there is no current or foreseen practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties.

The non-financial counterparty shall communicate any such decision to the competent authority referred to in Article 5(5). The exemption is valid until the notified competent authority does not agree upon fulfilment of the conditions referred to in points a) or b). The notified competent authority has the power to do so within three months from the communication.

1ccccc. An intragroup transaction referred to in Article 2a(1) that is entered into by a non-financial counterparty and a financial counterparty which are established in different Member States shall be exempted totally or partially from the requirement laid down in paragraph 1aa, on the basis of a decision of the relevant competent authority responsible for supervision of the financial counterparty, provided that the following conditions are fulfilled:

(a) the risk management procedures of the counterparties are adequately sound, robust and consistent with the level of complexity of the derivative transaction;

(b) there is no current or foreseen practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties.

The relevant competent authority responsible for supervision of the financial counterparty shall communicate any such decision to the competent authority referred to in Article 5(5). The exemption is valid unless the notified competent authority does not agree upon fulfilment of the conditions referred to in points a) or b). If there is a disagreement between the competent authorities, ESMA may assist those authorities in reaching an agreement in accordance with its powers under Article 19 of Regulation (EU) No 1095/2010.

1d. The counterparty of intragroup transaction which has been exempted from the requirement laid down in paragraph 1aa shall publicly disclose information on the exemption.

A competent authority shall notify ESMA of any decision adopted pursuant to paragraphs 1c, 1ccc or 1ccccc or any notification received pursuant to paragraphs 1cc, 1cccc or 1ccccc and provide ESMA with the details of intragroup transaction in concern.

1bb. Financial counterparties shall hold appropriate and proportionate amount of capital to manage the risk not covered by appropriate exchange of collateral.

1b. In case there has been exchange of collateral each financial counterparty or a non-financial counterparty referred to in Article 5 paragraph (1b), if requested by the other party before the time of execution of each OTC derivatives contract between the parties, shall distinguish in accounts, in accordance with their agreements, the assets provided by the other party.

The requirement to distinguish in accounts for the purpose of this Article is satisfied if the counterparties record separately in their accounts the assets exchanged as collateral.

1e. The obligations set out in paragraphs 1 to 1b shall apply to derivatives contracts entered into between third country entities that would be subject to these obligations if they were established in the EU, provided that these contracts have a direct, substantial and foreseeable effect within the EU or where such obligation is necessary or appropriate to prevent the evasion of any provision of this Regulation.

2. Powers are delegated to the Commission to adopt regulatory technical standards specifying the maximum time lag between the conclusion of an OTC derivative contract and the confirmation referred to in paragraph 1(a), and the market conditions that prevents marking-to-market and the criteria for using marking-to-model as referred to in the paragraph (1a).

The regulatory technical standards referred to in the first subparagraph shall be adopted in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 (ESMA Regulation).

ESMA shall submit a draft to the Commission for those regulatory technical standards by 30 June 2012.

3. Powers are delegated to the Commission to adopt regulatory technical standards specifying the arrangements required for compliance with paragraph (1), levels of collateral required for compliance with paragraph (1aa) and (1b), levels of capital required for compliance with paragraph (1bb), risk management models referred to in paragraph (1aa) and the procedures for the counterparties and the relevant competent authorities to be followed while applying exemptions under paragraphs (1c)-(1ccccc) as well as the applicable criteria referred to in paragraphs (1aaa) and (1c)-(1ccccc) including, in particular, what should be considered as practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties.

Depending on the legal nature of the counterparty, the regulatory technical standards referred to in the first subparagraph shall be adopted in accordance with either Articles 10 to 14 of Regulation (EU) No 1093/2010 [EBA Regulation], Articles 10 to 14 of Regulation (EU) No 1095/2010 [ESMA Regulation] or Articles 10 to 14 of Regulation (EU) No 1094/2010 [EIOPA Regulation].

When developing the draft regulatory technical standards, EBA, ESMA and EIOPA shall act in accordance with Article 56 of the abovementioned Regulations. The draft regulatory technical standards shall be submitted to the Commission by 30 June 2012.

4. Powers are conferred upon the Commission to adopt implementing technical standards in accordance with Article 15 of Regulation (EU) No 1095/2010 specifying:

(a) the details of the exempted intragroup transactions to be included in the notification referred to in paragraphs 1cc, 1cccc and 1ccccc;

(b) the details of the information on exempted intragroup transactions referred to in paragraph 1d.

ESMA shall submit drafts for those implementing technical standards to the Commission by 30 June 2012.

Article 7

Reporting obligation

1. Counterparties and CCPs shall ensure that the details of any derivative contract they have concluded and any modification, or termination of the contract is reported to a trade repository registered in accordance with Article 51 or recognised in accordance with Article 63 (…).

   The details shall be reported no later than the working day following the conclusion, modification or termination of the contract.

   The reporting obligation shall apply to derivative contracts which:

   a) were entered into before the date of entry into force of this Regulation and are outstanding on the date of entry into force of this Regulation;

   b) are entered into on or after the date of entry into force of this Regulation.

   A counterparty or a CCP which is subject to the reporting obligation may delegate the reporting of the details of the derivative contract.

   Counterparties and CCPs shall ensure that the details of their derivative contract are reported without duplication.

2. Where a trade repository is not available to record the details of a derivative contract, (…) counterparties and CCPs shall ensure that the details of the derivative contracts is reported to ESMA.

   In this case ESMA shall ensure that all relevant authorities referred to in Article 67 paragraph (2) will have direct and immediate access to all the details of derivative contracts they need to fulfil their respective responsibilities and mandates.

   The details to be reported to ESMA shall be the same that would be reported to the trade repository.

3. (…) An entity that reports the details of a derivative contract to a trade repository or ESMA on behalf of a counterparty shall not be considered in breach of any restriction on disclosure of information imposed by that contract or by any legislative, regulatory or administrative provision.

No liability resulting from that disclosure shall lie with the reporting entity or its directors or employees.

4. Powers are delegated to the Commission to determine the details and type of the reports referred to in paragraphs 1 and 2 for the different classes of derivatives.

Those reports shall contain at least:

(a) the parties to the contract and (…),

(b) the main characteristics of the contract, including the type, underlying maturity and notional value (…).

The draft regulatory technical standards referred to in the first subparagraph shall be adopted in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 [ESMA Regulation].

ESMA shall develop draft regulatory technical standards for submission to the Commission by 30 June 2012.

5. In order to ensure uniform conditions of application of paragraphs 1 and 2, powers are conferred upon the Commission to adopt implementing technical standards determining:

a) the format and frequency of the reports referred to in paragraphs 1 and 2 for the different classes of derivatives;

b) the date by which derivatives contracts shall be reported, including any phase in for contracts entered into before the reporting obligation applies.

The draft implementing technical standards referred to in the first subparagraph shall be adopted in accordance with Article 15 of Regulation (EU) No 1095/2010 [ESMA Regulation].

ESMA shall develop draft implementing technical standards for submission to the Commission by 30 June 2012.

Article 8

Access to a CCP

1. A CCP that has been authorised to clear OTC derivative contracts shall accept clearing such contracts on a non-discriminatory and transparent basis, regardless of the venue of execution.

   Without prejudice to Article 32a, a CCP may require that those venues of execution comply with the operational and technical requirements established by the CCP.

2. When a request to access a CCP has been formally submitted to a CCP by a venue of execution, the venue shall receive a response to the request from the CCP within three months.

3. Where the access is refused by a CCP, it shall provide full reasons and notify the venue of execution accordingly.

3a. Without prejudice to the decision by the competent authorities of the venue of execution and of the CCP, access shall be made possible by the CCP within three months of a positive response to a request for access.

   The competent authorities of the requesting venue of execution and of the CCP may only deny the venue of execution access to the CCP where such access would threaten the smooth and orderly functioning of markets.

Article 9

Penalties

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

2. Member States shall ensure that the competent authorities responsible for the supervision of financial and, where appropriate, non-financial counterparties disclose every penalty that has been imposed for infringements of Articles 3 to 8a to the public, unless such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

   Within six months of the entry into force of this Regulation, the Member States shall notify the rules referred to in paragraph 1 to the Commission. They shall notify the Commission of any subsequent amendment thereto without delay.

3. The Commission, with the assistance of ESMA, shall verify that the administrative penalties referred to in paragraph 1 are effectively and consistently applied.

Article 9a

International Coordination

1. The Commission shall be assisted by ESMA in monitoring and preparing reports to the Council and the European Parliament on the international application of principles laid down in Articles 3, 5, 6, 7 and Title IV and VII including potential duplicative or conflicting requirements and recommend possible actions.

2. The Commission may adopt an implementing act declaring that the legal, supervisory and enforcement arrangements of a third country are equivalent to the requirements resulting from this Regulation under Articles 3, 5, 6, 7 and Title IV and VII and guarantee protection of professional secrecy that is equivalent to that set out in this Regulation and which are subject to effective supervision and enforcement in that third country. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 69.

3. An implementing act on equivalence as referred to in paragraph 2 shall imply that counterparties entering into a transaction subject to this Regulation shall be deemed to have fulfilled the obligations contained in Articles 3, 5, 6, 7 and Title IV and VII of this Regulation only if:

   a) at least one of the counterparties is established outside the EU;

   b) the legal framework of the third country is being effectively applied and enforced;

   c) the legal framework of the third country is applied and enforced in an equitable and non-distortive manner; and

   d) there is no risk of an adverse effect on the financial market within the Union.

4. The Commission shall, in cooperation with ESMA, monitor the effective implementation by third countries, for which an implementing act on equivalence has been adopted, of the requirements equivalent to those contained in Articles 3, 5, 6, 7 and Title IV and VII of this Regulation and regularly report to the European Parliament and the Council. In a month after the presentation of the report and in case the report reveals an insufficient or inconsistent application of the equivalent requirements by third country authorities, the Commission shall withdraw the recognition as equivalent of the third country legal framework in question. In case an implementing act on equivalence is withdrawn, counterparties shall automatically be subject again to all requirements contained in this Regulation.

Title III

Authorisation and supervision of CCPs

Chapter 1

Conditions and Procedures for the Authorisation of a CCP

Article 10

Authorisation of a CCP

1. Where a (…) legal person established in the Union (…) intends to provide clearing services as a CCP, it shall apply for authorisation to the competent authority of the Member State where it is established in accordance with the procedure set out in Article 13.

2. Once the authorisation granted in accordance with Article 13 has taken effect, it shall be effective for the entire territory of the Union.

3. The authorisation shall specify the services or activities which the CCP is authorised to provide or perform including the classes of financial instruments covered by the authorisation.

4. A CCP shall comply at all times with the conditions necessary for the authorisation.

   A CCP shall, without undue delay, notify the competent authority of any material changes affecting the conditions for the authorisation.

5. *deleted*

6. Authorisation referred to in paragraph 1 shall not prevent Member States from adopting or continuing to apply, in respect of CCPs established in their territory, additional requirements including certain authorization requirements under Directive 2006/48/EC.

Article 11

Extension of activities and services

1. A CCP wishing to extend its business to additional services or activities not covered by the initial authorisation shall submit a request for extension to the competent authority of the Member State where it is established. The offering of clearing services (…) which the CCP has not already been authorised shall be considered an extension of that authorisation.

   The extension of an authorisation shall follow the procedure defined under Article 13.

2. Where a CCP wishes to extend its business into a Member State other than where it is established, the competent authority of the Member State of establishment shall immediately notify the competent authority of that other Member State.

Article 12

Capital requirements

1. A CCP shall have a paid up and available (…) initial capital of at least EUR 5 million to be authorised pursuant to Article 10.

2. Capital including retained earnings and reserves of a CCP shall be proportional to the risk stemming from the activities of the CCP. It shall at all times be sufficient to ensure an orderly winding-down or restructuring of the activities over an appropriate time span and that the CCP is adequately protected against credit, counterparty, market, liquidity, operational, legal and business risks which are not already covered by specific financial resources as referred to in Articles 39 to 41a.

2a. The capital of the CCP shall under no circumstances fall below the amount referred to in paragraph 1.

3. Powers are delegated to the Commission to adopt regulatory technical standards specifying the requirements regarding the capital including retained earnings and reserves of a CCP referred to in paragraph 2.

The regulatory technical standards referred to in the first subparagraph shall be adopted in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010 [EBA Regulation].

EBA shall develop drafts for those regulatory technical standards in consultation with the relevant Authorities and the members of the ESCB and shall submit drafts to the Commission by 30 June 2012.

Article 13

Procedure for granting and refusing authorisation

1. The applicant CCP shall submit an application for authorisation to its competent authority.

1a. The applicant CCP shall provide all information, necessary to enable the competent authority to satisfy itself that the applicant CCP has established, at the time of authorisation, all the necessary arrangements to meet its obligations set out in this Regulation.

1b. Within 30 working days of receipt of the application, the competent authority shall assess whether the application is complete. If the application is not complete, the competent authority shall set a deadline by which the applicant CCP has to provide additional information. After assessing an application is complete, the competent authority shall notify the applicant CCP, the members of the College established in accordance with Article 14 (1) and ESMA accordingly.

2. The competent authority of the Member State where the CCP is established shall only grant authorisation where it is fully satisfied that the applicant CCP complies with all the requirements set out in this Regulation and where the CCP is notified as a system pursuant to Directive 98/26/EC. Authorisation may only be granted following a positive opinion of the college reached in accordance with Article 15.

The competent authority of the Member State where the CCP is established shall duly consider the opinion of the college. In case the competent authority of the Member State where the CCP is established does not agree with a positive opinion of the college, its decision shall state the full reasons and shall contain an explanation of any significant deviation from the opinion of the college.

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

2a. ESMA shall act in accordance with the powers set out in Article 17 of the ESMA Regulation in the event that the competent authority of the Member State of establishment of the CCP has not applied the provisions of this Regulation, or has applied them in a way which appears to be a breach of Union law.

ESMA may investigate an alleged breach or non-application of EU law upon request from any member of the college or on its own initiative and after having informed the competent authority of the Member State where the CCP is established.

3. Within six months of the submission of a complete application, the competent authority shall inform the applicant CCP in writing with a fully reasoned explanation whether the authorisation has been granted or refused.

Article 14

Colleges

1. Within one month of the submission of a complete application as referred to in Article 13, the competent authority of the Member State of establishment of a CCP shall establish, manage and chair a college to facilitate the exercise of the tasks referred to in Articles 11, 13, 46 and 50.

2. The college shall consist of:

(a) ESMA;

(b) the competent authority of the Member State of establishment of the CCP;

(c) the competent authorities responsible for the supervision of the clearing members of the CCP that are established in the three Member States with the largest contributions to the default fund of the CCP referred to in Article 40 on an aggregate basis over a one-year period;

(d) the competent authorities responsible for the supervision of venues of execution, served by the CCP;

(e) the competent authorities supervising CCPs with whom interoperability arrangements have been established;

(ea) the competent authorities supervising central securities depositories to whom the CCPs are linked to;

(f) the relevant members of the ESCB responsible for the oversight of the CCP and the relevant members of the ESCB responsible for the oversight of the CCPs with whom interoperability arrangements have been established;

(fa) (…) the central banks of issue of the most relevant EU currencies of the financial instruments cleared.

2a. A competent authority of a Member State which is not a member of the college shall have the right to request from the college any information relevant for the performance of its supervisory duties.

3. The college shall, without prejudice to the responsibilities of the competent authorities under this Regulation, ensure:

(a) the preparation of the opinion referred to in Article 15;

(b) the exchange of information, including requests for information pursuant to Article 67c;

(c) agreement on the voluntary entrustment of tasks among its members;

(d) the coordination of supervisory examination programmes based on a risk assessment of the CCP;

(e) *deleted*

(f) *deleted*

(g) the determination of procedures and contingency plans to address emergency situations, as referred to in Article 22.

4. The establishment and functioning of the college shall be based on a written agreement between all its members.

That agreement shall determine the practical arrangements for the functioning of the college, including detailed rules on voting procedures as referred to in Article 15(3) and may determine tasks to be entrusted to the competent authority of the Member State of establishment of a CCP or another member of the college.

5. In order to ensure a consistent and coherent functioning of colleges across the Union, powers are conferred upon the Commission to adopt implementing technical standards in accordance with Article 15 of Regulation (EU) No 1095/2010 specifying the conditions under which the EU currencies referred to in paragraph 2 point (fa) shall be considered as the most relevant and the details of practical arrangements referred to in paragraph 4.

ESMA shall submit drafts for those implementing technical standards to the Commission by 30 June 2012.

Article 15

Opinion of the College

1. The competent authority of the Member State where the CCP is established shall conduct a risk assessment of the CCP and submit a report to the college within four months of the submission of a complete application by the CCP.

   On the basis of that report, within one month of receiving it, the college shall reach a joint opinion determining that the applicant CCP complies with all the requirements set out in this Regulation. If no joint opinion is reached within the timeframe set out above, the College shall adopt a majority opinion within one month.

2. ESMA shall facilitate the adoption of the joint opinion in accordance with its general coordination function under Article 31 of Regulation EU 1095/2010 (ESMA Regulation).

3. The majority opinion of the college shall be adopted on the basis of a simple majority of its members. Each member shall have one vote. ESMA shall have no voting rights on the opinions of the college.

Article 16

Withdrawal of authorisation

1. Without prejudice to Article 18 paragraph (3), the competent authority of the Member State where the CCP is established shall withdraw the authorisation in any of the following circumstances:

   (a) where the CCP has not made use of the authorisation within twelve months, expressly renounces the authorisation or has provided no services or performed no activity for the preceding six months;

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

(c) where the CCP is no longer in compliance with the conditions under which authorisation was granted and has not taken the remedial actions requested by the competent authority within a set time frame;

(d) has seriously and systematically infringed the requirements set out in this Regulation.

1a. Where the competent authority considers that one of the circumstances referred to in paragraph 1 has been met, it shall within 5 working days notify ESMA and the members of college as defined in Article 14.

1b. The members of the college shall be consulted on the necessity to withdraw the authorisation of the CCP, except where such a decision is required urgently.

2. Any member of the college may, at any time, request that the competent authority of the Member State where the CCP is established examine whether the CCP is still in compliance with the conditions under which the authorisation is granted.

3. The competent authority may limit the withdrawal to a particular service, activity, or financial instrument.

3a. The competent authority shall notify ESMA and the members of the college of its fully reasoned decision and take into account the reservations of the members of the college.

3b. The decision on the withdrawal of authorisation shall take effect throughout the Union.

Chapter 2

Supervision of CCPs

Article 17

Review and evaluation

1. The competent authority referred to in Article 18, and without prejudice to the role of the college as defined in Article 14, shall review the arrangements, strategies, processes and mechanisms implemented by the CCPs to comply with this Regulation and evaluate the risks to which the CCPs are, or might be exposed.

2. The scope of the review and evaluation referred to in paragraph 1 shall be that of the requirements of this Regulation.

3. The competent authority shall establish the frequency and depth of the review and evaluation referred to in paragraph 1 having regard to the size, systemic importance, nature, scale and complexity of the activities of the CCP concerned. The review and evaluation shall be updated at least on an annual basis.

   The CCP shall be subject to on-site inspections.

4. The competent authority shall regularly inform the college as defined in Article 14, and at least once a year, of the results, including any remedial actions or penalties, of the review and evaluation as referred to in paragraph 1.

5. The competent authority shall require the CCP that does not meet the requirements of this Regulation to take the necessary actions or steps at an early stage to address the situation.

Article 18

Competent authorities

1. Each Member State shall designate the competent authority responsible for carrying out the duties resulting from this Regulation for the authorisation and supervision (…) of CCPs established in its territory and shall inform the Commission and ESMA thereof.

   Where a Member State designates more than one competent authority, it shall clearly determine the respective roles and shall designate a single authority to be responsible for co-ordinating co-operation and the exchange of information with the Commission, ESMA, other Member States' competent authorities, EBA and the relevant members of the ESCB in accordance with Article 19, 22, 67b and 67c.

2. Each Member State shall ensure that the competent authorities have the supervisory and investigatory powers necessary for the exercise of their functions.

3. Each Member State shall ensure that appropriate administrative measures, in conformity with national law, can be taken or imposed against the natural or legal persons responsible where the provisions in this Regulation have not been complied with.

   Those measures shall be effective, proportionate and dissuasive and may include requesting remedial actions within a set time frame.

4. ESMA shall publish a list of the competent authorities designated in accordance with paragraph 1 on its website.

Chapter 3

Cooperation

Article 19

Cooperation between authorities

1. Competent authorities, ESMA and the members of the ESCB shall cooperate closely with one another.

2. The competent authorities shall, in the exercise of their general duties, duly consider the potential impact of their decisions on the stability of the financial system in all other Member States concerned, in particular the emergency situations referred to in Article 22, based on the available information at the time.

Article 20 (deleted)

Article 21 (deleted)

Article 22

Emergency situations

The competent authority or any other authority shall inform ESMA, the college, the relevant members of the ESCB and other relevant authorities without undue delay of any emergency situation relating to a CCP, including developments in financial markets, which may have an adverse effect on market liquidity and the stability of the financial system in any of the Member States where the CCP or one of its clearing members are established.

Chapter 4

Relations with third countries

Article 23

Recognition of a CCP

1. A CCP established in a third country may provide clearing services to clearing members or venues of execution established in the Union only where that CCP is recognised by ESMA.

2. ESMA, after consultation with the authorities referred to in paragraph (2aa) may recognise a CCP established in a third country that has applied for recognition to provide certain clearing services or activities only where the following conditions are met:

(a) the Commission has adopted an implementing act in accordance with paragraph 3;

(b) the CCP is authorised in, and is subject to, effective supervision and enforcement ensuring a full compliance with the prudential requirements applicable in that third country;

(c) co-operation arrangements have been established pursuant to paragraph 4.

2aa. When assessing whether the conditions referred to in paragraph 2 are met, ESMA shall consult with:

(a) the competent authority of a Member State in which the CCP provides or intends to provide clearing services and which has been selected by the CCP;

(b) the competent authorities responsible for the supervision of the clearing members of the CCP that are established in the three Member States which make or are anticipated by the CCP to make the largest contributions to the default fund of the CCP referred to in Article 40 on an aggregate basis over a one-year period;

(c) the competent authorities responsible for the supervision of venues of execution located in the EU, served or to be served by the CCP;

(d) the competent authorities supervising CCPs established in the Union with whom interoperability arrangements have been established;

(da) the relevant members of the ESCB of the Member States in which the CCP provides or intends to provide clearing services and the relevant members of the ESCB responsible for the oversight of the CCPs with whom interoperability arrangements have been established;

(e) the central banks of issue of the most relevant EU currencies of the financial instruments cleared or to be cleared.

2a. The CCP referred to in paragraph 1 shall submit its application to ESMA.

The applicant CCP shall provide ESMA with all information deemed necessary for its recognition. Within 30 working days of receipt of the application, ESMA shall assess whether the application is complete. If the application is not complete, ESMA shall set a deadline by which the applicant CCP has to provide additional information.

The recognition decision shall be based on the conditions set out in paragraph 2.

ESMA shall consult with the authorities and institutions referred to in paragraph (2aa) prior to taking its decision.

Within 180 working days of the submission of a complete application, ESMA shall inform the applicant CCP in writing with a fully reasoned explanation whether the recognition has been granted or refused.

ESMA shall publish on its website a list of the CCPs recognised in accordance with this Regulation.

2b. ESMA shall in consultation with the authorities and institutions referred to in paragraph (2aa) review the recognition of the CCP established in a third country in case of extensions of activities and services of that CCP in the Union. The review shall follow the procedure defined in paragraphs 2, (2aa) and (2a). ESMA is empowered to withdraw the recognition of that CCP where the conditions and requirements according to paragraph 2 are no longer met and in circumstances analogous to that described in Article 16.

3. The Commission may adopt an implementing act under Article 5 of Regulation (EU) 182/2011, determining that the legal and supervisory arrangements of a third country ensure that CCPs authorised in that third country comply with legally binding requirements which are equivalent to the requirements set out under Title IV of this Regulation, that these CCPs are subject to effective supervision and enforcement in that third country on an ongoing basis and that the legal framework of that third country provides for an effective equivalent recognition or registration of CCPs authorized under this Regulation.

4. ESMA shall establish 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 3. Such arrangements shall specify at least:

(a) the mechanism for the exchange of information between ESMA and the competent authorities of third countries concerned, including access to all information regarding the CCPs authorised in third countries that is requested by ESMA;

(aa) 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 other legislation to which it is obliged to adhere;

(ab) the mechanism of prompt notification to ESMA by a third country competent authority when a CCP it is supervising has been granted the right to provide clearing services to clearing members or clients established in the Union;

(b) the procedures concerning the coordination of supervisory activities including, where appropriate, on-site inspections.

4a Powers are delegated to the Commission to adopt regulatory technical standards specifying the information that the applicant CCP shall provide ESMA in its application for recognition.

The regulatory technical standards referred to in the first subparagraph shall be adopted in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 (ESMA Regulation).

ESMA shall submit a draft to the Commission for those regulatory technical standards by 30 June 2012.

Title IV

Requirements for CCPs

Chapter 1

Organisational Requirements

Article 24

General provisions

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.

2. A CCP shall adopt policies and procedures which are sufficiently effective so as to ensure compliance with this Regulation, including compliance of its managers and employees with all the provisions of this Regulation.

3. A CCP shall maintain and operate an organisational structure that ensures continuity and orderly functioning in the performance of its services and activities. It shall employ appropriate and proportionate systems, resources and procedures.

4. A CCP shall maintain a clear separation between the reporting lines for risk management and those for the other operations of the CCP.

5. A CCP shall adopt, implement and maintain a remuneration policy which promotes sound and effective risk management and which does not create incentives to relax risk standards.

6. A CCP shall maintain information technology systems adequate to deal with the complexity, variety and type of services and activities performed so as to ensure high standards of security and the integrity and confidentiality of the information maintained.

7. A CCP shall make its governance arrangements and the rules governing the CCP available to the public.

8. The CCP shall be subject to frequent and independent audits. The results of these audits shall be communicated to the board and made available to the competent authority.

9. Powers are delegated to the Commission to adopt regulatory technical standards specifying the minimum content of the rules and governance arrangements referred to in paragraphs (1) to (8).

The regulatory technical standards referred to in the first subparagraph shall be adopted in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 [ESMA Regulation].

ESMA shall develop drafts for those regulatory technical standards in consultation with the members of the ESCB, and shall submit drafts to the Commission by 30 June 2012.

Article 25

Senior Management and the Board

1. The senior management shall be of sufficiently good repute and experience so as to ensure the sound and prudent management of the CCP.

2. A CCP shall have a board of which at least one third, but no less than two, of its members are independent. The compensation of the independent and other non-executive members of the board shall not be linked to the business performance of the CCP. The members of the board, including its independent members, shall be of sufficiently good repute and have sufficient expertise in financial services, risk management and clearing services.

3. A CCP shall clearly determine the roles and responsibilities of the board and shall make the minutes of the board meetings available to the competent authority.

Article 26

Risk committee

1. A CCP shall establish a risk committee, which shall be composed of representatives of its clearing members and independent members of the board. The risk committee may invite employees of the CCP and external independent experts to attend risk committee meetings in a non-voting capacity. The advice of the risk committee shall be independent from any direct influence by the management of the CCP.

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, but not limited to, a significant change in its risk model, the default procedures, the criteria for accepting clearing members or the clearing of new classes of instruments. The advice of the risk committee is not required for the daily operations of the CCP or in emergency situations.

4. Without prejudice to the right of 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 the competent authority of any decision in which the board decides not to follow the advice of the risk committee.

6. A CCP shall allow the clients of clearing members to attend the risk committee meetings in a non voting capacity or, alternatively, it shall establish appropriate consultation mechanisms that ensure that the interests of the clients of clearing members are adequately represented.

Article 27

Record keeping

1. A CCP shall maintain, for a period of at least ten years, all the records on the services and activity provided so as to enable the competent authority to monitor the compliance with the requirements under this Regulation.

2. A CCP shall maintain, for a period of at least ten years following the termination of a contract it has processed, all information on that contract. That information shall at a minimum enable the identification of the original terms of a transaction submitted to the CCP before clearing by that CCP.

3. A CCP shall make the records and information referred to in paragraphs 1 and 2 and all information on the positions of cleared contracts, irrespective of the venue where the transactions was executed, available upon request to the competent authority and the relevant members of the ESCB for the purpose of fulfilling their mandates (…).

4. Powers are delegated to the Commission to adopt regulatory technical standards specifying the details of the records and information to be retained as referred to in paragraphs 1 and 2.

The regulatory technical standards referred to in the first subparagraph shall be adopted in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 [ESMA Regulation].

ESMA shall develop drafts for those regulatory technical standards in consultation with the members of the ESCB, and shall submit drafts to the Commission by 30 June 2012.

5. In order to ensure uniform conditions of application of paragraphs 1 and 2, powers are conferred upon the Commission to adopt implementing technical standards determining the format of the records and information to be retained.

The implementing technical standards referred to in the first subparagraph shall be adopted in accordance with Article 15 of Regulation (EU) No 1095/2010 [ESMA Regulation]. ESMA shall submit drafts on those implementing technical standards to the Commission by 30 June 2012.

Article 28

Shareholders and members with qualifying holdings

1. The competent authority shall not authorise a CCP until 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 the amounts of those holdings.

2. The competent authority shall refuse authorisation to 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, the competent authority 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, the competent authority shall take appropriate measures to terminate that situation.

5. The competent authority 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 the competent authority.

Article 29

Information to competent authorities

1. A CCP shall notify the competent authority of the Member State where the CCP is established of any changes to its management, and shall provide the competent authority of all the information necessary to assess whether the board members are of sufficiently good repute and sufficiently experienced.

   Where the conduct of a member of the board is likely to be prejudicial to the sound and prudent management of the CCP, the competent authority shall take appropriate measures, including removing that member from the board.

2. Any natural or legal person or such persons acting in concert (hereinafter referred to as "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 (hereinafter referred to as "the proposed acquisition"), shall first notify in writing the competent authorities 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 30 paragraph (4).

   Any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in a CCP shall first notify the competent authority in writing thereof, indicating the size of the intended holding. Such a person shall likewise notify the competent authority where he has taken a decision to reduce his 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 his subsidiary.

The competent authority shall, promptly and in any event within two working days following receipt of the notification as referred to in paragraph 2, as well as following receipt of the information referred to in paragraph 3, acknowledge receipt in writing thereof to the proposed acquirer or vendor.

The competent authority shall have a maximum of sixty 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 30 paragraph (4) (hereinafter referred to as "the assessment period"), to carry out the assessment provided for in Article 30 paragraph (1) (hereinafter referred to as "the assessment").

The competent authority shall inform the proposed acquirer or vendor of the date of the expiry of the assessment period at the time of acknowledging receipt.

3. The competent authority may, during the assessment period, where necessary, and 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.

For the period between the date of request for information by the competent authority and the receipt of a response thereto by the proposed acquirer, the assessment period shall be interrupted. 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. The competent authority may extend the interruption referred to in the second subparagraph of paragraph 3 up to thirty working days where the proposed acquirer or vendor is either of the following:

(a) situated or regulated outside the Union;

(b) a natural or legal person not subject to supervision under this Regulation or Directives 73/239/EEC, 85/611/EEC, 92/49/EEC, 2002/83/EC, 2003/41/EC, 2004/39/EC, 2005/68/EC, 2006/48/EC, 2009/65/EC or 2011/.../EU (AIFM).

5. Where the competent authority, 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. The College referred to in Article 14 shall be duly notified. 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, Member States may allow a competent authority to make such disclosure in the absence of a request by the proposed acquirer.

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

7. The competent authority may fix a maximum period for concluding the proposed acquisition and extend it where appropriate.

8. Member States shall not impose requirements for notification to, and approval by, the competent authority of direct or indirect acquisitions of voting rights or capital that are more stringent than those set out in this Regulation.

Article 30

Assessment

1. Where assessing the notification provided for in Article 29 paragraph (2) and the information referred to in Article 29 paragraph (3), the competent authority 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 criteria:

(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 the provisions set out in 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[21] 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, the competent authority shall pay particular attention to the type of business pursued and envisaged in the CCP in which the acquisition is proposed.

Where assessing the ability to comply with this Regulation, the competent authority 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, effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent authorities.

2. The competent authorities 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 neither impose any prior conditions in respect of the level of holding that must be acquired nor allow their competent authorities to examine the proposed acquisition in terms of the economic needs of the market.

[21] OJ L 309, 25.11.2005, p.15.

4. Member States shall make publicly available a list specifying the information that is necessary to carry out the assessment and that must be provided to the competent authorities at the time of notification referred to in Article 29 paragraph (2). The information required shall be proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition. Member States shall not require information that is not relevant for a prudential assessment.

5. Notwithstanding Article 29 paragraphs (2), (3) and (4), where two or more proposals to acquire or increase qualifying holdings in the same CCP have been notified to the competent authority, the latter shall treat the proposed acquirers in a non-discriminatory manner.

6. The relevant competent authorities shall work in full consultation with each other when carrying out the assessment where the proposed acquirer is one of the following:

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

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

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

7. The competent authorities shall, without undue delay, provide each other with any information which is essential or relevant for the assessment. 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 by the competent authority that has authorised the CCP in which the acquisition is proposed shall indicate any views or reservations expressed by the competent authority responsible for the proposed acquirer.

Article 31

Conflicts of interest

1. A CCP shall maintain and operate effective written organisational and administrative arrangements to identify and manage any potential conflicts of interest between itself, including its managers, employees, or any person directly or indirectly linked to them by control or close links and its clearing members or their clients known to the CCP. It shall maintain and implement adequate resolution procedures whenever possible conflicts of interest occur.

2. Where the organisational or administrative arrangements of a CCP to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of a clearing member or client will be prevented, it shall clearly disclose the general nature or sources of conflicts of interest to the clearing member before accepting new transactions from that clearing member. Where the client is known to the CCP, the CCP shall inform the client and the clearing member whose client is concerned.

3. Where the CCP is a parent undertaking or a subsidiary, the written arrangements must also take into account any circumstances, of which the CCP is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other undertakings with which it has a parent undertaking or a subsidiary relationship.

4. The written arrangements established in accordance with paragraph 1 shall include the following:

(a) the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of one or more clearing members or clients;

(b) procedures to be followed and measures to be adopted in order to manage such conflicts.

5. A CCP shall take all reasonable steps to prevent any misuse of the information maintained in its systems and shall prevent the use of that information held for other business activities. Confidential information recorded in one CCP shall not be used for commercial use by any other natural or legal person that has a parent undertaking or a subsidiary relationship with the CCP.

Article 32

Business continuity

1. A CCP shall establish, implement and maintain an adequate business continuity policy and disaster recovery plan aiming at ensuring the preservation of its functions, the timely recovery of operations and the fulfilment of the CCP's obligations. Such a plan shall at a minimum allow for the recovery of all transactions at the time of disruption to allow the CCP to continue to operate with certainty and to complete settlement on the scheduled date.

2. Powers are delegated to the Commission to adopt regulatory technical standards specifying the minimum content and requirements of the business continuity policy and of the disaster recovery plan (…).

The regulatory technical standards referred to in the first subparagraph shall be adopted in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 [ESMA Regulation].

ESMA shall develop drafts for those regulatory technical standards in consultation with the members of the ESCB, and shall submit drafts to the Commission by 30 June 2012.

Article 32a

Communication procedures with clearing members and market infrastructure

CCPs shall accommodate in their communication procedures with participants and with the market infrastructures they interface with, the open industry communication procedures and standards for messaging and reference data in order to facilitate efficient recording, payment, clearing and settlement.

Article 33

Outsourcing

1. Where a CCP outsources operational functions, services or activities, it shall remain fully responsible for discharging all of its obligations under this Regulation and shall comply at all times with the following conditions:

   (a) outsourcing does not result in the delegation of its responsibility;

   (b) the relationship and obligations of the CCP towards its clearing members or where relevant, towards their clients are not altered;

   (c) the conditions for the authorisation of the CCP do not effectively change;

   (d) outsourcing does not prevent the exercise of supervisory and oversight functions, including on site access to acquire any relevant information needed to fulfil those mandates;

   (e) outsourcing does not result in depriving the CCP from the necessary systems and controls to manage the risks it faces;

(f) the CCP retains the necessary expertise and resources to evaluate the quality of the services provided, the organisational and capital adequacy of the service provider; and to supervise the outsourced functions effectively and manage the risks associated with the outsourcing and must constantly supervise those functions and manage those risks;

(g) the CCP has direct access to the relevant information of the outsourced functions;

(h) the service provider cooperates with the competent authority in connection with the outsourced activities;

(i) the CCP ensures that the service provider meets the standards set down by the relevant data protection legislation which would apply if the service providers were established in the EEA. The CCP is responsible for ensuring that those standards are set out in a contract between the parties and that those standards are maintained.

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

3. A CCP shall make all information necessary to enable the competent authority to assess the compliance of the performance of the outsourced activities with the requirements of this Regulation available on request.

Chapter 2

Conduct of Business Rules

Article 34

General provisions

1. When providing services to its clearing members, and where relevant, to their clients, a CCP shall act fairly and professionally in accordance with the best interests of the clearing members and clients and sound risk management.

2. A CCP shall have transparent rules for the handling of complaints.

Article 35

Participation requirements

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 26 paragraph (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 only be permitted to the extent that their objective is to control the risk for the CCP.

2. A CCP shall ensure that the application of the criteria referred to in paragraph 1 is met on an on-going basis and shall have timely access to the information relevant for the assessment. A CCP shall conduct, at least once a year, a comprehensive review of the compliance with the provisions in this article by its clearing members.

3. Clearing members that clear transactions on behalf of their clients shall have the necessary additional financial resources and operational capacity to perform this activity. Clearing members shall, upon request, inform the CCP about the criteria and arrangements they adopt to allow their clients to access the services of the CCP.

4. A CCP shall have objective and transparent procedures for the suspension and orderly exit of clearing members that no longer meet the criteria referred to in paragraph 1.

5. A CCP may only deny access to clearing members meeting the criteria referred to in paragraph 1 where it is duly justified in writing and based on a comprehensive risk analysis.

6. A CCP may impose specific additional obligations on clearing members, such as, but not limited to, the participation in auctions of a defaulting clearing member's position. Such additional obligations shall be proportional to the risk brought by the clearing member and shall not restrict participation to certain categories of clearing members.

Article 36

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 and function 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 the competent authority.

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

3. A CCP shall publicly disclose the price information used to calculate its end of day exposures with its clearing members and, on a daily basis, the volumes of the cleared transactions for each class of instruments.

3a. A CCP shall publicly disclose the operational and technical requirements related to the communication protocols covering content and message formats it uses including those referred to in Article 8.

Article 37

Segregation (…)

1 A CCP shall keep separate records and accounts that shall enable it, at any time and without delay, to distinguish in accounts with the CCP the assets and positions held for the account of one clearing member from the assets and positions held for the account of any other clearing member and from its own assets.

2. A CCP shall keep records and accounts enabling each clearing member to distinguish in accounts (…) with the CCP, the assets and positions of that clearing member from those held for the accounts of its clients.

2a. Clearing members shall keep separate records and accounts enabling to distinguish in their accounts the assets and positions held for the account of their clients at the CCP from their own.

3. A CCP shall offer to keep separate records and accounts enabling each clearing member to distinguish in accounts held by the CCP, the assets and positions held for the account of a client from those held for the accounts of other clients ("individual client segregation"). Upon request, the CCP shall offer more detailed levels of segregation.

Clearing members shall offer individual client segregation in accounts with the CCP to their clients.

When a client opts for individual client segregation, any excess margin over and above the client's requirement should also be posted to the CCP and distinguished from other clients' or clearing members' margins and should not be exposed to losses connected to positions recorded in another account.

3a. The CCP and clearing members shall publicly disclose the levels of protection and the costs associated with the different levels of segregation they provide and offer these services under reasonable commercial terms.

4. Provided that the client has selected individual client segregation and has concluded a contract as referred to in Article 45 paragraph (4b), then Annex III, Part 2, point 6 of Directive 2006/48/EC shall apply.

5. *deleted*

5a. The CCP shall have a right of use related to the margins or default fund contributions collected via a security financial collateral arrangement provided that the use of such arrangements is foreseen by its operating rules. The CCP shall publicly disclose this right of use.

6a. The requirement to distinguish in accounts assets and positions with the CCP is satisfied if the following conditions are met:

(a) the assets and positions are recorded in separate accounts;

(b) the netting of positions recorded on different accounts is prevented;

(c) the assets covering the positions recorded in an account are not exposed to losses connected to positions recorded in another account.

6b. Assets refer to collateral held to cover positions and includes the right to the transfer of assets equivalent to that collateral or the proceeds of realisation of any collateral, but does not include default fund contributions.

Chapter 3

Prudential Requirements

Article 38

Exposure management

A CCP shall measure and assess its liquidity and credit exposures to each clearing member and, where relevant, to another CCP with whom it has concluded an interoperable arrangement, on a near to real time basis. A CCP shall have access in a timely manner and on a non discriminatory basis to the relevant pricing sources to effectively measure its exposures.

Article 39

Margin (…)

1. A CCP shall impose, call and collect margins to limit its credit exposures from its clearing members, and where relevant, from CCPs which have interoperable 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 be sufficient to cover losses that result from at least 99 per cent 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 which have interoperable arrangements, at least on a daily basis.

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. (…)

3. A CCP shall call and collect margins, on an intraday basis, at minimum when pre-defined thresholds are breached.

4. *deleted*

5. Powers are delegated to the Commission to adopt regulatory technical standards specifying the appropriate percentage and time horizons for the liquidation period and the calculation of historical volatility, as referred to in paragraph 1, to be considered for the different classes of financial instruments.

The regulatory technical standards referred to in the first subparagraph shall be adopted in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 [ESMA Regulation].

ESMA shall develop drafts for those regulatory technical standards in consultation with the members of the ESCB and other relevant authorities, and shall submit drafts to the Commission by 30 June 2012.

Article 40

Default fund (…)

1. To further limit its credit exposures to its clearing members, a CCP shall maintain a pre-funded default fund to cover losses that exceed the losses to be covered by margin requirements as referred to in Article 39, arising from the default, including the opening of an insolvency procedure, of one or more clearing members.

The CCP shall establish a minimum amount for the size of the default fund.

2. A CCP shall establish the minimum size of contributions to the default fund and the criteria to calculate the contributions of the single clearing members. The contributions shall be proportional to the exposures of each clearing member (…).

2a. The default fund shall at least enable the CCP to withstand, under extreme but plausible market conditions, the default of the clearing member to which it has the largest exposures or of the second and third largest clearing members, if the sum of their exposures is larger.

A CCP shall develop scenarios of extreme but plausible market conditions. The scenarios shall include the most volatile periods that have been experienced by the markets for which the CCP provides its services and a range of potential future scenarios. They shall take into account sudden sales of financial resources and rapid reductions in market liquidity.

3. A CCP may establish more than one default fund for the different classes of instruments it clears.

3a. Powers are delegated to the Commission to adopt regulatory technical standards specifying the framework that a CCP should use when defining extreme but plausible market conditions referred to in paragraph (2a), including governance, methodology and types of extreme but plausible market conditions.

The regulatory technical standards referred to in the first subparagraph shall be adopted in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010 [EBA Regulation].

ESMA shall develop drafts for those regulatory technical standards in consultation with the relevant Authorities and the members of the ESCB and EBA, and shall submit drafts to the Commission by 30 June 2012.

Article 41

Other financial resources

1. A CCP shall maintain sufficient available pre-funded financial resources to cover potential losses that exceed the losses to be covered by margin requirements as referred to in Article 39 and the default fund as referred to in Article 40. Such pre-funded financial resources shall include dedicated resources of the CCP. Such pre-funded financial resources shall be freely available to the CCP and shall not be used to meet the capital required under Article 12.

2. (…) The default fund referred to in Article 40 and the other financial resources referred to in paragraph 1 shall at all times enable the CCP to withstand the default of at least the two clearing members to which it has the largest exposures (…) under extreme but plausible market conditions.

3. *deleted*

4. A CCP may require non-defaulting clearing members to provide additional funds in the event of a default of another clearing member. The clearing members of a CCP shall have limited exposures toward the CCP.

5. *deleted*

Article 41a

Liquidity risk controls

1. A CCP shall at all times have access to adequate liquidity to perform its services and activities. To that end, it shall obtain the necessary credit lines or similar arrangements to cover its liquidity needs in case the financial resources at its disposal are not immediately available. A clearing member, parent undertaking or subsidiary of that clearing member together may not provide more than 25 per cent of the credit lines needed by the CCP.

   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 clearing members to which it has the largest exposures.

2. Powers are delegated to the Commission to adopt regulatory technical standards specifying the framework for managing the CCP's liquidity risk referred to in paragraph 1 that the CCP shall withstand.

   The regulatory technical standards referred to in the first subparagraph shall be adopted in accordance with Articles 10 to 14 of Regulation (EU) No1095/2010 [ESMA Regulation]. ESMA shall develop drafts for those regulatory technical standards in consultation with the relevant Authorities and the members of the ESCB, and shall submit drafts to the Commission by 30 June 2012.

Article 42

Default waterfall

1. A CCP shall use the margins posted by a defaulting clearing member prior to other financial resources in covering losses.

2. Where the margins posted by the defaulting clearing member are not sufficient to cover the losses incurred by the CCP, the CCP shall use the default fund contribution of the defaulting member to cover these losses.

3. A CCP shall use contributions to the default fund of the non defaulting clearing members (…) and any other financial resources referred to in Article 41 paragraph (1) only after having exhausted the contributions of the defaulting clearing member (…).

3a. A CCP shall use dedicated own resources before using the default fund contributions of non defaulting clearing members. A CCP shall not be allowed to use the margins posted by non-defaulting clearing members to cover the losses resulting from the default of another clearing member.

4a. Powers are delegated to the Commission to adopt regulatory technical standards specifying the methodology for calculation and maintenance of the amount of the CCP's own resources to be used in accordance with paragraph 3a.

The regulatory standards referred to in the first subparagraph shall be adopted in accordance with Articles 10 to 14 of Regulation EU 1095/2010 [ESMA Regulation].

ESMA shall develop drafts for those regulatory technical standards in consultation with the relevant authorities and with the members of the ESCB, and shall submit drafts to the Commission by 30 June 2012.

Article 43

Collateral requirements

1. A CCP, when collecting margins and default fund contributions, shall only accept highly liquid collateral with minimal credit and market risk to cover its exposure to its clearing members. It shall apply adequate haircuts to asset values that 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.

2. A CCP shall be able to satisfy the competent authority that when it accepts as collateral the underlying of the OTC derivative contract or of the financial instrument that originate the CCP exposure, such practice is operated in an appropriate and sufficiently prudent manner.

3. Powers are delegated to the Commission to adopt regulatory technical standards specifying the type of collateral that can be considered highly liquid, the haircuts, and the conditions under which commercial bank guarantees may be accepted as collateral referred to in paragraph 1.

   The regulatory technical standards referred to in the first subparagraph shall be adopted in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 [ESMA Regulation].

   ESMA shall develop drafts for those regulatory technical standards in consultation with the relevant Authorities and the members of the (…) ESCB, and shall submit drafts (…) to the Commission by 30 June 2012.

Article 44

Investment policy

1. A CCP shall only invest its financial resources in cash or in highly liquid financial instruments with minimal market and credit risk. The investments shall be capable of being liquidated rapidly with minimal adverse price effect.

1a. The amount of capital including retained earnings and reserves of a CCP, which are not invested according to paragraph 1, shall not be taken into account for the purposes of Article 12 paragraph (2) and Article 42 paragraph (3a).

2. Financial instruments posted as margins or as default fund contributions shall, where available, be deposited with operators of securities settlement systems that ensure the full protection of those instruments. Alternatively, other highly secure arrangements with authorised financial institutions may be used.

2a. The CCP shall ensure that the assets that are deposited by clearing members in accordance with paragraph 2, are identifiable separately from the assets belonging to the CCP and from assets belonging to the operator of a securities settlement system or an authorised financial institution, by means of differently titled accounts on the books of the third party or other any equivalent measures that achieve the same level of protection.

A CCP shall have prompt access to the financial instruments when required.

3. A CCP shall not invest its capital or the sums arising from the requirements referred to in Articles 39, 40, 41 or 41a in its own securities or those of its parent or subsidiary undertaking.

4. A CCP shall take into account its overall credit risk exposures to individual obligors in making its investment decision and shall ensure that its overall risk exposure to any individual obligor remains within acceptable concentration limits.

5. Powers are delegated to the Commission to adopt regulatory technical standards specifying the financial instruments that can be considered highly liquid, bearing minimal credit and market risk as referred to in paragraph 1, the highly secured arrangements referred to in paragraph 2 and the concentration limits referred to in paragraph 4.

The regulatory technical standards referred to in the first subparagraph shall be adopted in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 [ESMA Regulation].

ESMA shall develop drafts for those regulatory technical standards in consultation with the relevant Authorities and with the members of the ESCB and shall submit drafts to the Commission by 30 June 2012.

Article 45

Default procedures and portability

1. A CCP shall have procedures in place to be followed where a clearing member does not comply with the participation requirements of the CCP within the time limit and according to the procedures established by the CCP. The CCP shall outline the procedures to be followed in the event the default of a clearing member is not declared by the CCP.

2. A CCP shall take prompt action to contain losses and liquidity pressures resulting from defaults and shall ensure that the closing out of any clearing member's positions does not disrupt its operations or expose the non-defaulting clearing members to losses that they cannot anticipate or control.

3. The CCP shall promptly inform the competent authority where it considers that the clearing member will not be able to meet its future obligations and before the default procedure is declared or triggered. That competent authority shall immediately communicate this information to the relevant members of the ESCB and the authority responsible for the supervision of the defaulting clearing member.

4. A CCP shall establish that its default procedures are enforceable. It shall take all the reasonable steps to ensure that it has the legal powers to liquidate the proprietary positions of the defaulting clearing member and to transfer or liquidate the clients' positions of the defaulting clearing member.

4a. 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 37 paragraph (2), the CCP shall contractually commit itself to trigger the procedures for the transfer of the assets and positions held by the defaulting clearing member for the accounts of the clients to another clearing member designated by all of those clients, on their request and without the consent of the defaulting clearing member. That other clearing member shall only be obliged to accept these assets and positions where it has previously entered into a contractual relationship with the clients by which it has committed itself to do so. If the transfer to that other clearing member has not taken place for any reason within a predefined transfer period specified in its operating rules, the CCP may take all steps permitted by its rules to actively manage its risks in relation to those positions, including liquidating the assets and positions held by the defaulting clearing member for the account of its clients.

4b. 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 37 paragraph (3) ("individual client segregation"), the CCP shall 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 him, on its request and without the consent of the defaulting clearing member. That other clearing member shall only be obliged to accept these assets and positions 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 its clients.

4c. Clients' collateral distinguished in accordance with Article 37 paragraphs (2) and (3) shall be used exclusively to cover the positions held for their account. Any balance owed by the CCP after the completion of the clearing member's default management process by the CCP shall be readily returned to these clients when they are known to the CCP or, if they are not, to the clearing member for the accounts of their clients.

4d. Member States shall ensure that nothing in their respective national legal, regulatory and administrative framework prevents a full and swift compliance by the relevant parties with the requirements set out in paragraphs 4a, 4b and 4c.

Article 46

Review of models, stress testing and back testing

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 inform the competent authority of the results of the tests performed. It shall obtain independent validation and subject any significant change to the models and parameters to review by the competent authority before adopting the change. The models and parameters, including any significant change thereto, shall be subject to an opinion of the college referred to in Article 15.

2. A CCP shall regularly test the key aspects of its default procedures and take all the reasonable steps to ensure that all clearing members understand them and have appropriate arrangements in place to respond to a default event.

3. A CCP shall publicly disclose key information on its risk management model and assumptions adopted to perform the stress tests referred to in paragraph 1.

4. Powers are delegated to the Commission to adopt regulatory technical standards specifying the following:

   (a) the type of tests to be undertaken for different classes of financial instruments and portfolios;

   (b) the involvement of clearing members or other parties in the tests;

   (c) the frequency of tests;

   (d) the time horizons of tests;

   (e) the key information referred to in paragraph 3.

The regulatory technical standards referred to in the first subparagraph shall be adopted in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 [ESMA Regulation].

ESMA shall develop drafts for those regulatory technical standards in consultation with the relevant Authorities and the members of the ESCB and shall submit drafts to the Commission by 30 June 2012.

Article 47

Settlement

1. A CCP shall, where practicable and available, use central bank money to settle its transactions. Where central bank money is not used, steps shall be taken to strictly limit credit and liquidity risks.

2. A CCP shall clearly state its obligations with respect to deliveries of financial instruments, including whether it has an obligation to make or receive delivery of a financial instrument or whether it indemnifies participants for losses incurred in the delivery process.

3. Where a CCP has an obligation to make or receive deliveries of financial instruments, the CCP shall eliminate principal risk through the use of delivery-versus-payment mechanisms to the extent possible.

Title V

Interoperability arrangements

Article 48

Interoperability Arrangements

1. A CCP may enter into an interoperability arrangement with another CCP, where the requirements under Articles 49, 49a and 50 are fulfilled.

2. When establishing an interoperability arrangement with another CCP for the purpose of providing services to a particular venue of execution, the CCP shall have non discriminatory access to the data that it needs for the performance of its functions from that particular venue of execution to the extent that the CCP complies with the operational and technical requirements established by the venue and to the relevant settlement system.

3. Entering into an interoperability arrangement or accessing a data feed or a settlement system referred to in paragraphs 1 and 2 shall only be rejected or restricted, directly or indirectly, to control any risk arising from that arrangement or access.

Article 49

Risk management

1. CCPs that enter into an interoperability arrangement shall:

   (a) put in place adequate policies, procedures and systems to effectively identify, monitor and manage the (…) risks arising from the arrangement so that they can meet their obligations in a timely manner;

   (b) agree on their respective rights and obligations, including the applicable law governing their relationships;

   (c) identify, monitor and effectively manage credit and liquidity risks so that a default of a clearing member of one CCP does not affect an interoperable CCP;

(d) identify, monitor and address potential interdependences and correlations that arise from an interoperability arrangement that may affect credit and liquidity risks related to clearing member concentrations, and pooled financial resources.

For the purposes of point (b), CCPs shall use the same rules concerning moment of entry of transfer orders into their respective systems and the moment of irrevocability, as set out in Directive 98/26/EC where relevant.

For the purposes of point (c), the terms of the arrangement shall outline the process for managing the consequences of the default where one of the CCPs with which an interoperability arrangement has been concluded is in default.

For the purposes of point (d), CCPs shall have robust controls over the re-use of clearing members' collateral under the arrangement , if permitted by its competent authorities. The arrangement shall outline how these risks have been addressed taking into account sufficient coverage and need to limit contagion.

2. Where the risk management models used by the CCPs to cover their exposure to their clearing members or their reciprocal exposures are different, the CCPs shall identify those differences, assess risks that may arise there from and take measures, including securing additional financial resources, that limit their impact on the interoperability arrangement as well as their potential consequences in terms of contagion risks and ensure that these differences do not affect each CCP's ability to manage the consequences of the default of a clearing member.

Any associated costs that arise from paragraphs 1 and 2 shall be borne by the CCP requesting interoperability or access.

Article 49a

Provision of margins between CCPs

1. A CCP shall distinguish in accounts the assets and positions held for the account of CCPs with whom it has entered into an interoperability arrangement.

2. If a CCP that enters into an interoperability arrangement with another CCP only provides initial margins to that CCP under a security financial collateral arrangement, the receiving CCP shall have no right of use over the margins provided by the other CCP.

3. Collateral received in the form of financial instruments shall be deposited with operators of securities settlement systems notified under Directive 98/26/EC.

4. The assets referred to in paragraphs 1 and 2 shall be available to the receiving CCP only in case of default of the CCP which has provided the collateral in the context of an interoperability arrangement.

5. In case of default of the CCP which has received the collateral in the context of an interoperability arrangement, the collateral referred to in paragraphs 1 and 2 shall be readily returned to the providing CCP.

Article 50

Approval of interoperability arrangement

1. An interoperability arrangement shall be subject to the prior approval of the competent authorities of the CCPs involved. The procedure under Article 13 shall apply.

2. The competent authorities shall only grant approval of the interoperability arrangement, where the requirements set out in Articles 49 and 49a 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 that the arrangement does not undermine the effectiveness of supervision.

3. Prior to making a decision, a competent authority evaluating whether the requirements set out in paragraph 2 are (…) met, (...) shall provide explanations in writing regarding its risk considerations to the other competent authorities, the relevant members of the ESCB and the CCPs involved. It shall also notify ESMA. If necessary, ESMA shall facilitate the mediation between the competent authorities in accordance with its settlement of disagreement powers under Article 19 of Regulation (EU) No 1095/2010 [ESMA Regulation].

4. By 30 June 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 [ESMA Regulation].

ESMA shall develop drafts for those guidelines or recommendations in consultation with the members of the ESCB.

Title VI

Registration and supervision of trade repositories

Chapter 1

Conditions and Procedures for Registration of a Trade Repository

Article 51

Registration of a Trade Repository

1. A trade repository shall register with ESMA for the purposes of Article 7.

2. In order to be registered, a trade repository shall be a legal person established in the Union and meet the requirements of Title VII.

3. The registration of a trade repository shall be effective for the entire territory of the Union.

4. A registered trade repository shall comply at all times with the (…) conditions for registration. A trade repository shall, without undue delay, notify ESMA of any material changes to the conditions for registration.

Article 52

Application for registration

1. A trade repository shall submit an application for registration ESMA.

2. ESMA shall assess whether the application is complete within thirty working days of receipt of the application.

   Where the application is not complete, ESMA shall set a deadline by which the trade repository is to provide additional information.

   After assessing an application as complete, ESMA shall notify the trade repository accordingly.

3. Powers are delegated to the Commission to adopt regulatory technical standards specifying the details of the application for registration to ESMA referred to in paragraph 1.

The regulatory technical standards referred to in the first subparagraph shall be adopted in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 [ESMA Regulation].

ESMA shall develop drafts for those regulatory technical standards in consultation with the members of the ESCB, and shall submit drafts to the Commission by 30 June 2012.

Article 52a

Notification of and consultation with competent authorities prior to registration

1. If a trade repository which is applying for registration is an entity which is authorised or registered by a competent authority in the Member State where it is established, ESMA shall, without undue delay, notify and consult with this competent authority prior to the registration of the trade repository.

2. ESMA and the relevant competent authority shall exchange all information that is necessary for the registration of the trade repository as well as for the supervision of the entity's compliance with the conditions of its registration or authorisation in the Member State where it is established.

Article 53

Examination of the application

1. ESMA shall, within forty working days from the notification referred to in the third subparagraph of Article 52 paragraph (2) examine the application for registration based on the compliance of the trade repository with the requirements set out in Articles 64 to 67 and adopt a fully reasoned Decision for registration or refusal.

2. The Decision issued by ESMA pursuant to paragraph 1 shall take effect on the fifth working day following its adoption.

Article 54

Notification of the Decision

1. Where ESMA adopts a Decision to register, refuse registration or withdraw registration, it shall notify the trade repository within 5 working days with a fully reasoned explanation of its Decision.

   ESMA shall, without undue delay, notify the relevant competent authority referred to in Article 52a(1) of its Decision.

2. ESMA shall communicate any Decision referred to in paragraph 1 to the Commission.

3. ESMA shall publish on its website a list of trade repositories registered in accordance with this Regulation. That list shall be updated within 5 working days following the adoption of a Decision referred to in paragraph 1.

Article 54a

Withdrawal of registration

1. Without prejudice to Article 55a, ESMA shall withdraw the registration of a trade repository in any of the following circumstances:

   (a) the trade repository has not made use of the registration within 12 months, expressly renounces the registration or has provided no services or performed no activity for the preceding six months;

   (b) the trade repository has obtained the registration by making false statements or by any other irregular means;

   (c) the trade repository no longer meets the conditions under which it was registered.

1a. ESMA shall, without undue delay, notify the relevant competent authority referred to in Article 52a(1) of a decision to withdraw the registration of a trade repository.

2. The competent authority of a Member State in which the trade repository performs its services and activities and which considers that one of the conditions referred to in paragraph 1 has been met, may request ESMA to examine whether the conditions for the withdrawal of registration of the trade repository concerned are met. Where ESMA decides not to withdraw the registration of the trade repository concerned, it shall provide full reasons.

3. For the purpose of this Chapter, and without other information from the relevant Member State to ESMA, the competent authority shall be the same authority as the one designated under Article 18.

Article 54b

Supervisory fees

1. ESMA shall charge fees to the trade repositories. Those fees shall fully cover ESMA's expenditure relating to the registration and supervision of trade repositories.

2. The amount of a fee charged to a trade repository shall cover all administrative costs incurred by ESMA for its registration and supervision activities and be proportionate to the turnover of the trade repository concerned.

3. The Commission shall, by means of delegated acts further specify the type of fees, the matters for which fees are due, the amount of the fees and the way in which they are to be paid.

Article 55 Fines (deleted)

Article 56 Periodic penalty payments (deleted)

Article 57 Hearing of the persons concerned (deleted)

Article 58 Provisions common to fines and periodic penalty payments (deleted)

Article 59 Review by the court of justice (deleted)

Article 60 Withdrawal of registration (deleted)

Article 61 Surveillance of trade repositories (deleted)

Article 55a

Supervisory measures by ESMA

1. Where, in accordance with Article 56d paragraph (5), ESMA's Board of Supervisors finds that a trade repository has committed one of the infringements listed in Annex I, it shall take one or more of the following decisions:

   (a) as a last resort withdraw the registration of the trade repository;

   (b) require the trade repository to bring the infringement to an end and impose fines;

   (c) issue public notices.

2. When taking the decisions referred to in paragraph 1, ESMA's Board of Supervisors shall take into account the nature and seriousness of the infringement, having regard to the following criteria:

   (a) the duration and frequency of the infringement;

   (b) whether the infringement has revealed serious or systemic weaknesses in the undertaking's procedures or in the management systems or internal controls;

   (c) whether financial crime was facilitated, occasioned or otherwise attributable to the infringement;

   (d) whether the infringement has been committed intentionally or negligently.

3. Without undue delay, ESMA's Board of Supervisors shall notify any decision adopted pursuant to paragraph 1, to the trade repository concerned, and shall communicate it to the competent authorities of the Member States, and to the Commission. It shall publicly disclose any such decision on its website within 10 working days from the date when it was adopted.

4. When making public its decision as referred to in the first subparagraph, ESMA's Board of Supervisors shall also make public the right for the trade repository concerned to appeal the decision, the fact, where relevant, that such an appeal has been lodged, specifying that such an appeal does not have suspensive effect, and the fact that it is possible for the Board of Appeal to suspend the application of the contested decision in accordance with Article 60(3) of Regulation (EU) No 1095/2010.

Article 55b

Fines

1. Where, in accordance with Article 56d(5), ESMA's Board of Supervisors finds that a trade repository has intentionally or negligently committed one of the infringements listed in Annex I, it shall adopt a decision imposing a fine in accordance with paragraph 2.

   An infringement by a trade repository shall be considered to have been committed intentionally if ESMA has discovered objective elements which demonstrate that the trade repository or its senior management acted deliberately to commit the infringement.

2. The basic amounts of the fines referred to in paragraph 1 shall be included within the following limits:

   – for the infringements referred to in point (a) of Section I of Annex I and in points (c), (d), (e), (f), (g), (i) of Section II of Annex I, and in points (a) and (b) of Section III of Annex I the amounts of the fines shall be at least EUR 10,000 and shall not exceed EUR 20,000;

– for the infringements referred to in points (c), (d), (e), (f), (g), (h), (i) of Section I of Annex I, and in points (a), (b), (h) of Section II of Annex I, the amounts of the fines shall be at least EUR 5,000 and shall not exceed EUR 10,000.

In order to decide whether the basic amount of the fines should be at the lower, the middle or the higher end of the limits set out in the first subparagraph, ESMA shall have regard to the annual turnover of the preceding business year of the trade repository concerned. The basic amount shall be at the lower end of the limit for trade repositories whose annual turnover is below EUR 1 million, the middle of the limit for the trade repository whose turnover is between EUR 1 and 5 million and the higher end of the limit for the trade repository whose annual turnover is higher than EUR 5 million.

3. The basic amounts set out in paragraph 2 shall be adjusted, if need be, by taking into account aggravating or mitigating factors in accordance with the relevant coefficients set out in Annex II.

The relevant aggravating coefficient shall be applied one by one to the basic amount. If more than one aggravating coefficient is applicable, the difference between the basic amount and the amount resulting from the application of each individual aggravating coefficient shall be added to the basic amount.

The relevant mitigating coefficient shall be applied one by one to the basic amount. If more than one mitigating coefficient is applicable, the difference between the basic amount and the amount resulting from the application of each individual mitigating coefficient shall be subtracted from the basic amount.

4. Notwithstanding paragraphs 2 and 3, the amount of the fine shall not exceed 20% of the annual turnover of the trade repository concerned in the preceding business year but, where the trade repository has directly or indirectly benefitted financially from the infringement, the amount of the fine shall be at least equal to that benefit.

Where an act or omission of a trade repository constitutes more than one infringement listed in Annex I, only the higher fine calculated in accordance with paragraphs 2 and 3 and related to one of those infringements shall apply.

Article 55c

Periodic penalty payments

1. ESMA's Board of Supervisors shall by decision impose periodic penalty payments in order to compel:

   (a) a trade repository to put an end to an infringement, in accordance with a decision taken pursuant to Article 55a paragraph (1) point (b);

   (b) a person referred to in Article 57a paragraph (1) to supply complete information which has been requested by a decision pursuant to Article 57b;

   (c) a person referred to in Article 57a paragraph (1) to submit to an investigation and in particular to produce complete records, data, procedures or any other material required and to complete and correct other information provided in an investigation launched by decision taken pursuant to Article 57b;

   (d) a person referred to in Article 57a paragraph (1) to submit to an on-site inspection ordered by a decision taken pursuant to Article 57c.

2. The periodic penalty payments shall be effective and proportionate. The amount of the periodic penalty payments shall be imposed for each day of delay.

3. Notwithstanding paragraph 2, the amount of the periodic penalty payments shall be 3% of the average daily turnover in the preceding business year, or, in case of natural persons, 2% of the average daily income in the preceding calendar year. It shall be calculated from the date stipulated in the decision imposing the periodic penalty payment.

4. A periodic penalty payment may be imposed for a period of no more than six months following the notification of ESMA's decision. After 6 months ESMA shall consider the measures set out in Article 55a paragraph (1) point (a).

Article 56a

Disclosure, nature, enforcement and allocation of fines and periodic penalty payments

1. ESMA shall disclose to the public every fine and periodic penalty payment that has been imposed pursuant to Articles 55b and 55c, unless such disclosure to the public would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

2. Fines and periodic penalty payments imposed pursuant to Articles 55b and 55c shall be of an administrative nature.

3. Fines and periodic penalty payments imposed pursuant to Articles 55b and 55c shall be enforceable.

Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out. The order for its enforcement shall be appended to the decision without other formality than verification of the authenticity of the decision by the authority which the government of each Member State shall designate for that purpose and shall make known to ESMA and to the Court of Justice of the European Union.

When those formalities have been completed on application by the party concerned, the latter may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent body.

Enforcement may be suspended only by a decision of the Court of Justice of the European Union. However, the courts of the Member State concerned shall have jurisdiction over complaints that enforcement is being carried out in an irregular manner.

4. The amounts of the fines and periodic penalty payments shall be allocated to the general budget of the European Union.

Article 56b

Review by the Court of Justice of the European Union

The Court of Justice of the European Union shall have unlimited jurisdiction to review decisions whereby ESMA has imposed a fine or a periodic penalty payment. It may annul, reduce or increase the fine or periodic penalty payment imposed.

Article 56c

Hearing of the persons concerned before supervisory measures, fines and/or penalty payments are imposed

1. Before taking any decision provided for in Article 55a paragraph (1), ESMA's Board of Supervisors shall give the persons subject to the proceedings the opportunity to be heard on the matters to which ESMA has taken objection. ESMA's Board of Supervisors shall base its decisions only on objections on which the parties concerned have been able to comment.

   The first subparagraph does not apply if urgent action is needed in order to prevent significant and imminent damage to the financial system. In such a case ESMA's Board of Supervisors may adopt an interim decision and shall give the persons concerned the opportunity to be heard as soon as possible after having taken its decision.

2. Before taking any decision imposing a fine and/or periodic penalty payment as provided for in Article 55b and points (a) to (d) of Article 55c paragraph (1), ESMA's Board of Supervisors shall give the persons subject to the proceedings the opportunity to be heard on the matters to which ESMA has taken objection. ESMA's Board of Supervisors shall base its decisions only on objections on which the persons concerned have been able to comment.

3. The rights of defence of the persons concerned shall be fully respected in the proceedings. They shall be entitled to have access to ESMA's file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information including internal preparatory documents of ESMA.

Article 56d

Procedural rules for taking supervisory measures and imposing fines

1. Where, in carrying out its duties under this Regulation, ESMA finds that there are serious indications of the possible existence of facts liable to constitute one or more of the infringements listed in Annex I, ESMA shall appoint an independent investigation officer within ESMA to investigate the matter. The appointed officer shall not be involved or have been involved in the direct or indirect supervision or registration process of the trade repository concerned and shall perform his functions independently from the Board of Supervisors.

2. The investigation officer shall investigate the alleged infringements, taking into account any comments submitted by the persons who are subject to the investigations, and shall submit a complete file with his findings to the Board of Supervisors.

   In order to carry out his tasks, the investigation officer may exercise the power to request information in accordance with Article 57a and to conduct investigations and on-site inspections in accordance with Articles 57b and 57c. When using those powers, the investigation officer shall comply with Article 56e.

   Where carrying out his tasks, the investigation officer shall have access to all documents and information gathered by ESMA in its supervisory activities.

3. Upon completion of his investigation and before submitting the file with his findings to the Board of Supervisors, the investigation officer shall give the persons subject to the investigations the opportunity to be heard on the matters being investigated. The investigation officer shall base his findings only on facts on which the persons concerned have been able to comment.

   The rights of defence of the persons concerned shall be fully respected during the investigations.

4. When submitting the file with his findings to the Board of Supervisors, the investigation officer shall notify that fact to the persons who are subject to the investigations. The persons subject to the investigations shall be entitled to have access to the file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information affecting third parties.

5. On the basis of the file containing the investigation officer's findings and, when requested by the persons concerned, after having heard the persons subject to the investigations in accordance with Articles 56c paragraph (1) and 56c paragraph (2), the Board of Supervisors shall decide if one or more of the infringements listed in Annex I has been committed by the persons who have been subject to the investigations, and in such case, shall take a supervisory measure in accordance with Article 55a and impose a fine in accordance with Article 55b.

6. The investigation officer shall not participate in the deliberations of the Board of Supervisors or in any other way intervene in the decision-making process of the Board of Supervisors.

7. The Commission shall adopt further rules of procedure for the exercise of the power to impose fines or periodic penalty payments, including provisions on rights of defence, temporal provisions, and the collection of fines or periodic penalty payments, and shall adopt detailed rules on the limitation periods for the imposition and enforcement of penalties.

These rules shall be adopted by means of delegated acts under Article 290 TFEU.

8 ESMA shall refer matters for criminal prosecution to the relevant national authorities where, in carrying out its duties under this Regulation, it finds that there are serious indications of the possible existence of facts liable to constitute criminal offences. In addition, ESMA shall refrain from imposing fines or periodic penalty payments where a prior acquittal or conviction arising from identical fact or facts which are substantially the same has already acquired the force of res judicata as the result of criminal proceedings under national law.

Article 56e

Exercise of the powers referred to in Articles 57a to 57c

The powers conferred on ESMA or any official of or other person authorised by ESMA by Articles 57a to 57c shall not be used to require the disclosure of information or documents which are subject to legal privilege.

Article 57a

Request for information

1. ESMA may by simple request or by decision require trade repositories, and related third parties, third parties to whom the trade repositories have outsourced operational functions or activities to provide all information that is necessary in order to carry out its duties under this Regulation.

2. When sending a simple request for information under paragraph 1, ESMA shall:

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

(b) state the purpose of the request;

(c) specify what information is required;

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

(e) inform the person from whom the information is requested that he is not obliged to provide the information but that in case of a voluntary reply to the request the information provided must be correct and not misleading;

(f) indicate the fine provided for in Article 55b in conjunction with point (a) of Section IV of Annex I where the answers to questions asked are incorrect or misleading.

3. When requiring to supply information under paragraph 1 by decision, ESMA shall:

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

(b) state the purpose of the request;

(c) specify what information is required;

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

(e) indicate the periodic penalty payments provided for in Article 55c where the production of the required information is incorrect or misleading

(f) indicate the fine provided for in Article 55b in conjunction with point (a) of Section IV of Annex I, where the answers to questions asked are incomplete, incorrect or misleading; and

(g) indicate the right to appeal the decision before ESMA's Board of appeal and to have the decision reviewed by the Court of Justice of the European Union in accordance with Articles 60 and 61 of Regulation (EU) No 1095/2010 ESMA.

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 on their behalf. Lawyers duly authorised to act may supply the information on behalf of their clients. The latter shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.

5. ESMA shall, without delay, send a copy of the simple request or of its decision to the competent authority of the Member State where the person referred to in paragraph 1 concerned by the request for information is situated.

Article 57b

General investigations

1. In order to carry out its duties under this Regulation, ESMA may conduct the necessary investigations of persons referred to in article 57a paragraph (1). To that end, the officials and other persons authorised by ESMA shall be empowered to:

   (a) examine any records, data, procedures and any other material relevant to the execution of its tasks irrespective of the medium on which they are stored;

   (b) take or obtain certified copies of or extracts from such records, data, procedures and other material;

   (c) summon and ask any person referred to in Article 57a(1) or their representatives or staff for oral or written explanations on facts or documents related to the subject matter and purpose of the inspection and to record the answers;

   (d) interview any other natural or legal person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation.

2. The officials and other persons authorised by ESMA for the purposes of the investigations referred to in paragraph 1 shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the investigation. That authorisation shall also indicate the periodic penalty payments provided for in Article 55c where the production of the required records, data, procedures or any other material, or the answers to questions asked to persons referred to in Article 57a paragraph (1) are not provided or incomplete, and the fines provided for in Article 55b in conjunction with point (b) of Section IV of Annex I, where the answers to questions asked to persons referred to in Article 57a paragraph (1) are incorrect or misleading.

3. The persons referred to in Article 57a paragraph (1) are required to submit to investigations launched by decision of ESMA. The decision shall specify the subject matter and purpose of the investigation, the periodic penalty payments provided for in Article 55c, the legal remedies available under Regulation (EU) No 1095/2010 ESMA and the right to have the decision reviewed by the Court of Justice of the European Union.

4. In good time before the investigation, ESMA shall inform the competent authority of the Member State where the investigation is to be carried out of the investigation and of the identity of the authorised persons. Officials of the competent authority concerned shall, upon the request of ESMA, assist those authorised persons in carrying out their duties. Officials of the competent authority concerned may also attend the investigations on request.

Article 57c

On-site inspections

1. In order to carry out its duties under this Regulation, ESMA may conduct all necessary on-site inspections at any business premises of the legal persons referred to in Article 57a paragraph (1). Where the proper conduct and efficiency of the inspection so require, ESMA may carry out the on-site inspection without prior announcement.

2. The officials and other persons authorised by ESMA to conduct an on-site inspection may enter any business premises, and land of the legal persons subject to an investigation decision adopted by ESMA and shall have all the powers stipulated in Article 57b (paragraph 1). They shall also have the power to seal any business premises and books or records for the period of, and to the extent necessary for, the inspection.

3. The officials and other persons authorised by ESMA to conduct an on-site inspection shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the inspection, and the periodic penalty payments provided for in Article 55c where the persons concerned do not submit to the inspection. In good time before the inspection, ESMA shall give notice of the inspection to the competent authority of the Member State where it is to be conducted.

4. The persons referred to in Article 57a paragraph (1) are required to submit to on-site inspections ordered by decision of ESMA. The decision shall specify the subject matter and purpose of the inspection, appoint the date on which it is to begin and indicate the periodic penalty payments provided for in Article 55c, the legal remedies available under Regulation (EU) No 1095/2010 [ESMA] as well as the right to have the decision reviewed by the Court of Justice of the European Union. ESMA shall take such decisions after consulting the competent authority of the Member State where the inspection is to be conducted.

5. Officials of, as well as those authorised or appointed by, the competent authority of the Member State where the inspection is to be conducted shall, at the request of ESMA, actively assist the officials and other persons authorised by ESMA. To that end, they shall enjoy the powers set out in paragraph 2. Officials of the competent authority of the Member State concerned may also attend the on-site inspections on request.

6. ESMA may also require competent authorities to carry out specific investigatory tasks and on-site inspections as provided for in this Article and in Article 57b paragraph (1) on its behalf. To that end, competent authorities shall enjoy the same powers as ESMA as set out in this Article and in Article 57b paragraph (1).

7. Where the officials and other accompanying persons authorised by ESMA find that a person opposes an inspection ordered pursuant to this Article, the competent authority of the Member State concerned shall afford them the necessary assistance, requesting, where appropriate, the assistance of the police or of an equivalent enforcement authority, so as to enable them to conduct their on-site inspection.

8. If the on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7 requires authorisation by a judicial authority according to national rules, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

9. Where authorisation as referred to in paragraph 8 is applied for, the national judicial authority shall control that the ESMA decision is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the inspection. In its control of the proportionality of the coercive measures, the national judicial authority may ask ESMA for detailed explanations. Such a request for detailed explanations may in particular relate to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place, as well as to the seriousness of the suspected infringement and the nature of the involvement of the person who is subjected to the coercive measures. However, the national judicial authority may not review the necessity for the inspection or demand to be provided with the information on ESMA's file. The lawfulness of ESMA's decision shall be subject to review only by the Court of Justice of the European Union following the procedure set out in Regulation (EU) No 1095/2010 [ESMA Regulation].

Article 57d

Delegation of tasks by ESMA to competent authorities

1. Where it is necessary for the proper performance of a supervisory task, ESMA may delegate specific supervisory tasks to the competent authority of a Member State in accordance with the guidelines issued by ESMA pursuant to Article 8 of Regulation EU 1095/2010 [ESMA Regulation]. Such specific supervisory tasks may, in particular, include the power to carry out requests for information in accordance with Article 57a and to conduct investigations and on-site inspections in accordance with Article 57b and Article 57c paragraph (6).

2. Prior to delegation of a task, ESMA shall consult the relevant competent authority. Such consultation shall concern:

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

(b) the timetable to perform the task; and

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

3. In accordance with the regulation on fees adopted by the Commission pursuant to Article 54b paragraph (2), ESMA shall reimburse a competent authority for costs incurred as a result of carrying out delegated tasks.

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

A delegation of tasks shall not affect the responsibility of ESMA and shall not limit ESMA's ability to conduct and oversee the delegated activity. Supervisory responsibilities under this Regulation, including registration decisions, final assessments and follow-up decisions concerning infringements shall not be delegated.

Article 61d

Amendments to Annexes

In order to take account of developments on financial markets the Commission may adopt, by means of delegated acts in accordance with articles 10 to 14 of Regulation EU 1095/2010 [ESMA Regulation], measures to amend the Annexes, excluding Annex I.

Chapter 2

Relations with third countries

Article 62

Equivalence and international agreements

1. The Commission may adopt implementing act determining that the legal and supervisory arrangements of a third country ensure that:

   (a) trade repositories authorised in that third country comply with legally binding requirements which are equivalent to the requirements set out in this Regulation;

   (b) effective supervision and enforcement of trade repositories takes place in that third country on an ongoing basis; and

   (c) *deleted*

   (d) guarantees of professional secrecy exist, including the protection of business secrets shared with third parties by the authorities, and they are at least equivalent to those set out in this Regulation. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 69.

2. Where appropriate, and in any case after adopting an implementing act as referred to in paragraph 1, the Commission shall submit recommendations to the Council for the negotiation of international agreements with the relevant third countries regarding mutual access to, and exchange of, information on derivative contracts held in trade repositories which are established in that third country, in a way that ensures that Union authorities, including ESMA, have immediate and continuous access to all the information needed for the exercise of their duties.

3. After conclusion of the agreements referred to in paragraph 2, and in accordance with them, ESMA shall establish cooperation arrangements with the competent authorities of the relevant third country. Those arrangements shall specify at least:

(a) a mechanism for the exchange of information between, on one side, ESMA and any other Union authorities that exercise responsibilities in accordance with this Regulation and, on the other side, the relevant competent authorities of third countries concerned; and

(b) procedures concerning the coordination of supervisory activities.

4. With regard to transfer of personal data to a third country, ESMA shall apply Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

Article 63

Recognition of Trade Repositories

1. A trade repository established in a third country may provide its services and activities to entities established in the Union for the purposes of Article 7 only after its recognition by ESMA in accordance with the procedure established in paragraph 2.

2. A trade repository referred to in paragraph 1 shall submit to ESMA its application for recognition together with all necessary information, including at least the information necessary to verify that the trade repository is authorised and subject to effective supervision in a third country which:

(a) has been recognised by the Commission, by means of an implementing act as referred to in Article 62(1) as having an equivalent and enforceable regulatory and supervisory framework; and

(b) has entered into an international agreement with the Union pursuant to Article 62(2); and

(c) has established co-operation arrangements with the Union pursuant to Article 62(3) to ensure that Union authorities, including ESMA, have immediate and continuous access to all the necessary information.

Within 30 working days of receipt of the application, ESMA shall assess whether the application is complete. If the application is not complete, ESMA shall set a deadline by which the applicant trade repository has to provide additional information.

Within 180 working days of the submission of a complete application, ESMA shall inform the applicant trade repository in writing with a fully reasoned explanation whether the recognition has been granted or refused.

ESMA shall publish on its website a list of the trade repositories recognised in accordance with this Regulation.

Title VII

Requirements for trade repositories

Article 64

General requirements

1. A trade repository shall have robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility and adequate internal control mechanisms, including sound administrative and accounting procedures, which prevent the disclosure of confidential information.

1a. A TR shall maintain and operate effective written organisational and administrative arrangements to identify and manage any potential conflicts of interest between itself, including its managers, employees, or any person directly or indirectly linked to them by control or close links.

2. A trade repository shall establish adequate policies and procedures sufficient to ensure its compliance, including of its managers and employees with all the provisions of this Regulation.

3. A trade repository shall maintain and operate an adequate organisational structure to ensure continuity and orderly functioning of the trade repository in the performance of its services and activities. It shall employ appropriate and proportionate systems, resources and procedures.

3a. Should a trade repository offer any ancillary services, such as but not limited to, trade confirmation, trade matching, credit event servicing, portfolio reconciliation or portfolio compression services, those ancillary services will be operationally separate from the trade repository's function of centrally collecting and maintaining records of derivatives.

4. The senior management and members of the board of a trade repository shall be of sufficiently good repute and experience so as to ensure the sound and prudent management of the trade repository.

5. A trade repository shall have objective, non-discriminatory and publicly disclosed requirements for access by services providers and undertakings subject to the reporting obligation under Article 7. A trade repository shall grant third party service providers non-discriminatory access to information maintained by the trade repository, on condition that the entity providing the data and the relevant counterparties have provided their consent. Criteria that restrict access shall only be permitted to the extent that their objective is to control the risk to the data maintained by a trade repository.

6. A trade repository shall publicly disclose the prices and fees associated with services provided under this Regulation. It shall disclose the prices and fees of each service and function provided separately, including discounts and rebates and the conditions to benefit from those reductions. It shall allow reporting entities to access specific services separately. The prices and fees charged by a trade repository shall be cost-related.

Article 65

Operational reliability

1. A trade repository shall identify sources of operational risk and minimise them through the development of appropriate systems, controls and procedures. Such systems shall be reliable and secure, and have adequate capacity to handle the information received.

2. A trade repository shall establish, implement and maintain an adequate business continuity policy and disaster recovery plan aiming at ensuring the preservation of its functions, the timely recovery of operations and the fulfilment of the trade repository's obligations. Such a plan shall at least provide for the establishment of backup facilities.

Article 66

Safeguarding and recording

1. A trade repository shall ensure the confidentiality, integrity and protection of the information received under Article 7.

1a. A trade repository may only use the data it receives under this Regulation for commercial purposes if the entity providing the data and the relevant counterparties have provided their consent.

2. A trade repository shall promptly record the information received under Article 7 and shall maintain it for at least ten years following the termination of the relevant contracts. It shall employ timely and efficient record keeping procedures to document changes to recorded information.

3. A trade repository shall calculate the positions by class of derivatives and by reporting entity based on the details of the derivative contracts reported in accordance with Article 7.

4. A trade repository shall allow the parties to a contract to access and correct the information on that contract in a timely manner.

5. A trade repository shall take all reasonable steps to prevent any misuse of the information maintained in its systems (…).

(…)

Article 67

Transparency and data availability

1. A trade repository shall regularly publish aggregate positions by class of derivatives on the contracts reported to it.

1a. A trade repository shall collect, maintain data and ensure that the relevant authorities referred to in paragraph 2 have direct and immediate access to the details of derivatives contracts they need to fulfil their respective responsibilities and mandates.

2. A trade repository shall make the necessary information available to the following entities:

(a) ESMA;

(aa) the ESRB;

(b) the competent authorities supervising undertakings subject to the reporting obligation under Article 7;

(c) the competent authority supervising CCPs accessing the trade repository;

(d) the relevant members of the ESCB;

(daa) the relevant EU securities and market authorities;

(da) the relevant authorities of a third country that has entered into an international agreement with the Union as referred to in Article 62;

(dd) Agency for the Cooperation of Energy Regulators.

A trade repository shall not be considered in breach of any restriction on disclosure of information imposed by a contract or by any legislative, regulatory or administrative provision when making information available in accordance with the first subparagraph. No liability resulting from that disclosure shall lie with the trade repository or its directors or employees.

(…)

3. ESMA shall share the information necessary for the exercise of their duties with other EU relevant authorities.

4. Powers are delegated to the Commission to adopt regulatory technical standards specifying the frequency and the details of the information referred to in paragraphs (1) and (2).

The regulatory technical standards referred to in the first subparagraph shall be adopted in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 [ESMA Regulation].

ESMA shall develop drafts for those regulatory technical standards in consultation with the members of the ESCB, and shall submit drafts to the Commission by 30 June 2012.

Article 67a

Communication procedures

TRs shall accommodate in their communication procedures with participants and with the market infrastructures they interface with, the open industry communication procedures and standards for messaging and reference data in order to facilitate efficient recording, payment, clearing and settlement.

Title VIIa

Common requirements on professional secrecy, exchange of information for the authorities

Article 67b

Professional secrecy

1. The obligation of professional secrecy shall apply to all persons who work or who have worked for the competent authorities designated in accordance with Article 18 and the authorities referred to in Article 67 paragraph (2), ESMA, or auditors and experts instructed by the competent authorities or ESMA.

   Confidential information they may receive in the course of their duties shall not be divulged to any person or authority whatsoever, except in summary or aggregate form such that an individual CCP, trade repository or any other person cannot be identified, except where such divulgation is necessary for legal proceedings.

3. Except where necessary for legal proceedings, the competent authorities, ESMA, bodies or natural or legal persons other than competent authorities which receive confidential information pursuant to this Regulation may use it only in the performance of their duties and for the exercise of their functions including disclosing information to a superior body, in the case of the competent authorities, within the scope of this Regulation or, in the case of other authorities, bodies or natural or legal persons, for the purpose for which such information was provided to them or in the context of administrative or judicial proceedings specifically related to the exercise of those functions, or both. Where ESMA, the competent authority or other authority, body or person communicating information consents thereto, the authority receiving the information may use it for other purposes.

4. Any confidential information received, exchanged or transmitted pursuant to this Regulation shall be subject to the conditions of professional secrecy laid down in paragraphs 1, 2 and 3.

However, those conditions shall not prevent ESMA, the competent authorities and the relevant members of the ESCB from exchanging or transmitting confidential information in accordance with this Regulation and with other legislation applicable to investment firms, credit institutions, pension funds, undertakings for collective investment in transferable securities ("UCITS"), alternative investment fund managers ("AIFM"), insurance and reinsurance intermediaries, insurance undertakings, regulated markets or market operators or otherwise with the consent of the competent authority or other authority or body or natural or legal person that communicated the information.

Paragraphs 1, 2 and 3 shall not prevent the competent authorities from exchanging or transmitting confidential information, in accordance with national law, that has not been received from a competent authority of another Member State.

Article 67c

Exchange of information

1. ESMA, competent authorities and other relevant authorities shall without undue delay provide one another with the information required for the purposes of carrying out their duties.

2. Competent authorities, other relevant authorities, ESMA and other bodies or natural and legal persons receiving confidential information in the exercise of their duties under this Regulation shall only use it in the course of their duties.

3. Competent authorities shall communicate information to the relevant members of the ESCB where such information is relevant for the exercise of their duties.

Article 67d Equivalence and international agreements (deleted)

Title VIII

Transitional and final provisions

Article 68

Reports and Review

(-1). As of the entry into force of this Regulation, the Commission shall monitor and assess the need for any appropriate measures to ensure the consistent and effective application and development of regulations, standards and practices in the field covered by this Regulation, taking into consideration the outcome of the work performed by the relevant international fora.

0. No later than three years after the entry into force of this Regulation, the Commission shall review and prepare a general report on this Regulation. The Commission shall submit the report to the European Parliament and the Council, together with any appropriate proposals.

The Commission shall in particular:

a) assess in cooperation with the members of the ESCB the need for any measure to facilitate the access of CCPs to central bank liquidity facilities, having regard to any result of ongoing work between central banks at the EU and the international level. The assessment shall take into account the principle of independence of central banks and their right to provide access to liquidity facilities at their own discretion as well as the potential unintended effect on the behaviour of the CCPs or the internal market. Any accompanying proposals, neither directly nor indirectly, shall discriminate against any Member State or group of Member States as a venue for clearing services;

b) assess, in coordination with ESMA and the relevant sectoral authorities, the systemic importance of the transactions of non-financial firms in OTC derivatives;

c) assess, in cooperation with ESMA, the need for any measure facilitating the access of CCPs to trade feeds of venues of execution for OTC derivatives and hereby further ensuring a level playing field, eliminating inefficiencies and increasing competition in the market for clearing services. The assessment shall take into account results of the reports on interoperability arrangements referred to in Article 68 paragraph 1 point c and paragraph 2.

00. No later than two years after the entry into force of this Regulation, the Commission shall assess in consultation with ESMA and EIOPA the progress in the development of central clearing technical solution which may address specific need of pension schemes arrangements as well as the need for any measures to facilitate such solution. In the event of the report revealing that there have not been any appropriate technical solutions developed for the transfer of non-cash collateral as variation margins to CCPs, while the adverse effect of central clearing for derivative contracts of pension schemes arrangements on the retirement benefits of future pensioners basically remain unchanged, ESMA in consultation with EIOPA shall submit draft regulatory standards to the Commission, which shall adopt the necessary measures in accordance with Article 71(00).

1. ESMA shall submit to the Commission the following reports:

a) on the application of the clearing obligation under Title II and in particular the absence of clearing obligation for OTC derivative contracts entered into before the date of entry into force of this Regulation;

b) on the application of the identification procedure under Article 4a;

bb) on the application of the segregation requirements under Article 37;

c) on the extension of the scope of interoperability arrangements under Title V to other transactions in classes of financial instruments than transferable securities and money-market instruments;

d) on the evolution of CCP's policies on collateral requirements and their adaptation to the specific activities and risk profiles of their users;

e) on ESMA's staffing and resources needs arising from the assumption of its powers and duties in accordance with this Regulation.

Those reports shall be communicated to the Commission by 31 December 2014 at the latest. The report referred to in point e) shall also be submitted to the European Parliament and the Council.

2. The Commission shall, in cooperation with the Member States and ESMA, and after requesting the assessment of the ESRB, draw up an annual report assessing any possible systemic risk and cost implications of interoperability arrangements.

The report shall focus at least on the number and complexity of such arrangements, and the adequacy of risk management systems and models. The Commission shall submit the report to the European Parliament and the Council, together with any appropriate proposals.

The ESRB shall provide the Commission with its assessment of any possible systemic risk (…) implications of interoperability arrangements.

3. ESMA shall present annually to the Commission, the European Parliament and the Council a report on penalties imposed including supervisory measures, fines and periodic penalty payments.

Article 69

Committee procedure

1. The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC[22]. That Committee shall be a committee in the meaning of Regulation (EU) No 182/2011.

[22] OJ L 191, 13.7.2001, p.45.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

Article 70

Amendment to Directive 98/26/EC

1. In Article 9(1), the following subparagraph is added:

"Where a system operator has provided collateral security to another system operator in connection with an interoperable system, the rights of the providing system operator to that collateral security shall not be affected by insolvency proceedings against the receiving system operator."

2. Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this amendment of Directive 98/26/EC within 2 years after the entry into force of the Regulation. They shall forthwith inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

3. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 71

Transitional provisions

0. For three years after the entry into force of this Regulation, subject to the outcome of the Commission's report as referred to in Article 68(00) the clearing obligation set out in Article 3 shall not apply to OTC derivative contracts that are objectively measureable as reducing investment risks directly related to the financial solvency of pension schemes arrangements as defined in Article 2 paragraph 23 of this Regulation. The transitional period shall also apply to institutions established for the purpose of providing compensation to members of pension schemes arrangements in case of a default.

In relation to pension schemes arrangements referred to in Article 2 paragraph (23) point (d) the aforementioned exemption shall be granted by the relevant competent authority for types of entities or types of arrangements. After receiving the request, the competent authority shall notify ESMA and EIOPA. Within thirty days of receipt of the notification ESMA, in consultation with EIOPA, shall issue an opinion assessing compliance of the type of entities or the type of arrangements with the requirements set out in Article 2 paragraph 23 point d as well as necessity of the exemption due to difficulties to meet the variation margin requirements. The competent authority shall only grant exemption where it is fully satisfied that the type of entities or the type of arrangements complies with all the requirements set out in Article 2 paragraph 23 point d and that they encounter difficulties to meet the variation margin requirements. The competent authority shall make a decision within ten working days, duly considering the opinion received. In case the competent authority does not agree with the opinion presented by ESMA, its decision shall state the full reasons and shall contain an explanation of any significant deviation from the opinion.

ESMA shall publish on its website a list of types of entities and types of arrangements referred to in Article 2 paragraph 23 point d which has been granted an exemption in accordance with the subparagraph above. To further strengthen consistency in supervisory outcomes ESMA shall conduct a peer review of the entities included on the list every year in accordance with Article 30 of Regulation (EU) No 1095/2010 [ESMA Regulation].

The OTC derivative contracts, which would otherwise be subject to the clearing obligation under Article 3, entered into by these entities during this period shall be subject to the requirements referred to in Article 6.

00. If deemed necessary, according to the conclusions of the report referred to in Article 68(00), and taking into account the objectives of exemption available to pension schemes arrangements as well as the developments in financial markets, the Commission shall adopt, within a period of three months from the date of presentation of the report referred to in Article 68(00), regulatory technical standards in order to extend the transitional provision specified in paragraph 0 above for the period of two years.

1. A CCP that has been authorised in its Member State of establishment to provide clearing services in accordance with the national law of that Member State before the date of entry into force of this Regulation, or a CCP established in a third country which has been allowed to provide clearing services in a Member State in accordance with the national law of that Member State (…) before the date of entry into force of this Regulation shall apply for authorisation under Article 10 or recognition under Article 23 for the purposes of this Regulation within 6 months of the date when the latest of the regulatory technical standards under Articles 12, 24, 27, 32, 39, 40, 41a, 42, 43, 44 and 46 is adopted by the Commission.

Until the time a decision is made under this Regulation on the authorisation or recognition of a CCP, the respective national rules on supervision shall continue to apply and the CCP shall continue to be supervised by the competent authority of its Member State of establishment or recognition.

1a. Where a competent authority authorised a CCP to clear a given class of OTC derivatives in accordance with the national law of that Member State before the date of entry into force of this Regulation, it shall notify ESMA of that authorisation within 1 month of the entry into force of the implementing technical standards referred to in Article 4 paragraph (1).

Where a CCP established in a third country was recognised by a competent authority of the Union in accordance with the national law of that Member State before the date of entry into force of this Regulation, that competent authority shall notify ESMA within 1 month of the entry into force of this Regulation.

1b. The respective national rules on authorisation and recognition of CCPs shall continue to apply after the entry into force of this Regulation for CCPs that made an application to be authorised in their respective Member States of establishment to provide clearing services before the date of entry into force of this Regulation, and for CCPs established in third countries which made an application to get a recognition in order to be allowed to provide clearing services in a Member State before the date of entry into force of this Regulation.

A CCP that has been authorised in its Member State of establishment to provide clearing services in accordance with the national law of that Member State after the date of entry into force of this Regulation, or a CCP established in a third country which was recognised in order to be allowed to provide clearing services in a Member State in accordance with the national law of that Member State (…) after the date of entry into force of this Regulation, shall apply for authorisation under Article 10 or recognition under Article 23 for the purposes of this Regulation within 6 months of the date when the latest of the regulatory technical standards under Articles 12, 24, 27, 32, 39, 40, 41a, 42, 43, 44 and 46 is adopted by the Commission.

1c. Where a CCP made an application to be authorised in its Member State of establishment to provide clearing services before the date of entry into force of this Regulation, and the competent authority of that Member state authorised the CCP after the entry into force of this Regulation in accordance with the national law of that Member State, the competent authority of that Member state shall notify ESMA of that authorisation within 1 month of the authorisation or within 1 month of the entry into force of the implementing standards required under Article 4 paragraph 1 whichever is later.

Where a CCP established in a third country which made an application to get recognised in order to be allowed to provide clearing services in a Member State , and was recognised by the competent authority of that Member state to provide clearing services in accordance with the national law of that Member State after the entry into force of this Regulation, the competent authority of the Member state shall notify ESMA of that recognition within 1 month of the recognition.

2. A trade repository that has been authorised or registered in its Member States of establishment to collect and maintain the records of derivatives in accordance with the national law of that Member State before the entry into force of this Regulation, or a trade repository established in a third country which is allowed to collect and maintain the records of derivatives in accordance with the national law of that Member State (…) before the entry into force of this Regulation, shall apply for registration under Article 51 or recognition under Article 63 within 6 months of the date when the latest of the regulatory and implementing technical standards under Articles 7, 52 and 67 is adopted by the Commission.

3. A trade repository that has been authorised or registered in its Member State of establishment to collect and maintain the records of derivatives in accordance with the national law of that Member State before the entry into force of this Regulation, or a trade repository established in a third country which has been allowed to collect and maintain the records of derivatives in accordance with the national law of that Member State (…) before the entry into force of this Regulation, can be used to meet the reporting requirement under Article 7 until the time a decision is made on the registration or recognition of the trade repository under this Regulation.

Until the time a decision is made on the registration or recognition of a trade repository, the respective national rules on supervision shall continue to apply and the trade repository shall continue to be supervised by the competent authority of its Member State of establishment or recognition.

4. The respective national rules on authorisation, registration and recognition shall continue to apply after the entry into force of this Regulation for trade repositories that made an application to be authorised or registered in their respective Member States of establishment to collect and maintain the records of derivatives before the entry into force of this Regulation, or trade repositories established in third countries which made an application to get a recognition in order to be allowed to collect and maintain the records of derivatives in a Member State (…) before the entry into force of this Regulation.

5. A trade repository that has been authorised or registered in its Member State of establishment to collect and maintain the records of derivatives in accordance with the national law of that Member State after the entry into force of this Regulation, or a trade repository established in a third country which was recognised in order to be allowed to collect and maintain the records of derivatives in accordance with the national law of that Member State (…) after the entry into force of this Regulation, shall apply for registration under Article 51 or recognition under Article 63 within 6 months of the date when the latest of the regulatory and implementing technical standards under Articles 7, 52 and 67 is adopted by the Commission, and can be used to meet the reporting requirement under Article 7 until the time a decision is made on the registration or recognition of the trade repository under this Regulation.

5a. Notwithstanding Article 67 paragraph (2) point (da), where no international agreement is in place between a third country and the Union as referred to in Article 62, a trade repository shall make the necessary information available to the relevant authorities of that third country until one year after the entry into force of this Regulation.

Article 72

Entry into Force

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

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

Done at […],

For the European Parliament *For the Council*

The President *The President*

ANNEX I

List of infringements

In accordance with Article 55a paragraph (1) and 55b paragraph (1), a trade repository may be subject to fines in the following cases:

I. *Infringements related to organisational requirements or conflicts of interest:*

a) a trade repository infringes Article 64 paragraph (2) by not ensuring that it has established adequate policies and procedures sufficient to ensure its compliance, including of its managers and employees with all the provisions of this Regulation

b) *deleted*

c) a trade repository infringes Article 64 paragraph (1) by not ensuring that it has robust governance arrangements which includes a clear organisation structure with well defined, transparent and consistent lines of responsibility and adequate internal control mechanisms, including sound administrative and accounting procedures, which prevent the disclosure of confidential information

d) a trade repository infringes Article 64 paragraph (1a) by not ensuring that it has written organisational and administrative arrangements to identify and manage any potential conflicts of interest between itself including its managers, employees, or any person directly or indirectly linked to them by control or close links

e) a trade repository infringes Article 64 paragraph (3) by not ensuring that it maintains and operates an adequate organisational structure to ensure continuity and orderly functioning of the trade repository in the performance of its services and activities

f) a trade repository infringes Article 64 paragraph (3a) by not separating operationally the ancillary services from the function of centrally collecting and maintaining records of derivatives

g) a trade repository infringes Article 64 paragraph (4) by not ensuring that its senior management and members of its board are of sufficiently good repute and experience so as to ensure the sound and prudent management of the trade repository

h) a trade repository infringes Article 64 paragraph (5) by not ensuring that it has objective, non-discriminatory and publicly disclosed requirements for access by third party services providers and undertakings subject to the reporting obligation under Article 7

i) a trade repository infringes Article 64 paragraph (6) by not ensuring that it publicly discloses the prices and fees associated with services provided under this Regulation by not allowing reporting entities to access specific services separately or by not charging prices and fees that are cost related

j) *deleted*

II. Infringements related to operational requirements:

a) a trade repository infringes Article 65 paragraph (1) by not ensuring that it identifies sources of operational risk and minimises them through the development of appropriate systems, controls and procedures

b) a trade repository infringes Article 65 paragraph (2) by not ensuring that it has established, implemented and maintains an adequate business continuity policy and disaster recovery plan

c) a trade repository infringes Article 66 paragraph (1) by not ensuring the confidentiality, integrity and protection of the information received under Article 7

d) a trade repository infringes Article 66 paragraph (1a) by not ensuring that it only uses the data it receives under this Regulation for commercial purposes if the entity providing the data and the relevant counterparties have provided their consent

e) a trade repository infringes Article 66 paragraph (2) by not ensuring that it promptly records the information received under Article 7 and maintains it for at least ten years following the termination of the relevant contracts or by not employing timely and efficient record keeping procedures to document changes to recorded information

f) a trade repository infringes Article 66 paragraph (3) by not ensuring that it calculates the positions by class of derivatives and by reporting entity based on the details of the derivative contracts reported in accordance with Article 7

g) a trade repository infringes Article 66 paragraph (4) by not ensuring that it allows the parties to a contract to access and correct the information on that contract in a timely manner

h) a trade repository infringes Article 66 paragraph (5) by not ensuring that it takes all reasonable steps to prevent any misuse of the information maintained in its systems

III. Infringements related to transparency and availability of information:

a) a trade repository infringes Article 67 paragraph (1) by not ensuring that it regularly publishes aggregate positions by class of derivatives on the contracts reported to it

b) the trade repository infringes Article 67 paragraph (1a) by not ensuring the relevant authorities referred to in Article 67 paragraph (2) will have direct and immediate access to all the details of derivatives contracts they need to fulfil their respective responsibilities and mandates

IV. Infringements related to obstacles to the supervisory activities:

a) the trade repository infringes Article 57a paragraph (1) by providing incorrect or misleading information in response to a simple request for information pursuant to Article 57a paragraph (2) or in response to a decision requiring information pursuant to Article 57a paragraph (3)

b) the trade repository infringes Article 57b paragraph (1) point (d) by providing incorrect or misleading answers to questions asked pursuant to Article 57b paragraph (1) point (d)

c) the trade repository infringes Article 55a by not complying in due time with a supervisory measure adopted by ESMA

ANNEX II

List of the coefficients linked to aggravating and mitigating factors for the application of Article 55b paragraph (3) of this Regulation

The following coefficients shall be applicable in a cumulative way to the basic amounts as referred to in Article 55b paragraph (2) of this Regulation on the basis of each of the following aggravating and mitigating factors:

I. Adjustment coefficients linked to aggravating factors:

(a) if the infringement has been committed repeatedly, for every time it has been repeated, an additional coefficient of 1,1 shall be applied;

(b) if the infringement has been committed for more than 6 months, a coefficient of 1,5 shall be applied;

(c) if the infringement has revealed systemic weaknesses in the organisation of the trade repository, in particular in its procedures, management systems or internal controls, a coefficient of 2,2 shall be applied;

(d) if the infringement has a negative impact on the quality of the data it maintains, a coefficient of 1,5 shall be applied;

(e) if the infringement has been committed intentionally, a coefficient of 2 shall be applied;

(f) if no remedial action has been taken since the breach has been identified, a coefficient of 1,7 shall be applied;

(g) if the trade repository's senior management has not cooperated with ESMA in carrying out its investigations, a coefficient of 1,5 shall be applied;

II. Adjustment coefficients linked to mitigating factors:

(a) if the infringement has been committed for less than 10 working days, a coefficient of 0,9 shall be applied;

(b) if the trade repository's senior management can demonstrate to have taken all the necessary measures to prevent the infringement, a coefficient of 0,7 shall be applied;

(c) if the trade repository has brought quickly, effectively and completely the infringement to ESMA's attention, a coefficient of 0,4 shall be applied;

(d) if the trade repository has voluntarily taken measures to ensure that a similar infringement cannot be committed in the future, a coefficient of 0,6 shall be applied.