

Regulation (EU) No 648/2012 of the European Parliament
and of the Council of 4 July 2012 on OTC derivatives, central
counterparties and trade repositories (Text with EEA relevance)

REGULATION (EU) No 648/2012 OF THE
EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 4 July 2012

on OTC derivatives, central counterparties and trade repositories

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Central Bank⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee⁽²⁾,

Acting in accordance with the ordinary legislative procedure⁽³⁾,

Whereas:

- (1) At the request of the Commission, a report was published on 25 February 2009 by a High-Level Group chaired by Jacques de Larosière and concluded that the supervisory framework of the financial sector of the Union needed to be strengthened to reduce the risk and severity of future financial crises and recommended far-reaching reforms to the structure of supervision of that sector, including the creation of a European System of Financial Supervisors, comprising three European supervisory authorities, one each for the banking, the insurance and occupational pensions and the securities and markets sectors, and the creation of a European Systemic Risk Council.
- (2) The Commission Communication of 4 March 2009, entitled ‘Driving European Recovery’, proposed to strengthen the Union’s regulatory framework for financial services. In its Communication of 3 July 2009 entitled ‘Ensuring efficient, safe and sound derivatives markets’, the Commission assessed the role of derivatives in the financial crisis, and in its Communication of 20 October 2009 entitled ‘Ensuring efficient, safe and sound derivative markets: Future policy actions’, 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 Supervision, including the creation of three European Supervisory Authorities (ESAs) to contribute to a consistent

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application of Union legislation and to the establishment of high-quality common regulatory and supervisory standards and practices. The ESAs comprise the European Supervisory Authority (European Banking Authority) (EBA) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council⁽⁴⁾, the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (EIOPA) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council⁽⁵⁾, and the European Supervisory Authority (European Securities and Markets Authority) (ESMA) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁽⁶⁾. The ESAs have a crucial role to play in safeguarding the stability of the financial sector. It is therefore essential to ensure continuously that the development of their work is a matter of high political priority and that they are adequately resourced.

- (4) Over-the-counter derivatives ('OTC derivative contracts') 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 derivative contracts.
- (5) At the 26 September 2009 summit in Pittsburgh, G20 leaders agreed that all standardised OTC derivative contracts should be cleared through a central counterparty (CCP) by the end of 2012 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 OTC derivative contracts in an internationally consistent and non-discriminatory way.
- (6) The Commission will monitor and endeavour to ensure that those commitments are implemented in a similar way by the Union's 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 European Parliament and the Council on the international application of principles laid down in this Regulation. In order to avoid potential duplicate 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 assessment which forms the basis of such decisions should not prejudice the right of a CCP established in a third country and recognised by ESMA to provide clearing services to clearing members or trading venues established in the Union, as the recognition decision should be independent of this assessment. Similarly, neither an equivalence decision nor the assessment should prejudice the right of a trade repository established in a third country and recognised by ESMA to provide services to entities established in the Union.

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- (7) With regard to the recognition of third-country CCPs, and in accordance with the Union's international obligations under the agreement establishing the World Trade Organisation, including the General Agreement on Trade in Services, decisions determining third-country legal regimes as equivalent to the legal regime of the Union should be adopted only if the legal regime of the third country provides for an effective equivalent system for the recognition of CCPs authorised under foreign legal regimes in accordance with the general regulatory goals and standards set out by the G20 in September 2009 of improving transparency in the derivatives markets, mitigating systemic risk, and protecting against market abuse. Such a system should be considered equivalent if it ensures that the substantial result of the applicable regulatory regime is similar to Union requirements and should be considered effective if those rules are being applied in a consistent manner.
- (8) It is appropriate and necessary in this context, taking account of the characteristics of derivative markets and the functioning of CCPs, to verify the effective equivalence of foreign regulatory systems in meeting G20 goals and standards in order to improve transparency in derivatives markets, mitigate systemic risk and protect against market abuse. The very special situation of CCPs requires that the provisions relating to third countries are organised and function in accordance with arrangements that are specific to these market structure entities. Therefore this approach does not constitute a precedent for other legislation.
- (9) The European Council, in its Conclusions of 2 December 2009, agreed that there was a need to substantially improve the mitigation of counterparty credit risk and that it was important to improve 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 derivative contracts.
- (10) ESMA should act within the scope of this Regulation by safeguarding the stability of financial markets in emergency situations, 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 CCPs and trade repositories.
- (11) 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 monitoring 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. This Regulation is 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

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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.

- (12) Uniform rules are required for derivative contracts set out in Annex I, Section C, points (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⁽⁷⁾.
- (13) Incentives to promote the use of CCPs have not proven to be sufficient to ensure that standardised OTC derivative contracts are in fact cleared centrally. Mandatory CCP clearing requirements for those OTC derivative contracts that can be cleared centrally are therefore necessary.
- (14) It is likely 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.
- (15) Ensuring that the clearing obligation reduces systemic risk requires a process of identification of classes of derivatives that should be subject to that obligation. That process should take into account the fact that not all CCP-cleared OTC derivative contracts can be considered suitable for mandatory CCP clearing.
- (16) This Regulation sets out the criteria for determining whether or not different classes of OTC derivative contracts should be subject to a clearing obligation. On the basis of draft regulatory technical standards developed by ESMA, the Commission should decide whether a class of OTC derivative contract is to be subject to a clearing obligation, and from when the clearing obligation takes effect including, where appropriate, phased-in implementation and the minimum remaining maturity of contracts entered into or novated before the date on which the clearing obligation takes effect, in accordance with this Regulation. A phased-in implementation of the clearing obligation could be in terms of the types of market participants that must comply with the clearing obligation. In determining which classes of OTC derivative contracts are to be subject to the clearing obligation, ESMA should take into account the specific nature of OTC derivative contracts which are concluded with covered bond issuers or with cover pools for covered bonds.
- (17) When determining which classes of OTC derivative contracts are to be subject to the clearing obligation, ESMA should also pay due regard to other relevant considerations, most importantly the interconnectedness between counterparties using the relevant classes of OTC derivative contracts and 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(5)(d) of Regulation (EU) No 1095/2010.
- (18) Where ESMA has identified that an OTC derivative product is standardised and suitable for clearing but no CCP is willing to clear that product, ESMA should investigate the reason for this.
- (19) In determining which classes of OTC derivative contracts are to be subject to the clearing obligation, due account should be taken of the specific nature of the relevant

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classes of OTC derivative contracts. The predominant risk for transactions in some classes of OTC derivative contracts may relate to settlement risk, which is addressed through separate infrastructure arrangements, and may distinguish certain classes of OTC derivative contracts (such as foreign exchange) from other classes. CCP clearing specifically addresses counterparty credit risk, and may not be the optimal solution for dealing with settlement risk. The regime for such contracts should rely, in particular, on preliminary international convergence and mutual recognition of the relevant infrastructure.

- (20) In order to ensure a uniform and coherent application of this Regulation and a level playing field for market participants when a class of OTC derivative contract is declared subject to the clearing obligation, this obligation should also apply to all contracts pertaining to that class of OTC derivative contract entered into on or after the date of notification of a CCP authorisation for the purpose of the clearing obligation received by ESMA but before the date from which the clearing obligation takes effect, provided that those contracts have a remaining maturity above the minimum determined by the Commission.
- (21) In determining whether a class of OTC derivative contract is to be subject to clearing requirements, ESMA should aim for a reduction in systemic risk. This includes taking into account in the assessment factors such as the level of contractual and operational standardisation of contracts, the volume and the liquidity of the relevant class of OTC derivative contract as well as the availability of fair, reliable and generally accepted pricing information in the relevant class of OTC derivative contract.
- (22) For an OTC derivative contract to be cleared, both parties to that contract must be subject to a clearing obligation or must consent. 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.
- (23) In order to foster financial stability within the Union, it might be necessary also to subject the transactions entered into by entities established in third countries to the clearing and risk-mitigation techniques obligations, provided that the transactions concerned have a direct, substantial and foreseeable effect within the Union or where such obligations are necessary or appropriate to prevent the evasion of any provisions of this Regulation.
- (24) OTC derivative contracts that are not considered suitable for CCP clearing entail counterparty credit and operational risk and therefore, rules should be established to manage that risk. To mitigate counterparty credit risk, market participants that are subject to the clearing obligation should have risk-management procedures that require the timely, accurate and appropriately segregated exchange of collateral. When preparing draft regulatory technical standards specifying those risk-management procedures, ESMA should take into account the proposals of the international standard setting bodies on margining requirements for non-centrally cleared derivatives. When developing draft regulatory technical standards to specify the arrangements required for the accurate and appropriate exchange of collateral to manage risks associated with

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uncleared trades, ESMA should take due account of impediments faced by covered bond issuers or cover pools in providing collateral in a number of Union jurisdictions. ESMA should also take into account the fact that preferential claims given to covered bond issuers counterparties on the covered bond issuer's assets provides equivalent protection against counterparty credit risk.

- (25) Rules on clearing OTC derivative contracts, reporting on derivative 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⁽⁸⁾, insurance undertakings as authorised in accordance with First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, Regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life insurance⁽⁹⁾, 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⁽¹⁰⁾, reinsurance undertakings as authorised in accordance with Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance⁽¹¹⁾, undertakings for collective investments in transferable securities (UCITS) and, where relevant, their management companies, 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)⁽¹²⁾, 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⁽¹³⁾ and alternative investment funds managed by alternative investment fund managers (AIFM) as authorised or registered in accordance with Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers⁽¹⁴⁾.
- (26) Entities operating pension scheme 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 such entities to clear OTC derivative 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. Such a technical solution should take into account the special role of pension scheme arrangements and avoid materially adverse effects on pensioners. During a transitional period, OTC derivative contracts entered into with a view to decreasing investment risks directly relating to the financial solvency of pension scheme

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arrangements should be subject not only to the reporting obligation, but also to bilateral collateralisation requirements. The ultimate aim, however, is central clearing as soon as this is tenable.

- (27) It is important to ensure that only appropriate entities and arrangements receive 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 scheme arrangements. Therefore, the temporary derogation should apply to institutions for occupational retirement provision 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 by such institutions, acting solely and exclusively in their interest, and to occupational retirement provision businesses of institutions referred to in Article 3 of Directive 2003/41/EC.
- (28) The temporary derogation should also apply to 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. It 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 referred to in this recital 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, after consulting EIOPA. This could include entities and arrangements that are not necessarily 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, and pension arrangements taken up by individuals directly, which may also be provided by life insurers. The exemption in the case of pension arrangements taken up by individuals directly should not cover OTC derivative contracts relating 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 accordance with the Annex to Directive 2001/17/EC of the European Parliament and of the Council of 19 March 2001 on the reorganisation and winding-up of insurance undertakings⁽¹⁵⁾ 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 scheme arrangements in the case of a default should also be treated as a pension scheme for the purpose of this Regulation.
- (29) 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

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linked to their commercial or treasury financing 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 derivative contracts and to the size of the exposures that it has in those instruments. In order to ensure that non-financial institutions have the opportunity to state their views on the clearing thresholds, ESMA should, when preparing the relevant regulatory technical standards, conduct an open public consultation ensuring the participation of non-financial institutions. ESMA should also consult all relevant authorities, for example the Agency for the Cooperation of Energy Regulators, in order to ensure that the particularities of those sectors are fully taken into account. Moreover, by 17 August 2015, the Commission should assess the systemic importance of the transactions of non-financial firms in OTC derivative contracts in different sectors, including in the energy sector.

- (30) In determining whether an OTC derivative contract reduces risks directly relating to the commercial activities and treasury 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 relate to fluctuations in interest rates, foreign exchange rates, inflation rates or commodity prices.
- (31) The clearing threshold is a very important figure for all non-financial counterparties. When the clearing threshold is set, the systemic relevance of the sum of net positions and exposures per counterparty and per class of OTC derivative contract should be taken into account. In that connection, appropriate efforts should be made to recognise the methods of risk mitigation used by non-financial counterparties in the context of their normal business activity.
- (32) Members of the ESCB and other Member States' bodies performing similar functions, other Union public bodies charged with or intervening in the management of the public debt, and the Bank for International Settlements should be excluded from the scope of this Regulation in order to avoid limiting their power to perform their tasks of common interest.
- (33) 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 or indirect clients subject to certain conditions.
- (34) 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 trading venues because the CCP is owned by a competing trading venue. In order to avoid such discriminatory practices, CCPs should agree to clear transactions executed in different trading venues, to the extent that those trading venues comply with the operational and technical requirements established by the CCP, without reference to the contractual documents on the basis of which the parties concluded the relevant OTC derivative transaction, provided that those

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documents are consistent with market standards. Trading venues should provide the CCPs with trade feeds on a transparent and non-discriminatory basis. The right of access of a CCP to a trading venue should allow for arrangements whereby multiple CCPs use trade feeds of the same trading venue. However, this should not lead to interoperability for derivatives clearing or create liquidity fragmentation.

- (35) This Regulation should not block fair and open access between trading venues and CCPs in the internal market, subject to the conditions laid down in this Regulation and in the regulatory technical standards developed by ESMA and adopted by the Commission. The Commission should continue to monitor closely 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.
- (36) In certain areas within financial services and trading of derivative contracts, commercial and intellectual property rights may also exist. In instances where such property rights relate to products or services which have become, or impact upon, industry standards, licences should be available on proportionate, fair, reasonable and non-discriminatory terms.
- (37) In order to identify the relevant classes of OTC derivative contracts that should be subject to the clearing obligation, the thresholds and 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. Moreover, a retrospective reporting obligation is needed, to the largest possible extent, for both financial counterparties and non-financial counterparties, in order to provide comparative data, including to ESMA and the relevant competent authorities.
- (38) An intragroup transaction is a transaction between two undertakings which are included in the same consolidation on a full basis and are subject to appropriate centralised risk evaluation, measurement and control procedures. They are part of the same institutional protection scheme as referred to in Article 80(8) of Directive 2006/48/EC or, in the case of credit institutions affiliated to the same central body, as referred to in Article 3(1) of that Directive, both are credit institutions or one is a credit institution and the other is a central body. OTC derivative 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 those transactions to the clearing obligation may limit the efficiency of those 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 CCP clearing those transactions, where that is appropriate to mitigate intragroup counterparty risks.

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- (39) However, some intragroup transactions could be exempted, in some cases on the basis of the decision of the competent authorities, from the collateralisation 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. Those 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 the ESAs. Before developing such draft regulatory technical standards, the ESAs 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 concerned. 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 those transactions and existing differences between non-financial and financial counterparties as well as their purpose and methods of using derivatives.
- (40) Counterparties should be considered to be included in the same consolidation at least where they are both included in a consolidation in accordance with Council Directive 83/349/EEC⁽¹⁶⁾ or International Financial Reporting Standards (IFRS) adopted pursuant to Regulation (EC) No 1606/2002 of the European Parliament and of the Council⁽¹⁷⁾ or, in relation to a group the parent undertaking of which has its head office in a third country, in accordance with generally accepted accounting principles of a third country determined to be equivalent to IFRS in accordance with Commission Regulation (EC) No 1569/2007⁽¹⁸⁾ (or accounting standards of a third country the use of which is permitted in accordance with Article 4 of Regulation (EC) No 1569/2007), or where they are both covered by the same consolidated supervision in accordance with Directive 2006/48/EC or with Directive 2006/49/EC of the European Parliament and of the Council⁽¹⁹⁾ or, in relation to a group the parent undertaking of which has its head office in a third country, the same consolidated supervision by a third country competent authority verified as equivalent to that governed by the principles laid down in Article 143 of Directive 2006/48/EC or in Article 2 of Directive 2006/49/EC.
- (41) It is important that market participants report all details regarding derivative contracts they have entered into to trade repositories. As a result, information on the risks inherent in derivatives markets will be centrally stored and easily accessible, inter alia, to ESMA, the relevant competent authorities, the European Systemic Risk Board (ESRB) and the relevant central banks of the ESCB.
- (42) The provision of trade repository services is characterised 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 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 is not compromised by a

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- 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.
- (43) In order to allow for a comprehensive overview of the market and for assessing systemic risk, both CCP-cleared and non-CCP-cleared derivative contracts should be reported to trade repositories.
- (44) The ESAs should be provided with adequate resources in order to perform the tasks they are given in this Regulation effectively.
- (45) 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 should be able to 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. When preparing the draft regulatory technical standards regarding reporting, ESMA should take into account the progress made in the development of a unique contract identifier and the list of required reporting data in Annex I, Table 1 of Commission Regulation (EC) No 1287/2006⁽²⁰⁾ implementing Directive 2004/39/EC and consult other relevant authorities such as the Agency for the Cooperation of Energy Regulators.
- (46) Taking into consideration the principles set out in the Commission's Communication on reinforcing sanctioning regimes in the financial services sector and legal acts of the Union adopted as a follow-up to that Communication, Member States should lay down rules on penalties applicable to infringements of this Regulation. Member States should enforce those penalties in a manner that does not reduce the effectiveness of those rules. Those penalties should be effective, proportionate and dissuasive. They should be based on guidelines adopted by ESMA to promote convergence and cross-sector consistency of penalty regimes in the financial sector. Member States should ensure that the penalties imposed are publicly disclosed, where appropriate, and that assessment reports on the effectiveness of existing rules are published at regular intervals.
- (47) A CCP might be established in accordance with this Regulation in any Member State. No Member State or group of Member States should be discriminated against, directly or indirectly, as a venue for clearing services. Nothing in this Regulation should attempt to restrict or impede a CCP in one jurisdiction from clearing a product denominated in the currency of another Member State or in the currency of a third country.
- (48) 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, operational, legal and business risks which are not already covered by specific financial resources and that it is able to conduct an orderly winding-up or restructuring of its operations if necessary.

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- (49) 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 the stringent organisational, business conduct, and prudential requirements established by this Regulation. In order to ensure uniform application of this Regulation, those requirements should apply to the clearing of all financial instruments in which the CCPs deal.
- (50) It is therefore necessary, for regulatory and harmonisation purposes, to ensure that counterparties only use CCPs which comply with the requirements laid down in this Regulation. Those requirements should not prevent Member States from adopting or continuing to apply additional requirements in respect of CCPs established in their territory including certain authorisation requirements under Directive 2006/48/EC. However, imposing such additional requirements 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 those CCPs are not subject to those additional requirements and do not need to comply with them. By 30 September 2014, ESMA should draft a report on the impact of the application of additional requirements by Member States.
- (51) Direct rules regarding the authorisation and supervision of CCPs are an essential corollary to the obligation to clear OTC derivative contracts. It is appropriate that competent authorities retain responsibility for all aspects of the authorisation and the supervision of CCPs, including the responsibility for verifying that the applicant CCP complies 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⁽²¹⁾, 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.
- (52) Where a CCP risks insolvency, fiscal responsibility may lie predominantly with the Member State in which that CCP is established. It follows that authorisation 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 Member States and they will be the first to be impacted by the CCP's default, it is imperative that all relevant competent authorities and ESMA be involved in the authorisation and supervisory process. This will avoid divergent national measures or practices and obstacles to the proper functioning of the internal market. Furthermore, no proposal or policy of any member of a college of supervisors should, directly or indirectly, discriminate against any Member State or group of Member States as a venue for clearing services in any currency. ESMA should be a participant in every college in order to ensure the consistent and correct application of this Regulation. ESMA should involve other competent authorities in the Member States concerned in the work of preparing recommendations and decisions.
- (53) In light of the role assigned to colleges, it is important that all the relevant competent authorities as well as members of the ESCB are involved in performing their tasks.

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The college should consist not only of the competent authorities supervising the CCP but also of the supervisors of the entities on which the operations of that CCP might have an impact, namely selected clearing members, trading venues, interoperable CCPs and central securities depositories. Members of the ESCB that are responsible for the oversight of the CCP and interoperable CCPs as well as those responsible for the issue of the currencies of the financial instruments cleared by the CCP, should be able to participate in the college. As the supervised or overseen entities would be established in a limited range of Member States in which the CCP operates, a single competent authority or member of the ESCB could be responsible for supervision or oversight of a number of those entities. In order to ensure smooth cooperation between all the members of the college, appropriate procedures and mechanisms should be put in place.

- (54) Since the establishment and functioning of the college is assumed to be based on a written agreement between all of its members, it is appropriate to confer upon them the power to determine the college's decision-making procedures, given the sensitivity of the issue. Therefore, detailed rules on voting procedures should be laid down in a written agreement between the members of the college. However, in order to balance the interests of all the relevant market participants and Member States appropriately, the college should vote in accordance with the general principle whereby each member has one vote, irrespective of the number of functions it performs in accordance with this Regulation. For colleges with up to and including 12 members, a maximum of two college members belonging to the same Member State should have a vote and each voting member should have one vote. For colleges with more than 12 members, a maximum of three college members belonging to the same Member State should have a vote and each voting member should have one vote.
- (55) The very particular situation of CCPs requires that colleges are organised and function in accordance with arrangements that are specific to the supervision of CCPs.
- (56) The arrangements provided for in this Regulation do not constitute a precedent for other legislation on the supervision and oversight of financial market infrastructures, in particular with regard to the voting modalities for referrals to ESMA.
- (57) A CCP should not be authorised where all the members of the college, excluding the competent authorities of the Member State where the CCP is established, reach a joint opinion by mutual agreement that the CCP should not be authorised. If, however, a sufficient majority of the college has expressed a negative opinion and any of the competent authorities concerned, based on that majority of two-thirds of the college, has referred the matter to ESMA, the competent authority of the Member State where the CCP is established should defer its decision on the authorisation and await any decision that ESMA may take regarding conformity with Union law. The competent authority of the Member State where the CCP is established should take its decision in accordance with such a decision by ESMA. Where all the members of the college, excluding the authorities of the Member State where the CCP is established, reach a joint opinion to the effect that they consider that the requirements are not met and that the CCP should not receive authorisation, the competent authority of the Member State where the CCP

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is established should be able to refer the matter to ESMA to decide on conformity with Union law.

- (58) It is necessary to reinforce provisions on exchange of information between competent authorities, ESMA and other relevant authorities and to strengthen the duties of assistance and cooperation between them. Due to increasing cross-border activity, those 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.
- (59) 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. Therefore, a CCP established in a third country, providing clearing services to clearing members or trading venues established in the Union should be recognised 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 Union through a clearing member established in a third country should 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 financial stability.
- (60) On 16 September 2010, the European Council agreed on the need for the Union 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, inter alia, to secure greater market access for European business and deepen regulatory cooperation with major trade partners.
- (61) A CCP should have robust governance arrangements, senior management of good repute and independent members on its board, irrespective of its ownership structure. At least one-third, and no less than two, members of its board should be independent. However, different governance arrangements and ownership structures 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 address any potential conflict of interests within a CCP. Clearing members and clients need to be adequately represented as decisions taken by the CCP may have an impact on them.
- (62) A CCP may outsource functions. The CCP's risk committee should advise on such outsourcing. Major activities linked to risk management should not be outsourced unless this is approved by the competent authority.

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- (63) The participation requirements for a CCP should 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.
- (64) Clients of clearing members that clear their OTC derivative contracts 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. The requirements laid down in this Regulation on the segregation and portability of clients' positions and assets should therefore prevail over any conflicting laws, regulations and administrative provisions of the Member States that prevent the parties from fulfilling them.
- (65) 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. In order to ensure that it benefits from sufficient resources on an ongoing basis, the CCP should establish a minimum amount below which the size of the default fund is not generally to fall. This should not, however, limit the CCP's ability to use the entirety of the default fund to cover the losses caused by a clearing member's default.
- (66) 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 on the basis of the criteria specified in the regulatory technical standards to be developed by ESMA, 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, in particular relating to the creditworthiness of the guarantor, and the guarantor's capital links with CCP's clearing members. Where appropriate, ESMA may also consider gold as an asset acceptable as collateral. CCPs should be able to accept, under strict risk-management conditions, commercial bank guarantees from non-financial counterparties acting as clearing members.
- (67) CCPs' risk-management strategies should be sufficiently sound so as to avoid risks for the taxpayer.

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- (68) Margin calls and haircuts on collateral may have procyclical effects. CCPs, competent authorities and ESMA 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.
- (69) 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 those relating to indices that are used as references to derivatives or other financial instruments.
- (70) 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.
- (71) Access to adequate liquidity resources is essential for a CCP. It is possible for such liquidity to derive from access to central bank liquidity, creditworthy and reliable commercial bank liquidity, or a combination of both. 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 adequacy 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.
- (72) The 'European Code of Conduct for Clearing and Settlement' of 7 November 2006 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 interoperability arrangements between CCPs to the extent these do not expose the relevant CCPs to risks that are not appropriately managed.
- (73) Interoperability arrangements are important for greater integration of the post-trading market within the Union and regulation should be provided for. However, as interoperability arrangements may expose CCPs to additional risks, CCPs should have been, for three years, authorised to clear or recognised in accordance with this Regulation, or authorised under a pre-existing national authorisation regime, before competent authorities grant approval of such interoperability arrangements. In addition, 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 transferable securities and money-market instruments. However, by 30 September 2014, ESMA should submit a report to the Commission on whether an extension of that scope to other financial instruments would be appropriate.
- (74) Trade repositories collect data for regulatory purposes that are relevant to authorities in all Member States. ESMA should assume responsibility for the registration, withdrawal of registration and supervision of trade repositories.

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- (75) 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, record-keeping and data-management requirements.
- (76) Transparency of prices, fees and risk-management models associated with the services provided by CCPs, their members and trade repositories is necessary to enable market participants to make an informed choice.
- (77) In order to carry out its duties effectively, ESMA should be able to require, by simple request or by decision, all necessary information from trade repositories, related third parties and third parties to which the trade repositories have outsourced operational functions or activities. If ESMA requires such information by simple request, the addressee is not obliged to provide the information but, in the event that it does so voluntarily, the information provided should not be incorrect or misleading. Such information should be made available without delay.
- (78) Without prejudice to cases covered by criminal or tax law, the competent authorities, ESMA, bodies or natural or legal persons other than the competent authorities, which receive confidential information should use it only in the performance of their duties and for the exercise of their functions. However, this should not prevent the exercise, in accordance with national law, of the functions of national bodies responsible for the prevention, investigation or correction of cases of maladministration.
- (79) In order to exercise its supervisory powers effectively, ESMA should be able to conduct investigations and on-site inspections.
- (80) 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. ESMA should be able to delegate 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 for the performance of 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 a regulation on fees to be adopted by the Commission by means of a delegated act. ESMA should not be able to delegate the power to adopt decisions on registration.
- (81) It is necessary to ensure that competent authorities are able to request that ESMA examine whether the conditions for the withdrawal of a trade repository's registration are met. ESMA should assess such requests and take any appropriate measures.
- (82) ESMA should be able to impose periodic penalty payments to compel trade repositories to put an end to an infringement, to supply complete and correct information required by ESMA or to submit to an investigation or an on-site inspection.
- (83) ESMA should also be able to impose fines on trade repositories where it finds that they have committed, intentionally or negligently, an infringement of this Regulation.

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Fines should be imposed according to the level of seriousness of the infringement. Infringements should be divided into different groups for which specific fines should be allocated. In order to calculate the fine relating to a particular infringement, ESMA should use a two-step methodology consisting of setting a basic amount and adjusting that basic amount, if necessary, 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.

- (84) This Regulation should establish coefficients linked to aggravating and mitigating circumstances 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 that infringement has been committed.
- (85) Before taking a decision to impose fines or periodic penalty payments, ESMA should give the persons subject to the proceedings the opportunity to be heard in order to respect their rights of defence.
- (86) ESMA should refrain from imposing fines or periodic penalty payments where a prior acquittal or conviction arising from identical facts, or from facts which are substantially the same, has acquired the force of *res judicata* as a result of criminal proceedings under national law.
- (87) ESMA's decisions imposing fines and periodic penalty payments should be enforceable and their enforcement should be subject to the rules of civil procedure which are in force in the State in the territory of which it is carried out. Rules of civil procedure should not include criminal procedural rules but could include administrative procedural rules.
- (88) In the case of an infringement committed by a trade repository, ESMA should be empowered to take a range of supervisory measures, including requiring the trade repository to bring the infringement to an end, and, as a last resort, withdrawing the registration where 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 comply with their rights of defence.
- (89) 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⁽²²⁾ and with 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 of the free movement of such data⁽²³⁾.

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- (90) It is important to ensure international convergence of requirements for CCPs and trade repositories. This Regulation follows the existing recommendations developed by the Committee on Payment and Settlement Systems (CPSS) and International Organization of Securities Commissions (IOSCO) noting that the CPSS-IOSCO principles for financial market infrastructure, including CCPs, were established on 16 April 2012. 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.
- (91) The power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of amendments to the list of entities exempt from this Regulation, further rules of procedure relating to the imposition of fines or periodic penalty payments, including provisions on the rights of the defence, time limits, the collection of fines or periodic penalty payments and the limitation periods for the imposition and enforcement of penalty payments or fines; measures to amend Annex II in order to take account of developments in the financial markets; the further specification of the type of fees, the matters for which fees are due, the amount of the fees and the manner in which they are to be paid. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (92) In order to ensure consistent harmonisation, power should be delegated to the Commission to adopt the ESAs' draft regulatory technical standards in accordance with Articles 10 to 14 of Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010 for the application, for the purposes of this Regulation, of points (4) to (10) of Section C of Annex I to Directive 2004/39/EC and in order to specify: the OTC derivative contracts that are considered to have a direct, substantial and foreseeable effect within the Union or the cases where it is necessary or appropriate to prevent the evasion of any provision of this Regulation; the types of indirect contractual arrangements that meet the conditions set out in this Regulation; the classes of OTC derivative contracts that should be subject to the clearing obligation, the date or dates from which the clearing obligation is to take effect, including any phase-in, the categories of counterparties to which the clearing obligation applies, and the minimum remaining maturity of the OTC derivative contracts entered into or novated before the date on which the clearing obligation takes effect; the details to be included in a competent authority's notification to ESMA of its authorisation of a CCP to clear a class of OTC derivative contract; particular classes of OTC derivative contracts, the degree of standardisation of the contractual terms and operational processes, the volume and the liquidity, and the availability of fair, reliable and generally accepted pricing information; the details to be included in ESMA's register of classes of OTC derivative contracts subject to the clearing obligation; the details and type of the reports for the different classes of derivatives; criteria to determine which OTC derivative contracts

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are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity and values of the clearing thresholds, the procedures and the arrangements in regard to risk-mitigation techniques for OTC derivative contracts not cleared by a CCP; the risk-management procedures, including the required levels and type of collateral and segregation arrangements and the required level of capital; the notion of liquidity fragmentation; requirements regarding the capital, retained earnings and reserves of CCPs; the minimum content of the rules and governance arrangements for CCPs; the details of the records and information to be retained by CCPs; the minimum content and requirements for CCPs' business continuity policies and disaster recovery plans; the appropriate percentage and time horizons for the liquidation period and the calculation of historical volatility to be considered for the different classes of financial instruments taking into account the objective to limit pro-cyclicality and the conditions under which portfolio margining practices can be implemented; the framework for defining extreme but plausible market conditions which should be used when defining the size of the default fund and the resources of CCPs; the methodology for calculating and maintaining the amount of CCPs' own resources; the type of collateral that could be considered highly liquid, such as cash, gold, government and high-quality corporate bonds, covered bonds and the haircuts and the conditions under which commercial bank guarantees can be accepted as collateral; the financial instruments that can be considered highly liquid, bearing minimal credit and market risk, highly secured arrangements and concentration limits; the type of stress tests to be undertaken by CCPs for different classes of financial instruments and portfolios, the involvement of clearing members or other parties in the tests, the frequency and timing of the tests and the key information that the CCP is to disclose on its risk-management model and assumptions adopted to perform the stress tests; the details of the application by trade repositories for registration with ESMA; the frequency and the detail in which trade repositories are to disclose information relating to aggregate positions by class of OTC derivative contract; and the operational standards required in order to aggregate and compare data across repositories.

- (93) Any obligation imposed by this Regulation which is to be further developed by means of delegated or implementing acts adopted under Article 290 or 291 TFEU should be understood as applying only from the date on which those acts take effect.
- (94) As a part of its development of technical guidelines and regulatory technical standards, and in particular when setting the clearing threshold for non-financial counterparties under this Regulation, ESMA should organise public hearings of market participants.
- (95) 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 of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers⁽²⁴⁾.
- (96) The Commission should monitor and assess the need for any appropriate measures to ensure the consistent and effective application and development of regulations,

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standards and practices falling within the scope of this Regulation, taking into consideration the outcome of the work performed by relevant international forums.

- (97) 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.
- (98) In order to facilitate efficient clearing, recording, settlement and payment, CCPs and trade repositories should accommodate in their communication procedures with participants and with the market infrastructures they interface with, the relevant international communication procedures and standards for messaging and reference data.
- (99) Since the objectives of this Regulation, namely to lay down uniform requirements for OTC derivative contracts and for the performance of activities of CCPs 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,

HAVE ADOPTED THIS REGULATION:

Modifications etc. (not altering text)

- C1** Regulation: power to modify conferred (11.7.2023) by [Financial Services and Markets Act 2023](#) (c. 29), ss. 3, 86(3), [Sch. 1 Pt. 1](#); S.I. 2023/779, reg. 2(d)

TITLE I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter and scope

1 This Regulation lays down clearing and bilateral risk-management requirements for over-the-counter ('OTC') derivative contracts, reporting requirements for derivative contracts and uniform requirements for the performance of activities of central counterparties ('CCPs') and trade repositories.

2 This Regulation shall apply to CCPs and their clearing members, to financial counterparties and to trade repositories. It shall apply to non-financial counterparties and trading venues where so provided.

3 Title V of this Regulation shall apply only to transferable securities and money-market instruments, as defined in ^[^{F1}]Articles 2(1)(24) and 2(1)(25A) of MIFIR].

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- 4 This Regulation shall not apply to:
- [^{F2}a the Bank of England and other public bodies in the United Kingdom charged with or intervening in the management of the public debt;]
 - b the Bank for International Settlements[^{F3};
 - [^{F4}c the central banks and public bodies charged with or intervening in the management of the public debt in the following countries:
 - (i) Japan;
 - (ii) United States of America [^{F5};
 - (iii) [^{F6}Australia;
 - (iv) Canada;
 - (v) Hong Kong;
 - (vi) Mexico;
 - (vii) Singapore;
 - (viii) Switzerland.]]
- 5 With the exception of the reporting obligation under Article 9, this Regulation shall not apply to the following entities:
- a multilateral development banks, as listed under [^{F7}Article 117 of the Capital Requirements Regulation];
 - b public sector entities within the meaning of [^{F8}Article 4(1)(8) of the Capital Requirements Regulation] where they are owned by central governments and have explicit guarantee arrangements provided by central governments;
 - c the European Financial Stability Facility and the European Stability Mechanism.
- [^{F9}6 The Treasury may by regulations amend the list set out in paragraph 4 of this Article.]

Textual Amendments

- F1** Words in Art. 1(3) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **10(2)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F2** Art. 1(4)(a) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **10(3)** (with savings in S.I. 2019/680); 2020 c. 1, Sch. 5 para. 1(1)
- F3** Substituted by Commission Delegated Regulation (EU) No 1002/2013 of 12 July 2013 amending Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to the list of exempted entities (Text with EEA relevance).
- F4** Inserted by Commission Delegated Regulation (EU) No 1002/2013 of 12 July 2013 amending Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to the list of exempted entities (Text with EEA relevance).
- F5** Substituted by Commission Delegated Regulation (EU) 2017/979 of 2 March 2017 amending Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to the list of exempted entities (Text with EEA relevance).

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- F6** Inserted by Commission Delegated Regulation (EU) 2017/979 of 2 March 2017 amending Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to the list of exempted entities (Text with EEA relevance).
- F7** Words in Art. 1(5)(a) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **10(4)(a)** (with savings in S.I. 2019/680); 2020 c. 1, Sch. 5 para. 1(1)
- F8** Words in Art. 1(5)(b) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **10(4)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F9** Art. 1(6) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **10(5)** (with savings in S.I. 2019/680); 2020 c. 1, Sch. 5 para. 1(1)

Article 2

Definitions

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

- A1 ^{[F10}“FSMA” means the Financial Services and Markets Act 2000;
- (A2) “MIFIR” means Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) 648/2012;
- (A3) “Capital Requirements Regulation” means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) 648/2012;
- (A4) “2013 Regulations” means the Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013;
- (A5) “Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
- (A6) “PRA-authorized person” has the meaning given in section 2B(5) of the FSMA;]
- (1) ^{[F11}“CCP” means a body corporate or unincorporated association which interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer;]
- (2) ‘trade repository’ means a legal person 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 the exposures arising from those positions;
- (4) ^{[F12}“trading venue” means a UK trading venue within the definition in Article 2(1) (16A) of the MIFIR;]

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- (5) [^{F13}“derivative” or “derivative contract” means a financial instrument referred to in paragraphs 4 to 10 of Part 1 of Schedule 2 to the Regulated Activities Order;]
- (6) ‘class of derivatives’ means a subset of derivatives sharing common and essential characteristics including at least the relationship with the underlying asset, the type of underlying asset, and currency of notional amount. Derivatives belonging to the same class may have different maturities;
- (7) [^{F14} ‘OTC derivative’ or ‘OTC derivative contract’ means a derivative contract the execution of which does not take place on a [^{F15}UK regulated market within the meaning given in Article 2(1)(13A) of the MIFIR] or on a third-country market considered to be equivalent to a [^{F16}a UK regulated market in accordance with an implementing act adopted by the Commission under Article 2a of this Regulation before IP completion day or in accordance with regulations made by the Treasury under that Article after IP completion day];]
- (8) [^{F17}“financial counterparty” means:
- a an investment firm within the meaning given in Article 2(1A) of the MIFIR which:
 - i has its registered office or head office in the United Kingdom;
 - ii has permission under Part 4A of the FSMA to carry on regulated activities relating to investment services and activities (as defined in Article 2(1)(2) of the MIFIR) in the United Kingdom;
 - iii would require an authorisation given under Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and 2011/61/EU (as it had effect immediately before IP completion day) if it had its registered office (or if it does not have a registered office, its head office) in an EEA state; and
 - iv is not a firm which has permission under Part 4A of the FSMA to carry on regulated activities as an exempt investment firm, within the meaning given in regulation 8 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017;
 - b a credit institution which is a CRR firm (within the meaning given in Article 4(1)(2A) of the Capital Requirements Regulation);
 - c an insurance undertaking or a reinsurance undertaking within the meaning given in section 417 of the FSMA;
 - d a UK UCITS (within the meaning given in section 237(3) of the FSMA) and, where relevant, its management company (within the meaning given in section 237(2) of the FSMA) unless that UCITS is set up exclusively for the purposes of serving one or more employee share purchase plans;
 - e an occupational pension scheme within the meaning given in section 1(1) of the Pension Schemes Act 1993 which is established in the United Kingdom;
 - f an AIF (within the meaning given in regulation 3 of the Alternative Investment Fund Managers Regulations 2013) which is either established in the UK or managed by an AIFM (within the meaning given in regulation 4

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- of those Regulations) authorised or registered in accordance with those Regulations unless that AIF is set up exclusively for the purpose of serving one or more employee share purchase plans or unless that AIF is a securitisation special purpose entity as defined in Article 4.1(an) of Directive 2011/61/EU, and where relevant, its AIFM is established in the United Kingdom; or
- g a central securities depository authorised in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories.]
- (9) ‘non-financial counterparty’ means an undertaking established in the [^{F18}United Kingdom] other than the entities referred to in points (1) and (8);
- (10) [^{F19}‘pension scheme arrangement’ means:
- (a) an occupational pension scheme within the meaning of section 1(1) of the Pension Schemes Act 1993 which has its main administration in the United Kingdom, including the trustees and managers of such a scheme, and any legal entity set up for the purpose of investment of such a scheme acting solely and exclusively in its interest;
- (b) occupational retirement provision businesses of insurance and reinsurance undertakings within the meaning of section 417 of FSMA, provided that all assets and liabilities corresponding to the businesses are ring-fenced, managed and organised separately from the other activities of the insurance or reinsurance undertaking, without any possibility of transfer;
- (c) any other authorised and supervised entities, or arrangements, established in the United Kingdom, provided that:
- (i) they are recognised under the law applying to any part of the United Kingdom; and
- (ii) their primary purpose is to provide retirement benefits;]
- (11) ‘counterparty credit risk’ means the risk that the counterparty to a transaction defaults before the final settlement of the transaction’s cash flows;
- (12) ‘interoperability arrangement’ means an arrangement between two or more CCPs that involves a cross-system execution of transactions;
- (13) [^{F20}‘competent authority’] means:
- (a) the relevant competent authority referred to in the legislation (or the relevant competent authority of the firm, institution, undertaking or other entity) referred to in paragraphs (a) to (g) of point (8);
- (b) the competent authority referred to in Article 10(5); or
- (c) the authority designated under Article 22;]
- (14) ‘clearing member’ means an undertaking which participates in a CCP and which is responsible for discharging the financial obligations arising from that participation;
- (15) ‘client’ means an undertaking with a contractual relationship with a clearing member of a CCP which enables that undertaking to clear its transactions with that CCP;

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- (16) ‘group’ means the group of undertakings consisting of a parent undertaking and its subsidiaries within the meaning of [F²¹section 1162 of the Companies Act 2006] or [F²²a group of undertakings meeting the conditions in Article 113(6) of the Capital Requirements Regulation];
- (17) ‘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 [F²³of the Annex I activities listed in points (2) to (12) and for this purpose “Annex I activities” has the meaning given in Article 4(1)(26A) of the Capital Requirements Regulation];
- (18) ‘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 subsidiary undertakings being a credit institution, and which is not a mixed financial holding company within the meaning of [F²⁴Article 4(1)(21) of the Capital Requirements Regulation];
- (19) ‘ancillary services undertaking’ means an undertaking the principal activity of which consists in owning or managing property, managing data-processing services, or a similar activity which is ancillary to the principal activity of one or more credit institution;
- (20) ‘qualifying holding’ means any direct or indirect holding in a CCP or trade repository which represents at least 10 % 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⁽²⁵⁾, 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 or trade repository in which that holding subsists;
- (21) ‘parent undertaking’ means a parent undertaking as described in [F²⁵section 1162 of the Companies Act 2006];
- (22) ‘subsidiary’ means a subsidiary undertaking as described in [F²⁶section 1162 of the Companies Act 2006], including a subsidiary of a subsidiary undertaking of an ultimate parent undertaking;
- (23) ‘control’ means the relationship between a parent undertaking and a subsidiary, as described in [F²⁷section 1162 of the Companies Act 2006];
- (24) ‘close links’ means a situation in which two or more natural or legal persons are linked by:
- (a) participation, by way of direct ownership or control, of 20 % or more of the voting rights or capital of an undertaking; or
 - (b) control or a similar relationship between any natural or legal person and an undertaking or a subsidiary of a subsidiary 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.

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- (25) ‘capital’ means subscribed capital ^{F28}... 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, it ranks after all other claims;
- (25A) [^{F29}‘subscribed capital’ comprises all amounts, regardless of their actual designations, which, in accordance with the legal structure of the institution concerned, are regarded under the law of any part of the United Kingdom as equity capital subscribed by the shareholders or other proprietors;]
- (26) [^{F30}‘reserves’ means reserves as set out in item K.IV of balance sheet format 1 in Section B of Part 1 of Schedule 1 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 and profits and losses brought forward as a result of the application of the final profit or loss;]
- (27) ‘board’ means administrative or supervisory board, or both, in accordance with [^{F31}company law applying in any part of the United Kingdom];
- (28) ‘independent member’ of the board means a member of the board who has no business, family or other relationship that raises a conflict of interests regarding the CCP concerned or its controlling shareholders, its management or its clearing members, and who has had no such relationship during the five years preceding his membership of the board;
- (29) ‘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[^{F32};]
- (30) [^{F33}‘covered bond’ means a bond meeting the requirements of Article 129 of [^{F34}the Capital Requirements Regulation];
- (31) ‘covered bond entity’ means the covered bond issuer or cover pool of a covered bond.]
- (32) [^{F35}‘third country’ means a country other than the United Kingdom;
- (33) ‘working day’ means any day other than—
- (a) Saturday or Sunday,
 - (b) Christmas Day or Good Friday, or
 - (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom;
- (34) ‘FCA’ means the Financial Conduct Authority;
- (35) ‘PRA’ means the Prudential Regulation Authority;]
- (36) [^{F36}‘PRA Rulebook’ means the rulebook published by the PRA containing rules made by that Authority under FSMA as that rulebook has effect on 1 January 2022;]
- (37) [^{F37}‘FCA Handbook’ means the handbook published by the FCA containing rules made by that Authority under FSMA as that handbook has effect on 17 August 2022;
- (38) ‘FCA investment firm’ has the meaning given in Article 4(1)(2AB) of the Capital Requirements Regulation;
- (39) ‘Part 9C rules’ has the meaning given in section 143F(1) of FSMA.]

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Textual Amendments

- F10** Arts. 2(A1)-(A6) inserted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **11(2)** (with savings in S.I. 2019/680); 2020 c. 1, Sch. 5 para. 1(1)
- F11** Art. 2(1) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **11(3)** (with savings in S.I. 2019/680); 2020 c. 1, Sch. 5 para. 1(1)
- F12** Art. 2(4) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **11(4)** (with savings in S.I. 2019/680); 2020 c. 1, Sch. 5 para. 1(1)
- F13** Art. 2(5) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **11(5)** (with savings in S.I. 2019/680); 2020 c. 1, Sch. 5 para. 1(1)
- F14** Substituted by Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (Text with EEA relevance).
- F15** Words in Art. 2(7) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **11(6)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F16** Words in Art. 2(7) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **11(6)(b)** (as amended by S.I. 2020/1301, regs. 1, 3, **Sch. para. 21(a)(i)**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F17** Art. 2(8) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **11(7)** (as amended by S.I. 2019/710, regs. 1(2), **21(a)**; S.I. 2019/1416, regs. 1(2), **12(a)**; S.I. 2020/1301, regs. 1, 3, **Sch. para. 21(a)(ii)**) (with savings in S.I. 2019/680); 2020 c. 1, **Sch. 5 para. 1(1)**
- F18** Words in Art. 2(9) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **11(8)** (with savings in S.I. 2019/680); 2020 c. 1, Sch. 5 para. 1(1)
- F19** Art. 2(10) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1416), regs. 1(3), **26** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F20** Art. 2(13) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **11(9)** (as amended by S.I. 2019/1416, regs. 1(2), **12(b)**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F21** Words in Art. 2(16) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **11(10)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F22** Words in Art. 2(16) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **11(10)(b)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/628, regs. 1(3), **13(2)**); 2020 c. 1, Sch. 5 para. 1(1)
- F23** Words in Art. 2(17) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit)

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- Regulations 2019 (S.I. 2019/335), regs. 1(1), **11(11)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F24** Words in Art. 2(18) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **11(12)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F25** Words in Art. 2(21) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **11(13)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F26** Words in Art. 2(22) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **11(13)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F27** Words in Art. 2(23) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **11(14)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F28** Words in Art. 2(25) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **11(15)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F29** Art. 2(25A) inserted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **11(16)** (with savings in S.I. 2019/680); 2020 c. 1, Sch. 5 para. 1(1)
- F30** Art. 2(26) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **11(17)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F31** Words in Art. 2(27) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **11(18)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F32** Substituted by Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012.
- F33** Inserted by Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012.
- F34** Words in Art. 2(30) substituted (31.12.2020) by The Securitisation (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/660), regs. 1(2), **36** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F35** Art. 2(32)-(35) inserted (31.12.2020) by The Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 (S.I. 2018/1184), regs. 1(2), **7** (with regs. 11-20) (as substituted by S.I. 2019/405, regs. 1(2), **9**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F36** Art. 2(36) inserted (1.1.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (S.I. 2021/1376), regs. 1(3), **24(2)**

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F37 Art. 2(37)-(39) inserted (17.8.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2022 (S.I. 2022/838), regs. 1(2), **19(2)** (with regs. 24-26)

^{F38} Article 2a

Equivalence decisions for the purposes of the definition of OTC derivatives

1 For the purposes of Article 2(7) of this Regulation, a third-country market shall be considered to be equivalent to ^{F39}a UK regulated market within the meaning given in Article 2(1)(13A) of the MIFIR where it complies with legally binding requirements which are equivalent to the requirements ^{F40}resulting from provisions of the law of the United Kingdom relied on before IP completion day to implement Title 3 of Directive 2014/65/EU and it is subject to effective supervision and enforcement in that third country on an ongoing basis, as determined by ^{F41}the Treasury].

2 ^{F42}The Treasury may make regulations] determining that a third-country market complies with legally binding requirements which are equivalent to the requirements ^{F43}resulting from provisions of the law of the United Kingdom relied on before IP completion day to implement Title 3 of Directive 2014/65/EU and it is subject to effective supervision and enforcement in that third country on an ongoing basis for the purposes of paragraph 1.

^{F44}
...

3 ^{F45}The Treasury and the FCA] shall publish on their websites a list of those markets that are to be considered to be equivalent in accordance with the ^{F46}regulations made by the Treasury under] paragraph 2. That list shall be updated periodically.

^{F47} In this Article, references to requirements resulting from provisions of United Kingdom law which was relied on before IP completion day to implement Title 3 of Directive 2014/65/EU are to those requirements as they apply on the day on which the regulations are made by the Treasury under this Article.]]

Textual Amendments

- F38** Inserted by Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (Text with EEA relevance).
- F39** Words in Art. 2a(1) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **12(2)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F40** Words in Art. 2a(1) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **12(2)(b)** (as amended by S.I. 2020/1301, regs. 1, 3, **Sch. para. 21(b)**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F41** Words in Art. 2a(1) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **12(2)(c)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F42** Words in Art. 2a(2) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit)

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- Regulations 2019 (S.I. 2019/335), regs. 1(1), **12(3)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F43** Words in Art. 2a(2) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **12(3)(b)** (as amended by S.I. 2020/1301, regs. 1, 3, **Sch. para. 21(b)**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F44** Words in Art. 2a(2) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **12(3)(c)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F45** Words in Art. 2a(3) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **12(4)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F46** Words in Art. 2a(3) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **12(4)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F47** Art. 2a(4) inserted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **12(5)** (as amended by S.I. 2019/1212, **reg. 17**; S.I. 2020/1301, regs. 1, 3, **Sch. para. 45(b)**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**

Article 3

Intragroup transactions

1 In relation to a non-financial counterparty, an intragroup transaction is an OTC derivative contract entered into with another counterparty which is part of the same group provided that both counterparties are included in the same consolidation on a full basis and they are subject to an appropriate centralised risk evaluation, measurement and control procedures and that counterparty is established in the ^[F48]United Kingdom] or, if it is established in a third country, the Commission has adopted an implementing act under Article 13(2) in respect of that third country ^[F49]before IP completion day or the Treasury have made regulations under that Article in respect of that third country after IP completion day].

- 2 In relation to a financial counterparty, an intragroup transaction is any of the following:
- a an OTC derivative contract entered into with another counterparty which is part of the same group, provided that the following conditions are met:
 - (i) the financial counterparty is established in the ^[F50]United Kingdom] or, if it is established in a third country, the Commission has adopted an implementing act under Article 13(2) in respect of that third country ^[F51]before IP completion day or the Treasury have made regulations under that Article in respect of that third country after IP completion day];
 - (ii) the other counterparty is a financial counterparty, a financial holding company, a financial institution or an ancillary services undertaking subject to appropriate prudential requirements;
 - (iii) both counterparties are included in the same consolidation on a full basis; and

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- (iv) both counterparties are subject to appropriate centralised risk evaluation, measurement and control procedures; ^{F52}or]
- ^{F53}b
- ^{F54}c
- d an OTC derivative contract entered into with a non-financial counterparty which is part of the same group provided that both counterparties are included in the same consolidation on a full basis and they are subject to an appropriate centralised risk evaluation, measurement and control procedures and that counterparty is established in the ^{F55}United Kingdom] or in a third-country jurisdiction for which the Commission has adopted an implementing act as referred to in Article 13(2) in respect of that third country ^{F56}before IP completion day or the Treasury have made regulations under that Article in respect of that third country after IP completion day].
- 3 For the purposes of this Article, counterparties shall be considered to be included in the same consolidation when they are both either:
- ^{F57}a included in a consolidation in accordance with:
- i) legislation of the United Kingdom that was relied upon immediately before IP completion day to implement Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC;
 - ii) UK-adopted international accounting standards, having the meaning given by section 474(1) of the Companies Act 2006; or
 - iii) in relation to a group the parent undertaking of which has its head office in a third country, the generally accepted accounting principles of a third country determined to be equivalent to—
 - aa) International Financial Reporting Standards by the Commission before IP completion day in accordance with Regulation (EC) No. 1569/2007 of 21 December 2007 establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities pursuant to Directives 2003/71/EC and 2004/109/EC of the European Parliament and of the Council; or
 - ab) UK-adopted international accounting standards (within the meaning of section 474(1) of the Companies Act 2006) in accordance with regulations made by the Treasury after IP completion day under Regulation (EC) No. 1569/2007 of 21 December 2007 establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities pursuant to Directives 2003/71/EC and 2004/109/EC of the European Parliament and of the Council;]
- ^{F58}b covered by the same supervision on a consolidated basis in accordance with the Capital Requirements Regulation ^{F59}or CRR rules], or in relation to a group the parent undertaking of which has its head office in a third country, the same supervision on a consolidated basis by a third-country competent authority verified as equivalent to that governed by the principles laid down in accordance with the Capital Requirements Regulation ^{F59}or CRR rules];] ^{F60}or
- c) belong to a group covered by rules made by the FCA under Part 9C of the FSMA (prudential regulation of FCA investment firms) or in relation to a group the parent undertaking of which has its head office in a third country, belong to a group subject

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to supervision by a third country competent authority verified as equivalent to Part 9C rules;]

[^{F61}4

In this Article:

‘CRR rules’ has the meaning given in section 144A of the FSMA;

‘Part 9C rules’ has the meaning given in section 143F(1) of the FSMA.]

Textual Amendments

- F48** Words in Art. 3(1) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/335), regs. 1(1), **13(2)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F49** Words in Art. 3(1) inserted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/335), regs. 1(1), **13(2)(b)** (as amended by S.I. 2019/1416, regs. 1(2), **13(a)**; S.I. 2020/1301, regs. 1, 3, **Sch. para. 21(c)(i)**) (with savings in S.I. 2019/680, **reg. 11**; 2020 c. 1, **Sch. 5 para. 1(1)**)
- F50** Words in Art. 3(2)(a)(i) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/335), regs. 1(1), **13(3)(a)(i)(aa)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F51** Words in Art. 3(2)(a)(i) inserted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/335), regs. 1(1), **13(3)(a)(i)(bb)** (as amended by S.I. 2019/1416, regs. 1(2), **13(b)(i)**; S.I. 2020/1301, regs. 1, 3, **Sch. para. 21(c)(ii)**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F52** Word in Art. 3(2)(a) inserted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/335), regs. 1(1), **13(3)(a)(ii)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F53** Art. 3(2)(b) omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/335), regs. 1(1), **13(3)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F54** Art. 3(2)(c) omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/335), regs. 1(1), **13(3)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F55** Words in Art. 3(2)(d) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/335), regs. 1(1), **13(3)(c)(i)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F56** Words in Art. 3(2)(d) inserted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/335), regs. 1(1), **13(3)(c)(ii)** (as amended by S.I. 2019/1416, regs. 1(2), **13(b)(ii)**; S.I. 2020/1301, regs. 1, 3, **Sch. para. 21(c)(ii)**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F57** Art. 3(3)(a) substituted (31.12.2020) by [The International Accounting Standards and European Public Limited-Liability Company \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/685), reg. 1(2), **Sch. 1 para. 63(2)** (with reg. 1(3)(4)) (as amended by S.I. 2020/523, regs. 1(2), **25(a)**); 2020 c. 1, **Sch. 5 para. 1(1)**

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- F58** Art. 3(3)(b) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **13(4)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F59** Words in Art. 3(3)(b) inserted (1.1.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (S.I. 2021/1376), regs. 1(3), **24(3)(a)(i)**
- F60** Art. 3(3)(c) and word inserted (1.1.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (S.I. 2021/1376), regs. 1(3), **24(3)(a)(ii)**
- F61** Art. 3(4) inserted (1.1.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (S.I. 2021/1376), regs. 1(3), **24(3)(b)**

TITLE II

CLEARING, REPORTING AND RISK MITIGATION OF OTC DERIVATIVES

Article 4

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 Article 5(2), if those contracts fulfil both of the following conditions:

- a they have been concluded in one of the following ways:
- (i) [^{F62}between two financial counterparties that [^{F63}are subject to the conditions] set out in the second subparagraph of Article 4a(1);
 - (ii) between a financial counterparty that [^{F64}is subject to the conditions] set out in the second subparagraph of Article 4a(1) and a non-financial counterparty that [^{F64}is subject to the conditions] set out in the second subparagraph of Article 10(1);
 - (iii) between two non-financial counterparties that [^{F65}are subject to the conditions] set out in the second subparagraph of Article 10(1);
 - (iv) between, on the one side, a financial counterparty that [^{F66}is subject to the conditions] set out in the second subparagraph of Article 4a(1) or a non-financial counterparty that [^{F66}is subject to the conditions] set out in the second subparagraph of Article 10(1), and, on the other side, an entity established in a third country that would be subject to the clearing obligation if it were established in the [^{F67}United Kingdom];
 - (v) between two entities established in one or more third countries that would be subject to the clearing obligation if they were established in the [^{F68}United Kingdom], provided that the contract has a direct, substantial and foreseeable effect within the [^{F68}United Kingdom] or where such an obligation is necessary or appropriate to prevent the evasion of any provisions of this Regulation; and
- [^{F62}b they are entered into or novated on or after the date on which the clearing obligation takes effect, provided that, on the date they are entered into or novated, both counterparties meet the conditions set out in point (a).]

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2 Without prejudice to risk-mitigation techniques under Article 11, OTC derivative contracts that are intragroup transactions as described in Article 3 shall not be subject to the clearing obligation.

The exemption set out in the first subparagraph shall apply only:

- a where two counterparties established in the [F69United Kingdom] belonging to the same group have first notified [F70the FCA] in writing that they intend to make use of the exemption for the OTC derivative contracts concluded between each other. The notification shall be made not less than 30 calendar days before the use of the exemption. Within 30 calendar days after receipt of that notification, [F71the FCA] may object to the use of this exemption if the transactions between the counterparties do not meet the conditions laid down in Article 3, without prejudice to the right of [F71the FCA] to object after that period of 30 calendar days has expired where those conditions are no longer met. F72 ... ;
- b to OTC derivative contracts between two counterparties belonging to the same group which are established in [F73the United Kingdom] and in a third country, where the counterparty established in the [F74United Kingdom] has been authorised to apply the exemption by [F75the FCA] within 30 calendar days after it has been notified by the counterparty established in the [F74United Kingdom], provided that the conditions laid down in Article 3 are met. F76 ...

3 The OTC derivative contracts that are subject to the clearing obligation pursuant to paragraph 1 shall be cleared in a CCP authorised under Article 14 or recognised under Article 25 to clear that class of OTC derivatives and listed in the register in accordance with Article 6(2)(b).

For that purpose a counterparty shall become a clearing member, a client, or shall establish indirect clearing arrangements with a clearing member, provided that those arrangements do not increase counterparty risk and ensure that the assets and positions of the counterparty benefit from protection with equivalent effect to that referred to in Articles 39 and 48.

[F773A Clearing members and clients which provide clearing services, whether directly or indirectly, must—

- a provide those services under fair, reasonable, non-discriminatory and transparent commercial terms, and
- b take all reasonable measures to identify, prevent, manage and monitor conflicts of interest, in particular between the trading unit and the clearing unit, that may adversely affect the fair, reasonable, non-discriminatory and transparent provision of clearing services.

3B The duty under paragraph 3A(a)—

- a does not oblige clearing members or clients to contract, and
- b does not prevent clearing members or clients from taking steps to control the risks related to the clearing services offered.

3C The duty to take the measures described in paragraph 3A(b) includes a duty to do so where trading and clearing services are provided by different legal entities belonging to the same group.

3D The duties under paragraph 3A (read with paragraphs 3B and 3C) apply in relation to an undertaking with an indirect contractual arrangement with a clearing member of a CCP which enables that undertaking to clear its transactions with a CCP as they apply in relation to a client.]

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[^{F78}4 The FCA may make technical standards specifying the contracts that are considered to have a direct, substantial and foreseeable effect within the United Kingdom 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(a)(v).

The Bank of England may make technical standards in relation to CCPs specifying the types of indirect contractual arrangements that meet the conditions referred to in the second sub-paragraph of paragraph 3.

The FCA may make technical standards for cases other than CCPs specifying the types of indirect contractual arrangements that meet—

- a the conditions referred to in the second sub-paragraph of paragraph 3; and
- b conditions for reasonable and transparent commercial terms.]

[^{F79}4A The FCA may make rules specifying the conditions under which the commercial terms referred to in paragraph 3A(a) are to be considered fair, reasonable, non-discriminatory and transparent.]

[^{F33}5 Paragraph 1 of this Article shall not apply with respect to OTC derivative contracts that are concluded by covered bond entities in connection with a covered bond, or by a securitisation special purpose entity in connection with a securitisation, within the meaning of Regulation (EU) 2017/2402 of the European Parliament and of the Council (²⁶) provided that:

- a in the case of securitisation special purpose entities, the securitisation special purpose entity shall solely issue securitisations that meet the requirements of Article 18, and of Articles 19 to 22 or 23 to 26 of Regulation (EU) 2017/2402 (the Securitisation Regulation);
- b the OTC derivative contract is used only to hedge interest rate or currency mismatches under the covered bond or securitisation; and
- c the arrangements under the covered bond or securitisation adequately mitigate counterparty credit risk with respect to the OTC derivative contracts concluded by the covered bond entity or securitisation special purpose entity in connection with the covered bond or securitisation.

[^{F80}5A In paragraph 5—

- a the reference to—
 - [a securitisation includes a reference to a securitisation notified as STS ^{F81}] in accordance with Article 27 of the Securitisation Regulation before IP completion day, or before the expiry of a period of [^{F82}four years] beginning with IP completion day, where the person responsible for the notification (the originator and sponsor or, in the case of an ABCP programme, the sponsor) is established in an EEA State [^{F83}, or
 - ii an overseas STS securitisation as defined in regulation 12(2) of the Securitisation Regulations 2024.]
- b in relation to any securitisation so notified a reference to a numbered Article of the Securitisation Regulation is a reference to the Article so numbered of that Regulation as it had or has effect in relation to an EEA State at any time on and after the date of the notification and before the end of the period referred to in point (a).

In the first subparagraph ‘the Securitisation Regulation’ means Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation.

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In paragraph 6 the reference to paragraph 5 is a reference to paragraph 5 without the modification made by this paragraph.]

6 In order to ensure consistent application of this Article, and taking into account the need to prevent regulatory arbitrage, the [^{F84}FCA may make] technical standards specifying criteria for establishing which arrangements under covered bonds or securitisations adequately mitigate counterparty credit risk, within the meaning of paragraph 5.

F85
...]

Textual Amendments

- F33** Inserted by Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012.
- F62** Substituted by Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (Text with EEA relevance).
- F63** Words in Art. 4(1)(a)(i) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **14(2)(a)(i)** (as amended by S.I. 2019/1416, regs. 1(2), **14(a)**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F64** Words in Art. 4(1)(a)(ii) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **14(2)(a)(ii)** (as amended by S.I. 2019/1416, regs. 1(2), **14(a)**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F65** Words in Art. 4(1)(a)(iii) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **14(2)(a)(i)** (as amended by S.I. 2019/1416, regs. 1(2), **14(a)**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F66** Words in Art. 4(1)(a)(iv) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **14(2)(a)(ii)** (as amended by S.I. 2019/1416, regs. 1(2), **14(a)**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F67** Words in Art. 4(1)(a)(iv) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **14(2)(a)(iii)** (as amended by S.I. 2019/1416, regs. 1(2), **14(a)**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F68** Words in Art. 4(1)(a)(v) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **14(2)(a)(iii)** (as amended by S.I. 2019/1416, regs. 1(2), **14(a)**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F69** Words in Art. 4(2)(a) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **14(3)(a)(i)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F70** Words in Art. 4(2)(a) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **14(3)(a)(ii)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**

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- F71** Words in Art. 4(2)(a) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **14(3)(a)(iii)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F72** Words in Art. 4(2)(a) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **14(3)(a)(iv)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F73** Words in Art. 4(2)(b) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **14(3)(b)(i)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F74** Words in Art. 4(2)(b) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **14(3)(b)(ii)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F75** Words in Art. 4(2)(b) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **14(3)(b)(iii)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F76** Words in Art. 4(2)(b) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **14(3)(b)(iv)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F77** Art. 4(3A)-(3D) inserted (1.7.2021) by Financial Services Act 2021 (c. 22), **ss. 40(2)(a)**, 49(5); S.I. 2021/739, reg. 3(v)
- F78** Art. 4(4) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **14(4)** (as amended by S.I. 2020/1385, regs. 1(4), **52(3)**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F79** Art. 4(4A) inserted (1.7.2021) by Financial Services Act 2021 (c. 22), **ss. 40(2)(b)**, 49(5) (with s. 40(5)); S.I. 2021/739, reg. 3(v)
- F80** Art. 4(5A) inserted (31.12.2020) by The Securitisation (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/660), regs. 1(2), **37(a)** (as amended by S.I. 2020/1301, regs. 1, 3, **Sch. para. 35(f)**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F81** Words in Art. 4(5A)(a)(i) in Art. 4(5A)(a) renumbered as Art. 4(5A)(a)(i) (30.1.2024 for specified purposes) by The Securitisation Regulations 2024 (S.I. 2024/102), reg. 2(1)(e)(2), **Sch. 2 para. 1(a)** (with Sch. 3)
- F82** Words in Art. 4(5A)(a) substituted (31.12.2022 at 11.00 p.m.) by The Financial Services (Miscellaneous Amendments) Regulations 2022 (S.I. 2022/1223), regs. 1(2), **3(2)**
- F83** Art. 4(5A)(a)(ii) and word inserted (30.1.2024 for specified purposes) by The Securitisation Regulations 2024 (S.I. 2024/102), reg. 2(1)(e)(2), **Sch. 2 para. 1(b)** (with Sch. 3)
- F84** Words in Art. 4(6) substituted (31.12.2020) by The Securitisation (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/660), regs. 1(2), **37(b)(i)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F85** Words in Art. 4(6) omitted (31.12.2020) by virtue of The Securitisation (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/660), regs. 1(2), **37(b)(ii)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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^{F86} Article 4a

Financial counterparties that are subject to the clearing obligation

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

Where a financial counterparty does not calculate its positions, or where the result of that calculation exceeds any of the clearing thresholds specified pursuant to point (b) of Article 10(4), the financial counterparty shall:

- [^{F87} a immediately notify the FCA of that fact and, where relevant, the period used for the calculation;]
- b establish clearing arrangements within four months after the notification referred to in point (a) of this subparagraph; and
- c become subject to the clearing obligation referred to in Article 4 for all OTC derivative contracts pertaining to any class of OTC derivatives which is subject to the clearing obligation entered into or novated more than four months following the notification referred to in point (a) of this subparagraph.

2 A financial counterparty that is subject to the clearing obligation referred to in Article 4 on 17 June 2019 or that becomes subject to the clearing obligation in accordance with the second subparagraph of paragraph 1, shall remain subject to that obligation and shall continue clearing until that financial counterparty demonstrates to the [^{F88}FCA] that its aggregate month-end average position for the previous 12 months does not exceed the clearing threshold specified pursuant to point (b) of Article 10(4).

The financial counterparty shall be able to demonstrate to the [^{F88}FCA] that the calculation of the aggregate month-end average position for the previous 12 months does not lead to a systematic underestimation of that position.

3 In calculating the positions referred to in paragraph 1, the financial counterparty shall include all OTC derivative contracts entered into by that financial counterparty or entered into by other entities within the group to which that financial counterparty belongs.

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

UCITS management companies which manage more than one UCITSs and AIFMs which manage more than one AIF shall be able to demonstrate to the [^{F89}FCA] that the calculation of positions at the fund level does not lead to:

- a a systematic underestimation of the positions of any of the funds they manage or the positions of the manager; and
- b a circumvention of the clearing obligation.

The relevant competent authorities of the financial counterparty and of the other entities within the group shall [^{F90}seek to] establish cooperation procedures to ensure the effective calculation of the positions at the group level.]

Textual Amendments

F86 Inserted by [Regulation \(EU\) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation \(EU\) No 648/2012 as regards the clearing obligation, the suspension of](#)

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (Text with EEA relevance).

- F87** Art. 4a(1)(a) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1416), regs. 1(3), **27(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F88** Word in Art. 4a(2) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1416), regs. 1(3), **27(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F89** Word in Art. 4a(3) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1416), regs. 1(3), **27(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F90** Words in Art. 4a(3) inserted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1416), regs. 1(3), **27(c)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 5

Clearing obligation procedure

^{F91} 1

[^{F92}2 Technical standards may be made as follows:

- a the Bank of England may make technical standards specifying the class or classes of OTC derivatives that should be subject to the clearing obligation referred to in Article 4;
- b the Bank of England may make technical standards for financial counterparties that are PRA-authorised persons and the FCA may make technical standards for all other cases, specifying the date or dates from which the clearing obligation takes effect, including any phase in and the categories of counterparties to which the obligation applies.

In developing the technical standards under this paragraph, the Bank and the FCA shall not prejudice the transitional provision relating to C6 energy derivative contracts as laid down in Article 89a.]

[^{F93}3 The Bank of England shall identify in accordance with the criteria set out in points (a), (b) and (c) of paragraph 4 the classes of derivatives that should be subject to the clearing obligation provided in Article 4 but for which no CCP has yet received authorisation.]

4 With the overarching aim of reducing systemic risk, the [^{F94}development by the Bank of England of] technical standards for the part referred to in paragraph 2(a) shall take into consideration the following criteria:

- a the degree of standardisation of the contractual terms and operational processes of the relevant class of OTC derivatives;
- b the volume and 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 derivatives.

In preparing those ^{F95}... technical standards, [^{F96}the Bank of England] may take into consideration the interconnectedness between counterparties using the relevant classes

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of OTC derivatives, the anticipated impact on the levels of counterparty credit risk between counterparties as well as the impact on competition across the [^{F97}United Kingdom].

F98 ...

5 [^{F99}In developing these technical standards, the Bank of England and the FCA] shall take into consideration the following criteria:

- a the expected volume of the relevant class of OTC derivatives;
- b whether more than one CCP already clear the same class of OTC derivatives;
- c the ability of the relevant CCPs to handle the expected volume and to manage the risk arising from the clearing of the relevant class of OTC derivatives;
- d the type and number of counterparties active, and expected to be active within the market for the relevant class of OTC derivatives;
- e 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;
- f the risk management and the legal and operational capacity of the range of counterparties that are active in the market for the relevant class of OTC derivatives and that would be captured by the clearing obligation pursuant to Article 4(1).

6 If a class of OTC derivative contracts no longer has a CCP which is authorised or recognised to clear those contracts under this Regulation, it shall cease to be subject to the clearing obligation referred to in Article 4, and paragraph 3 of this Article shall apply.

Textual Amendments

- F91** Art. 5(1) omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **15(2)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F92** Art. 5(2) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **15(3)** (as amended by S.I. 2019/1416, regs. 1(2), **15**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F93** Art. 5(3) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **15(4)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F94** Words in Art. 5(4) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **15(5)(a)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F95** Words in Art. 5(4) omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **15(5)(b)(i)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F96** Words in Art. 5(4) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **15(5)(b)(ii)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F97** Words in Art. 5(4) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **15(5)(b)(iii)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**

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- F98** Words in Art. 5(4) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **15(5)(c)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F99** Words in Art. 5(5) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **15(6)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**

Article 6

Public register

1 ^{F100}The Bank of England] shall establish, maintain and keep up to date a public register in order to identify the classes of OTC derivatives subject to the clearing obligation correctly and unequivocally. The public register shall be available on ^{F101}the Bank of England's] website.

2 The register shall include:

- a the classes of OTC derivatives that are subject to the clearing obligation pursuant to Article 4;
- ^{F102}b the CCPs that are authorised in accordance with ^{F103}Article 14 or 15] or recognised in accordance with Article 25 and the date of authorisation or recognition respectively, indicating the CCPs that are authorised or recognised for the purpose of the clearing obligation;]
- c the dates from which the clearing obligation takes effect, including any phased-in implementation;
- d the classes of OTC derivatives identified by ^{F104}the Bank of England] in accordance with Article 5(3);
- ^{F105}e)
- ^{F106}f)

^{F623} Where a CCP is no longer authorised or recognised in accordance with this Regulation to clear a specific class of OTC derivatives, ^{F107}the Bank of England] shall immediately remove that CCP from the public register in relation to that class of OTC derivatives.]

^{F1084} The Bank of England may make technical standards specifying the details to be included in the public register referred to in paragraph 1.]

Textual Amendments

- F62** Substituted by Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (Text with EEA relevance).
- F100** Words in Art. 6(1) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **16(2)(a)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F101** Words in Art. 6(1) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit)

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- Regulations 2019 (S.I. 2019/335), regs. 1(1), **16(2)(b)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F102** Substituted by Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019 amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs.
- F103** Words in Art. 6(2)(b) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **16(3)(a)** (as substituted by S.I. 2020/646, regs. 1(2)(c), **6(3)**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F104** Words in Art. 6(2)(d) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **16(3)(b)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F105** Deleted by Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (Text with EEA relevance).
- F106** Art. 6(2)(f) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **16(3)(c)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F107** Words in Art. 6(3) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **16(4)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F108** Art. 6(4) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **16(5)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**

^{F109} Article 6a

Suspension of the clearing obligation

1 The Bank of England may, with the consent of the Treasury, direct that the clearing obligation referred to in Article 4(1) be suspended for specific classes of OTC derivatives or for a specific type of counterparty if one of the following conditions is met:

- a the specific classes of OTC derivatives are no longer suitable for central clearing in accordance with the criteria referred to in the first sub-paragraph of Article 5(4) and in Article 5(5);
- b a CCP is likely to cease clearing those specific classes of OTC derivatives and no other CCP is able to clear those specific classes of OTC derivatives without interruption;
- c the suspension of the clearing obligation for those specific classes of OTC derivatives or for a specific type of counterparty is necessary to avoid or address a serious threat to financial stability or to the orderly functioning of financial markets in the United Kingdom and the suspension is proportionate to those aims.

The Bank of England must inform the FCA of its intention to make a direction as soon as is reasonably practicable after making the decision to make a direction.

2 The FCA may inform the Bank of England that, in its opinion, there is evidence that one of the conditions for suspension of the clearing obligation set out in paragraph 1 has

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been met. The Bank shall consider the FCA's information, and respond as appropriate within a reasonable time from the receipt of that information.

3 A direction under paragraph 1 to suspend the clearing obligation for specific classes of OTC derivatives shall also trigger a suspension of the trading obligation laid down in Article 28(1) and (2) of Regulation (EU) No 600/2014 for the same classes of OTC derivatives that are subject to the suspension of the clearing obligation.

4 The Bank shall set the period for the suspension of the clearing obligation and the trading obligation. The suspension shall be for a period of no more than twelve months beginning with the day the decision was published on the Bank of England's website in accordance with paragraph 5.

5 A direction to suspend the clearing and trading obligations must be published on the websites of the Bank of England and the FCA and be included within the public register referred to in Article 6. The FCA must also update the register of derivatives that are subject to the trading obligation referred to in Article 34 of Regulation (EU) No 600/2014.]

Textual Amendments

F109 Art. 6a substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) \(No. 2\) Regulations 2019](#) (S.I. 2019/1416), regs. 1(3), **28** (with savings in S.I. 2019/680, [reg. 11](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#))

^{F110} Article 6b

Risk reduction services

1 The Bank of England may by rules provide for the clearing obligation referred to in Article 4(1) in respect of a class or classes of OTC derivatives not to apply—

- a in relation to activities or transactions of a specified description carried out as part of a risk reduction service, or
- b to persons of a specified description in the provision of such services.

2 The power to make rules under paragraph 1 is exercisable only if the Bank of England considers that the rules are necessary or expedient for the purpose of advancing the financial stability objective under section 2A of the Bank of England Act 1998.

3 The risk reduction services to which the rules relate may only be post-trade services that do not give rise to any transactions that contribute to the price discovery process.

4 The rules—

- a may describe the risk reduction services to which they relate in whatever way the Bank of England considers appropriate (subject to paragraph 3);
- b may provide for whatever conditions or exceptions the Bank of England considers appropriate.

5 In this Article—

“risk reduction service” means a service provided to two or more counterparties to derivatives transactions for the purpose of reducing non-market risks in derivatives portfolios (including, for example, portfolio compression);

“specified” means specified in the rules.]

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

F110 Art. 6b inserted (29.8.2023) by [Financial Services and Markets Act 2023 \(c. 29\)](#), s. 86(3), **Sch. 2 para. 29** (with s. 2(3)); S.I. 2023/779, reg. 4(zz)(ii)

Article 7

Access to a CCP

[^{F111}1 A CCP that has been authorised to clear OTC derivative contracts shall accept clearing such contracts on a non-discriminatory and transparent basis, including as regards collateral requirements and fees related to access, regardless of the trading venue. This in particular shall ensure that a trading venue has the right to non-discriminatory treatment in terms of how contracts traded on that trading venue are treated in terms of:

- a collateral requirements and netting of economically equivalent contracts, where the inclusion of such contracts in the close-out and other netting procedures of a CCP based on the applicable insolvency law would not endanger the smooth and orderly functioning, the validity or enforceability of such procedures; and
- b cross-margining with correlated contracts cleared by the same CCP under a risk model that complies with Article 41.

A CCP may require that a trading venue comply with the operational and technical requirements established by the CCP, including the risk-management requirements.]

2 A CCP shall accede to or refuse a formal request for access by a trading venue within three months of such a request.

3 Where a CCP refuses access under paragraph 2, it shall provide the trading venue with full reasons for such refusal.

4 Save where the competent authority of the trading venue and that of the CCP refuse access, the CCP shall, subject to the second subparagraph, grant access within three months of a decision acceding to the trading venue's formal request in accordance with paragraph 2.

The competent authority of the trading venue and that of the CCP may refuse access to the CCP following a formal request by the trading venue only where such access would threaten the smooth and orderly functioning of the markets or would adversely affect systemic risk.

^{F112}5

[^{F113}6 The conditions laid down in paragraph 1 regarding non-discriminatory treatment in terms of how contracts traded on that trading venue are treated in terms of collateral requirements and netting of economically equivalent contracts and cross-margining with correlated contracts cleared by the same CCP shall be further specified by [^{F114}Commission Delegated Regulation (EU) 2017/581 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on clearing access in respect of trading venues and central counterparties].]

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

- F111** Substituted by Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (Text with EEA relevance).
- F112** Art. 7(5) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **17(2)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F113** Inserted by Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (Text with EEA relevance).
- F114** Words in Art. 7(6) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **17(3)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**

Article 8

Access to a trading venue

1 A trading venue shall provide trade feeds on a non-discriminatory and transparent basis to any CCP that has been authorised to clear OTC derivative contracts traded on that trading venue upon request by the CCP.

2 Where a request to access a trading venue has been formally submitted to a trading venue by a CCP, the trading venue shall respond to the CCP within three months.

3 Where access is refused by a trading venue, it shall notify the CCP accordingly, providing full reasons.

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

Access of the CCP to the trading venue shall be granted only where such access would not require interoperability or threaten the smooth and orderly functioning of markets in particular due to liquidity fragmentation and the trading venue has put in place adequate mechanisms to prevent such fragmentation.

[^{F115} The FCA may make technical standards specifying the notion of liquidity fragmentation.]

Textual Amendments

- F115** Art. 8(5) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **18** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Article 9

Reporting obligation

[^{F62}1 Counterparties and CCPs shall ensure that the details of any derivative contract they have concluded and of any modification or termination of the contract are reported in accordance with paragraphs 1a to 1f of this Article to a trade repository registered in accordance with Article 55 or recognised in accordance with Article 77. The details shall be reported no later than 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 12 February 2014 and remain outstanding on that date;
- b were entered into on or after 12 February 2014 .

Notwithstanding Article 3, the reporting obligation shall not apply to derivative contracts within the same group where at least one of the counterparties is a non-financial counterparty or would be qualified as a non-financial counterparty if it were established in the [^{F116}United Kingdom], provided that:

- a both counterparties are included in the same consolidation on a full basis;
- b both counterparties are subject to appropriate centralised risk evaluation, measurement and control procedures; and
- c the parent undertaking is not a financial counterparty.

Counterparties shall notify [^{F117}the FCA] of their intention to apply the exemption referred to in the third subparagraph. The exemption shall be valid unless the [^{F118}FCA does] not agree upon fulfilment of the conditions referred to in the third subparagraph within three months of the date of notification.

[^{F119}For the purposes of this Article, counterparties shall be considered to be included in the same consolidation if they both meet either of the criteria set out in Article 3(3).]]

[^{F86}1a Financial counterparties shall be solely responsible, and legally liable, for reporting on behalf of both counterparties, the details of OTC derivative contracts concluded with a non-financial counterparty that does not meet the conditions referred to in the second subparagraph of Article 10(1), as well as for ensuring the correctness of the details reported.

To ensure that the financial counterparty has all the data it needs to fulfil the reporting obligation, the non-financial counterparty shall provide the financial counterparty with the details of the OTC derivative contracts concluded between them, which the financial counterparty cannot be reasonably expected to possess. The non-financial counterparty shall be responsible for ensuring that those details are correct.

Notwithstanding the first subparagraph, non-financial counterparties who have already invested in a reporting system may decide to report the details of their OTC derivative contracts with financial counterparties to a trade repository. In that case, the non-financial counterparties shall inform the financial counterparties with which they have concluded OTC derivative contracts of their decision prior to reporting those details. In that situation, the non-financial counterparties shall be responsible, and legally liable, for reporting those details and for ensuring their correctness.

A non-financial counterparty that does not meet the conditions referred to in the second subparagraph of Article 10(1) and that concludes an OTC derivative contract with an entity established in a third country shall not be required to report pursuant to this Article

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

and shall not be legally liable for reporting or ensuring the correctness of the details of such OTC derivative contracts, provided that:

- a that third-country entity would be qualified as a financial counterparty if it were established in the [^{F120}United Kingdom];
- b the legal regime for reporting to which that third-country entity is subject has been declared equivalent pursuant to Article 13; and
- c the third-country financial counterparty has reported such information pursuant to that third-country legal regime for reporting to a trade repository that is subject to a legally binding and enforceable obligation to grant the entities referred to in Article 81(3) direct and immediate access to the data.

1b The management company of a UCITS shall be responsible, and legally liable, for reporting the details of OTC derivative contracts to which that UCITS is a counterparty, as well as for ensuring the correctness of the details reported.

1c The AIFM shall be responsible, and legally liable, for reporting the details of OTC derivative contracts to which the relevant AIF is a counterparty, as well as for ensuring the correctness of the details reported.]

[^{F121} 1d The trustees or managers of an occupational pension scheme (within the meaning given in section 1(1) of the Pension Schemes Act 1993) shall be responsible, and legally liable, for reporting the details of OTC derivative contracts to which that occupational pension scheme is a counterparty.]

[^{F86} 1e Counterparties and CCPs that are required to report the details of derivative contracts shall ensure that such details are reported correctly and without duplication.

1f Counterparties and CCPs that are subject to the reporting obligation referred to in paragraph 1 may delegate that reporting obligation.]

2 Counterparties shall keep a record of any derivative contract they have concluded and any modification for at least five years following the termination of the contract.

[^{F122} 3 Except where the FCA has suspended the reporting obligation under paragraph 3A, where a trade repository is not available to record the details of a derivative contract:

- a counterparties and CCPs shall ensure that such details are reported to the FCA; and
- b the FCA shall ensure that all the relevant entities referred to in paragraph 3 of Article 81 have access to all the details of derivative contracts they need to fulfil their respective responsibilities and mandates

3A The FCA may suspend the reporting obligation in paragraph 1. Before it does so it must:

- a provide a report to the Treasury setting out its reasons for suspending the reporting obligation;
- b specify a date:
 - i) on which the suspension of that obligation will end;
 - ii) by which it anticipates counterparties and CCPs will be able to report details of any derivative contracts as set out in paragraph 3; and
- c consult the Treasury and the Bank of England.

3B The FCA may, with the consent of the Treasury, suspend the reporting obligation under paragraph 3A for a period of up to one year or such longer period as the Treasury may by regulations specify.

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

3C Details of any derivative contracts that counterparties and CCPs have concluded, and of any modification or termination of the contract, that have not been reported to a trade repository in accordance with the reporting obligation in paragraph 1 must be reported by those counterparties and CCPs to a trade repository following the end of the suspension of the reporting obligation in paragraph 3a by no later than the end of the period specified by the FCA for this purpose.]

4 A counterparty or a CCP that reports the details of a derivative contract to a trade repository or to [F123 the FCA], or an entity that reports such details on behalf of a counterparty or a CCP 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.

[F1245 The Bank of England may make technical standards for CCPs, and the FCA may make technical standards for all other cases specifying the details and type of the reports referred to in paragraphs 1 and 3 for the different classes of derivatives. The reports referred to in paragraphs 1 and 3 shall specify at least:

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

[F62[F1256 The Bank of England may make technical standards for CCPs, and the FCA may make technical standards in all other cases specifying:]

- a the data standards and formats for the information to be reported, which shall include at least the following:
 - (i) global legal entity identifiers (LEIs);
 - (ii) international securities identification numbers (ISINs);
 - (iii) unique trade identifiers (UTIs);
- b the methods and arrangements for reporting;
- c the frequency of the reports;
- d the date by which derivative contracts are to be reported.

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Textual Amendments

- F62** Substituted by Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (Text with EEA relevance).
- F86** Inserted by Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (Text with EEA relevance).

- F116** Words in Art. 9(1) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1416), regs. 1(3), **29(2)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F117** Words in Art. 9(1) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1416), regs. 1(3), **29(2)(c)(i)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F118** Words in Art. 9(1) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1416), regs. 1(3), **29(2)(c)(ii)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F119** Words in Art. 9(1) inserted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1416), regs. 1(3), **29(2)(d)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F120** Words in Art. 9(1a) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1416), regs. 1(3), **29(2A)** (as inserted by S.I. 2020/1385, regs. 1(4), **67(3)(b)**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F121** Art. 9(1d) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1416), regs. 1(3), **29(2B)** (as inserted by S.I. 2020/1385, regs. 1(4), **67(3)(b)**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F122** Art. 9(3)-(3C) substituted for Art. 9(3) (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **19(2)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F123** Words in Art. 9(4) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **19(3)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F124** Art. 9(5) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **19(4)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F125** Words in Art. 9(6) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1416), regs. 1(3), **29(3)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F126** Words in Art. 9(6) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1416), regs. 1(3), **29(3)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Article 10

Non-financial counterparties

[^{F62}1 Every 12 months, a non-financial counterparty taking positions in OTC derivative contracts may calculate its aggregate month-end average position for the previous 12 months in accordance with paragraph 3.

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

- a immediately notify [^{F127}the FCA], and, where relevant, indicate the period used for the calculation;
- b establish clearing arrangements within four months of the notification referred to in point (a) of this subparagraph;
- c become subject to the clearing obligation referred to in Article 4 for the OTC derivative contracts entered into or novated more than four months following the notification referred to in point (a) of this subparagraph that pertain to those asset classes in respect of which the result of the calculation exceeds the clearing thresholds or, where the non-financial counterparty has not calculated its position, that pertain to any class of OTC derivatives which is subject to the clearing obligation.

2 A non-financial counterparty that is subject to the clearing obligation referred to in Article 4 on 17 June 2019 or that becomes subject to the clearing obligation in accordance with the second subparagraph of paragraph 1 of this Article, shall remain subject to that obligation and shall continue clearing until that non-financial counterparty demonstrates to the [^{F128}FCA] that its aggregate month-end average position for the previous 12 months does not exceed the clearing threshold specified pursuant to point (b) of paragraph 4 of this Article.

The non-financial counterparty shall be able to demonstrate to the [^{F128}FCA] that the calculation of the aggregate month-end average position for the previous 12 months does not lead to a systematic underestimation of the position.]

[^{F86}2a The relevant competent authorities of the non-financial counterparty and of the other entities within the group shall [^{F129}seek to] establish cooperation procedures to ensure the effective calculation of the positions at the group level.]

3 In calculating the positions referred to in paragraph 1, the non-financial counterparty shall include all the OTC derivative contracts entered into by the non-financial 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 relating to the commercial activity or treasury financing activity of the non-financial counterparty or of that group.

[^{F130}4 The FCA may make technical standards specifying:

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

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

The FCA shall periodically review the thresholds specified under point (b) and, where necessary, taking into account in particular the interconnectedness of financial counterparties, make technical standards to amend them.]

[^{F1315} The authority responsible for ensuring that the obligation under paragraph 1 is met is the FCA.]

Textual Amendments

- F62** Substituted by Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (Text with EEA relevance).
- F86** Inserted by Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (Text with EEA relevance).
- F127** Words in Art. 10(1)(a) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **20(2)** (as substituted by S.I. 2019/1416, regs. 1(2), **17(a)**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**)
- F128** Word in Art. 10(2) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **20(3)** (as substituted by S.I. 2019/1416, regs. 1(2), **17(b)**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**)
- F129** Words in Art. 10(2a) inserted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1416), regs. 1(3), **30** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**)
- F130** Art. 10(4) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **20(4)** (as amended by S.I. 2019/1416, regs. 1(2), **17(c)**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**)
- F131** Art. 10(5) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **20(5)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**)

Article 11

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, exercising due diligence, that appropriate procedures and arrangements are in place to measure, monitor and mitigate operational risk and counterparty credit risk, including at least:

- a the timely confirmation, where available, by electronic means, of the terms of the relevant OTC derivative contract;

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- b formalised processes which are robust, resilient and auditable 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.

2 Financial counterparties and non-financial counterparties referred to in Article 10 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.

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

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

5 The requirement laid down in paragraph 3 of this Article shall not apply to an intragroup transaction referred to in Article 3 that is entered into by counterparties which are established in the [F132United Kingdom] 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.

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8 An intragroup transaction referred to in Article 3(2)(a) to (d) that is entered into by a counterparty which is established in the [F135United Kingdom] and a counterparty which is established in a third-country jurisdiction shall be exempt totally or partially from the requirement laid down in paragraph 3 of this Article, on the basis of a positive decision of the relevant competent authority responsible for supervision of the counterparty which is established in the [F135United Kingdom], 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.

9 An intragroup transaction referred to in Article 3(1) that is entered into by a non-financial counterparty which is established in the [F136United Kingdom] and a counterparty which is established in a third-country jurisdiction shall be exempt from the requirement laid down in paragraph 3 of this Article, 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 notify its intention to apply the exemption to the competent authority referred to in Article 10(5). The exemption shall be valid unless the notified competent authority does not agree upon fulfilment of the conditions referred to in point (a) or (b) of the first subparagraph within three months of the date of notification.

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Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

11 The counterparty of an intragroup transaction which has been exempted from the requirement laid down in paragraph 3 shall publicly disclose information on the exemption.

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12 The obligations set out in paragraphs 1 to 11 shall apply to OTC derivative contracts entered into between third country entities that would be subject to those obligations if they were established in the [F139United Kingdom], provided that those contracts have a direct, substantial and foreseeable effect within the [F139United Kingdom] or where such obligation is necessary or appropriate to prevent the evasion of any provision of this Regulation.

[F140]13 The Bank of England shall regularly monitor the activity in derivatives not eligible for clearing in order to identify cases where a particular class of derivatives may pose systemic risk. The FCA and the PRA shall regularly monitor the activity in derivatives not eligible for clearing in order to prevent regulatory arbitrage between cleared and non-cleared derivative transactions. In particular—

- a the Bank of England shall —
 - i) take action in accordance with paragraph 3 of Article 5; and
 - ii) review the technical standards on margin requirements laid down in Article 41;
- b the FCA and the PRA shall review the technical standards on margin requirements laid down in paragraph 15.]

14 [F141The FCA may make] technical standards specifying:

- a the procedures and arrangements referred to in paragraph 1;
- b the market conditions that prevent marking-to-market and the criteria for using marking-to-model referred to in paragraph 2;
- c the details of the exempted intragroup transactions to be included in the notification referred to in [F142paragraph 9];
- d the details of the information on exempted intragroup transactions referred to in paragraph 11;

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[F145]14A The FCA may make technical standards specifying the contracts that are considered to have a direct, substantial and foreseeable effect within the United Kingdom or the cases where it is necessary or appropriate to prevent the evasion of any provision of this Regulation as referred to in paragraph 12.]

[F146] 15 The PRA may make technical standards for financial counterparties that are PRA-
authorised persons and the FCA may make technical standards for all other cases, specifying the risk-management procedures, including the levels and type of collateral and segregation arrangements, referred to in paragraph 3, and the supervisory procedures to ensure initial and ongoing validation of those risk-management procedures.]

[F147]15A For the purposes of making technical standards under paragraph 15 the level and type of collateral required with respect to an OTC derivative contract which—

- a is concluded by a covered bond entity in connection with a covered bond or by a securitisation special purpose entity (within the meaning given in Article 2(2) of the Securitisation Regulation) in connection with a securitisation (within the meaning of Article 2(1) of that Regulation), and
- b meets the conditions of Article 4(5) of this Regulation and the requirements set out in Article 18 and in Articles 19 to 22 or 23 to 26 of the Securitisation Regulation,

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

are to be determined taking into account any impediments faced in exchanging collateral with respect to existing collateral arrangements under the covered bond or the securitisation.

In the first subparagraph ‘the Securitisation Regulation’ means Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation.]

[^{F148}16 The FCA may make technical standards specifying the procedures for the counterparties and the relevant competent authorities to be followed when applying exemptions under paragraphs 8 and 9.

17 The PRA may make technical standards in respect of financial counterparties that are PRA-authorised persons in respect of United Kingdom to United Kingdom intragroup exemptions (see paragraph 5) and the FCA may make technical standards in all other cases, specifying the applicable criteria referred to in paragraphs 5, 8 and 9, including in particular what should be considered as a practical or legal impediment to the prompt transfer of own funds and repayment of liabilities between the counterparties.]

Textual Amendments

- F132** Words in Art. 11(5) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **21(2)** (with savings in S.I. 2019/680, [reg. 11](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F133** Art. 11(6) omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **21(3)** (with savings in S.I. 2019/680, [reg. 11](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F134** Art. 11(7) omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **21(3)** (with savings in S.I. 2019/680, [reg. 11](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F135** Words in Art. 11(8) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **21(4)** (with savings in S.I. 2019/680, [reg. 11](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F136** Words in Art. 11(9) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **21(5)** (with savings in S.I. 2019/680, [reg. 11](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F137** Art. 11(10) omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **21(6)** (with savings in S.I. 2019/680, [reg. 11](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F138** Words in Art. 11(11) omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **21(7)** (with savings in S.I. 2019/680, [reg. 11](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F139** Words in Art. 11(12) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **21(8)** (with savings in S.I. 2019/680, [reg. 11](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- F140 Art. 11(13) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), 21(9) (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
F141 Words in Art. 11(14) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), 21(10)(a) (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
F142 Words in Art. 11(14)(c) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), 21(10)(b) (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
F143 Art. 11(14)(e) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), 21(10)(c) (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
F144 Words in Art. 11(14) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), 21(10)(d) (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
F145 Art. 11(14A) inserted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), 21(11) (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
F146 Art. 11(15) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), 21(12) (as amended by S.I. 2019/1416, regs. 1(2), 18) (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
F147 Art. 11(15A) inserted (31.12.2020) by The Securitisation (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/660), regs. 1(2), 38 (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
F148 Art. 11(16)(17) inserted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), 21(13) (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 12

Penalties

[F149 Regulation 9 of the 2013 Regulations sets out the penalties applicable to infringements of the rules under this Title.]

F150 2

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

Textual Amendments
F149 Art. 12(1) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), 22(2) (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

F150 Art. 12(2) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **22(3)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**

Article 13

Mechanism to avoid duplicative or conflicting rules

F151¹

2 [^{F152}The Treasury may by regulations determine] that the legal, supervisory and enforcement arrangements of a third country:

- a are equivalent to the requirements laid down in this Regulation under Articles 4, 9, 10 and 11;
- b ensure protection of professional secrecy that is equivalent to that set out in this Regulation; and
- c are being effectively applied and enforced in an equitable and non-distortive manner so as to ensure effective supervision and enforcement in that third country.

F153 ...

3 [^{F154}Regulations] 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 4, 9, 10 and 11 where at least one of the counterparties is established in that third country.

F155⁴

Textual Amendments

F151 Art. 13(1) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **23(2)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**

F152 Words in Art. 13(2) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **23(3)(a)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**

F153 Words in Art. 13(2) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **23(3)(b)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**

F154 Word in Art. 13(3) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **23(4)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**

F155 Art. 13(4) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **23(5)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

^{F156}Article 13a

Conditions for making technical standards

The FCA, the PRA and the Bank of England, as appropriate, must co-ordinate the exercise of their functions when making technical standards under:

- a the second sub-paragraph of paragraph 4 of Article 4,
- b paragraph 5 of Article 9,
- c paragraph 6 of Article 9,
- d paragraph 15 of Article 11, or
- e paragraph 17 of Article 11,

with a view to ensuring that the technical standards made under each of those provisions are compatible.]

Textual Amendments

F156 Art. 13a inserted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **24** (with savings in [S.I. 2019/680](#), **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**

TITLE III

AUTHORISATION AND SUPERVISION OF CCPs

CHAPTER 1

Conditions and procedures for the authorisation of a CCP

Article 14

Authorisation of a CCP

1 Where a [^{F157}body corporate or unincorporated association established in the United Kingdom] intends to provide clearing services as a CCP, it shall apply for authorisation to [^{F158}its competent authority] (the CCP's competent authority), in accordance with the procedure set out in Article 17.

^{F159}2

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

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

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

^{F160}5

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

- F157** Words in Art. 14(1) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **25(2)(a)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F158** Words in Art. 14(1) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **25(2)(b)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F159** Art. 14(2) omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **25(3)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F160** Art. 14(5) omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **25(3)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**

Article 15

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 CCP's competent authority. The offering of clearing services for which the CCP has not already been authorised shall be considered to be an extension of that authorisation.

The extension of authorisation shall be made in accordance with the procedure set out under Article 17.

^{F161}2

[^{F162} [^{F163}The Bank of England may make technical standards] specifying the conditions under which additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorisation and therefore require an extension of authorisation in accordance with paragraph 1 of this Article ^{F164}...

^{F165} ...

^{F165} ...]

Textual Amendments

- F161** Art. 15(2) omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **26** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F162** Inserted by [Regulation \(EU\) 2019/2099 of the European Parliament and of the Council of 23 October 2019 amending Regulation \(EU\) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs](#).
- F163** Words in Art. 15(3) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2020 \(S.I. 2020/646\)](#), regs. 1(3), **17(a)(i)** (with savings in S.I. 2019/680, **reg. 11** as amended by S.I. 2020/646, **reg. 12**)

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- F164** Words in Art. 15(3) omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2020 \(S.I. 2020/646\)](#), regs. 1(3), **17(a)(ii)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F165** Words in Art. 15(3) omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2020 \(S.I. 2020/646\)](#), regs. 1(3), **17(b)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)

Article 16

Capital requirements

1 A CCP shall have a permanent and available initial capital of at least EUR 7,5 million to be authorised pursuant to Article 14.

2 A CCP's capital, including retained earnings and reserves, shall be proportionate 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 an adequate protection of the CCP against credit, counterparty, market, operational, legal and business risks which are not already covered by specific financial resources as referred to in Articles 41 to 44.

3 [^{F166}The Bank of England may make] technical standards specifying requirements regarding the capital, retained earnings and reserves of a CCP referred to in paragraph 2.

F167 ...

F167 ...

Textual Amendments

- F166** Words in Art. 16(3) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **27(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F167** Words in Art. 16(3) omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **27(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 17

Procedure for granting and refusing authorisation

1 The applicant CCP shall submit an application for authorisation to the competent authority ^{F168}...

2 The applicant CCP shall provide all information necessary to satisfy the competent authority that the applicant CCP has established, at the time of authorisation, all the necessary arrangements to meet the requirements laid down in this Regulation. ^{F169}...

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

[^{F1023} Within 30 working days of receipt of the application, the competent authority shall assess whether the application is complete. Where the application is not complete, the competent authority shall set a deadline by which the applicant CCP has to provide additional information. ^{F170}... After assessing that an application is complete, the competent authority shall notify the applicant CCP ^{F171}...]

4 The competent authority shall grant authorisation only where it is fully satisfied that the applicant CCP complies with all the requirements laid down in this Regulation and that the CCP is [^{F172}a designated system as defined in regulation 2(1) of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999].

^{F173} ...

^{F174}5

^{F175}6

7 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 authorisation has been granted or refused.

Textual Amendments

- F102** Substituted by Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019 amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs.
- F168** Words in Art. 17(1) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **28(2)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F169** Words in Art. 17(2) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **28(3)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F170** Words in Art. 17(3) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **18(a)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F171** Words in Art. 17(3) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **18(b)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F172** Words in Art. 17(4) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **28(5)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F173** Words in Art. 17(4) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **28(5)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F174** Art. 17(5) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **28(6)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

F175 Art. 17(6) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), 28(6) (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F176 Article 18

College

Textual Amendments

F176 Art. 18 omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), 29 (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F177 Article 19

Opinion of the college

Textual Amendments

F177 Art. 19 omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), 30 (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 20

Withdrawal of authorisation

- 1 [F178The] CCP's competent authority shall withdraw authorisation where the CCP:
a has not made use of the authorisation within 12 months, expressly renounces the authorisation or has provided no services or performed no activity for the preceding six months;
b has obtained authorisation by making false statements or by any other irregular means;
c is no longer in compliance with the conditions under which authorisation was granted and has not taken the remedial action requested by the CCP's competent authority within a set time frame;
d has seriously and systematically infringed any of the requirements laid down in this Regulation.

F179 2

F179 3

F179 4

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

5 The CCP's competent authority may limit the withdrawal to a particular service, activity, or class of financial instruments.

^{F180}6

^{F181}7

Textual Amendments

F178 Word in Art. 20(1) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/335), regs. 1(1), **31(2)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F179 Art. 20(2)-(4) omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/335), regs. 1(1), **31(3)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F180 Art. 20(6) omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/335), regs. 1(1), **31(3)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F181 Art. 20(7) omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/335), regs. 1(1), **31(3)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 21

Review and evaluation

^{F1021} [^{F182}The competent authority] referred to in Article 22 shall review the arrangements, strategies, processes and mechanisms implemented by CCPs to comply with this Regulation and evaluate the risks, including at least financial and operational risks, to which CCPs are, or might be, exposed.]

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

^{F1023} The [^{F183}competent authority] shall establish the frequency and depth of the review and evaluation referred to in paragraph 1, having particular regard to the size, systemic importance, nature, scale, complexity of the activities and interconnectedness with other financial market infrastructures of the CCPs concerned. The review and evaluation shall be updated at least on an annual basis.

CCPs shall be subject to on-site inspections. ^{F184} ...

^{F185} ...]

^{F186}4

5 The [^{F187}competent authority] shall require any CCP that does not meet the requirements laid down in this Regulation to take the necessary action or steps at an early stage to address the situation.

^{F188} 6

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

- F102** Substituted by Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019 amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs.
- F182** Words in Art. 21(1) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **32(2)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F183** Words in Art. 21(3) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **32(3)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F184** Words in Art. 21(3) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **32(3A)(a)** (as inserted by S.I. 2020/646, regs. 1(2)(c), **6(5)**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F185** Words in Art. 21(3) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **32(3A)(b)** (as inserted by S.I. 2020/646, regs. 1(2)(c), **6(5)**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F186** Art. 21(4) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **32(4)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F187** Words in Art. 21(5) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **32(3)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F188** Art. 21(6) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **32(4)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

CHAPTER 2

Supervision and oversight of CCPs

[^{F189}Article 22

Competent authority

The competent authority responsible for carrying out the duties resulting from this Regulation for the authorisation and supervision of CCPs is the Bank of England.]

Textual Amendments

- F189** Art. 22 substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **33** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

^{F190} CHAPTER 3

Cooperation

Article 23

Cooperation between authorities

.....

Article 23a

**Supervisory cooperation between competent authorities
and ESMA with regards to authorised CCPs**

.....

Article 24

Emergency situations

.....

Textual Amendments

F190 Title 3 Ch. 3 omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/335), regs. 1(1), [34](#) (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

^{F191} CHAPTER 3A

CCP Supervisory Committee

Article 24a

CCP Supervisory Committee

.....

Article 24b

Consultation of central banks of issue

.....

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Article 24c

Decision making within the CCP Supervisory Committee

.....

Article 24d

Decision making within the Board of Supervisors

.....

Article 24e

Accountability

.....

Textual Amendments

F191 Title 3 Ch. 3A omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2020](#) (S.I. 2020/646), regs. 1(3), **19** (with savings in S.I. 2019/680, **reg. 11** as amended by S.I. 2020/646, **reg. 12**)

CHAPTER 4

Relations with third countries

Article 25

Recognition of a third-country CCP

[^{F102}1 A CCP established in a third country may only provide clearing services to clearing members or trading venues established in the [^{F192}United Kingdom] where that CCP is recognised by [^{F193}the Bank of England].]

2 [^{F194}The Bank of England] may recognise a CCP established in a third country that has applied for recognition to provide certain clearing services or activities where:

- a [^{F195}the Treasury has made regulations] in accordance with paragraph 6;
- b the CCP is authorised in the relevant third country, and is subject to effective supervision and enforcement ensuring full compliance with the prudential requirements applicable in that third country;
- c cooperation arrangements have been established pursuant to paragraph 7;
- [^{F196}d the CCP is established or authorised in a third country that is not [^{F197}a high-risk third country within the meaning of regulation 33 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017][^{F102};]]

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[^{F162}e the CCP has not been determined as systemically important or likely to become systemically important in accordance with paragraph 2a and is therefore a Tier 1 CCP.]

[^{F162}2a [^{F198}The Bank of England must] determine whether a third-country CCP is systemically important or likely to become systemically important for the financial stability of the [^{F199}United Kingdom] (Tier 2 CCP) by taking into account all of the following criteria:

- (a) the nature, size and complexity of the CCP's business in the [^{F200}United Kingdom], and outside the [^{F200}United Kingdom] to the extent its business may have a systemic impact on the [^{F201}United Kingdom], including:
 - (i) the value in aggregate terms and in [^{F202}pounds sterling] of transactions cleared by the CCP, or the aggregate exposure of the CCP engaged in clearing activities to its clearing members and, to the extent the information is available, their clients and indirect clients established [^{F203}in the United Kingdom, including where they have been identified by the PRA as other systemically important institutions (O-SIIs) in accordance with regulation 29 of the Capital Requirements (Capital Buffers and Macroprudential Measures) Regulations 2014; and;
 - (ii) the risk profile of the CCP in terms of, amongst others, legal, operational and business risk;
- (b) the effect that the failure of or a disruption to the CCP would have on:
 - (i) financial markets, including the liquidity of the markets served;
 - (ii) financial institutions;
 - (iii) the broader financial system; or
 - (iv) the financial stability of the [^{F204}United Kingdom];
- (c) the CCP's clearing membership structure including, to the extent the information is available, the structure of its clearing members' network of clients and indirect clients, established in the [^{F205}United Kingdom];
- (d) the extent to which alternative clearing services provided by other CCPs exist [^{F206}... for clearing members and, to the extent the information is available, their clients and indirect clients established in the [^{F207}United Kingdom];
- (e) the CCP's relationships, interdependencies, or other interactions with other financial market infrastructures, other financial institutions and the broader financial system to the extent that that is likely to have an impact on the financial stability of the [^{F208}United Kingdom].

[^{F209}The Bank of England may make technical standards specifying further the criteria set out in the first subparagraph.]

Without prejudice to the outcome of the recognition process, [^{F210}the Bank of England must], after conducting the assessment referred to in the first subparagraph, inform the applicant CCP whether or not it is considered to be a Tier 1 CCP within 30 working days of the determination that that CCP's application is complete in accordance with the second subparagraph of paragraph 4.

2b Where [^{F211}the Bank of England] determines a CCP to be systemically important or likely to become systemically important (Tier 2 CCP) in accordance with paragraph 2a, it shall

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only recognise that CCP to provide certain clearing services or activities where, in addition to the conditions referred to in points (a) to (d) of paragraph 2, the following conditions are fulfilled:

- (a) the CCP complies, at the moment of recognition and thereafter on an ongoing basis, with the requirements set out in Article 16 and in Titles IV and V. ^{F212}The Bank of England] shall take into account, in accordance with Article 25a, the extent to which a CCP's compliance with those requirements is satisfied by its compliance with comparable requirements applicable in the third country;
- (b) ^{F213}
- (c) the CCP has provided ^{F211}the Bank of England] with:
 - (i) a written statement, signed by its legal representative, expressing the unconditional consent of the CCP to:
 - provide within ^{F214}the time specified in] a request by ^{F211}the Bank of England] any documents, records, information and data held by that CCP at the time the request is served, and
 - allow ^{F211}the Bank of England] to access any of the CCP's business premises;
 - (ii) a reasoned legal opinion by an independent legal expert confirming that the consent expressed is valid and enforceable under the relevant applicable laws;
- (d) the CCP has implemented all necessary measures and established all necessary procedures to ensure the effective compliance with the requirements laid down in points (a) and (c);
- (e) ^{F215}the Treasury have not made location regulations under paragraph 2c in relation to the CCP.]]

^{F216} 2c The Treasury may make regulations in respect of a third-country CCP to be known as location regulations.

Location regulations may be made for the purpose of requiring that some or all of the clearing services of the third-country CCP may only be provided to clearing members and trading venues established in the United Kingdom by the CCP after it has been authorised in accordance with Article 14.

The Treasury may only make location regulations—

- a having received a recommendation from the Bank of England (see paragraph 2ca);
- b following compliance with the procedural requirements of paragraph 2cb.

Where a third-country CCP is already providing clearing services to clearing members or trading venues established within the United Kingdom, the requirement which may be imposed by virtue of the second subparagraph may only come into force after a period of time specified in the location regulations has elapsed (“adaptation period”).

Location regulations including an adaptation period may specify—

- a conditions with which the third-country CCP must comply in order to continue to provide clearing services or activities described in the location regulations during the adaptation period;
- b measures that must be taken during the adaptation period, in order to limit the potential costs to clearing members and their clients, in particular those established in the United Kingdom.

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2ca The Bank of England may recommend that the Treasury make location regulations under paragraph 2c if it considers that a third-country CCP, or some of its clearing services, are of such substantial systemic importance to the United Kingdom that the CCP should not be recognised under paragraph 1.

The recommendation must be in writing.

The recommendation must include advice—

- a explaining how compliance with the conditions set out in paragraph 2b would not sufficiently address the financial stability risk for the United Kingdom;
- b describing the characteristics of the clearing services provided by the CCP, including the liquidity and physical settlement requirements associated with the provision of such services;
- c providing a quantitative technical assessment of the costs and benefits and consequences of a decision not to recognise the CCP to provide certain clearing services or activities, taking into account—
 - i) the existence of potential alternative substitutes for the provision of the clearing services concerned in the currencies concerned to clearing members, and to the extent the information is available, their clients and indirect clients established in the United Kingdom;
 - ii) the potential consequences of including the outstanding contracts held at the CCP within the scope of the location direction;
- d where relevant, addressing the duration of the adaptation period mentioned in the fourth subparagraph of paragraph 2c and any conditions or measures the Bank of England proposes to be included in the location regulations (see the fifth subparagraph of paragraph 2c).

2cb Before the Treasury make location regulations under paragraph 2c, they must send a statement in writing to the third-country CCP concerned.

The statement must—

- a state that the Treasury propose to make location regulations in respect of the CCP;
- b provide a summary of the Treasury's reasons for proposing to make the regulations;
- c be accompanied by a copy of the Bank of England's recommendation given under paragraph 2ca;
- d specify a reasonable period within which the CCP may make representations.

The Treasury must have regard to any representations made within the period specified in the statement.

Where the Treasury make location regulations, they must—

- a send a copy of the regulations to—
 - i) the third-country CCP concerned;
 - ii) the Bank of England;
 - iii) the Financial Conduct Authority, and
- b publish the regulations on their website.]

^{F217} 3

4 The CCP referred to in paragraph 1 shall submit its application to [^{F218}the Bank of England].

[^{F102}The applicant CCP shall provide [^{F219}the Bank of England] with all information necessary for its recognition. Within 30 working days of receipt, [^{F219}the Bank of

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England] shall assess whether the application is complete. If the application is not complete, [^{F219}the Bank of England] shall set a deadline by which the applicant CCP is to provide additional information. ^{F220}...

The recognition decision shall be based on the conditions set out in paragraph 2 for Tier 1 CCPs and in points (a) to (d) of paragraph 2 and paragraph 2b for Tier 2 CCPs. It shall be independent of any assessment as the basis for the equivalence decision as referred to in Article 13(3). [^{F221}Before the end of the relevant period (see paragraph 4A), the Bank of England] shall inform the applicant CCP in writing, with a fully reasoned explanation, whether the recognition has been granted or refused.]

[^{F222}Recognition under this Article must be granted only for services or activities linked to clearing and the decision granting recognition must specify the services or activities which the CCP is recognised to provide or perform, including the classes of financial instruments covered by the recognition.]

[^{F102}[^{F223}The Bank of England] shall publish on its website a list of the CCPs recognised in accordance with this Regulation, indicating their classification as Tier 1 CCPs or Tier 2 CCPs.]

[^{F224}4A In paragraph 4 “the relevant period” means—

- a where the applicant CCP has submitted an application before the end of the period of 18 months beginning with IP completion day, the period of one year beginning with the first day on which—
 - i) the applicant CCP has submitted a complete application, and
 - ii) the conditions in paragraph 2(a) and (c) are met, or
- b in any other case, the period of 180 working days beginning with the first day on which—
 - i) the applicant CCP has submitted a complete application, and
 - ii) the conditions in paragraph 2(a) and (c) are met.

4B A CCP must, without undue delay, notify the Bank of England of any material changes affecting the conditions for recognition—

- a in point (b) of paragraph 2;
- b in points (a), (c)(ii) and (d) of the first subparagraph of paragraph 2b.]

[^{F1025} [^{F225}The Bank of England must, as it considers appropriate, review the recognition of a CCP established in a third country.]

That review shall be conducted in accordance with paragraphs 2 to 4.

Where, following the review referred to in the first subparagraph, [^{F226}the Bank of England] determines that a third-country CCP that has been classified as Tier 1 CCP should be classified as a Tier 2 CCP, [^{F226}the Bank of England] shall set an appropriate adaptation period ^{F227}... within which the CCP must comply with the requirements referred to in paragraph 2b. ^{F228}...

[^{F1026} [^{F229}The Treasury may by regulations specify] that:

- (a) the legal and supervisory arrangements of a third country ensure that CCPs authorised in that third country comply on an ongoing basis with legally binding requirements which are equivalent to the requirements laid down in Title IV of this Regulation;
- (b) those CCPs are subject to effective supervision and enforcement in that third country on an ongoing basis;

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(c) the legal framework of that third country provides for an effective equivalent system for the recognition of CCPs authorised under [F230]legal regimes of other countries].

F231 ...]

[F232]6ZA The Bank of England may provide advice to the Treasury in connection with any regulations made or to be made by the Treasury under paragraph 6.]

F233 6a

F234 6b

[F102]7 [F235]The Bank of England][F236]must take such steps as it considers appropriate to establish] effective cooperation arrangements with the relevant competent authorities of third countries whose legal and supervisory frameworks have been recognised as equivalent to this Regulation in accordance with paragraph 6. [F237]Such arrangements are to specify such matters as the Bank of England considers appropriate. Without limiting the scope to specify matters, such matters may include:]]

[F102]a the mechanism for the exchange of information between [F238]the Bank of England][F239] ... and the competent authorities of the third countries concerned, including access to all information requested by [F238]the Bank of England] regarding CCPs authorised in third countries, such as significant changes to risk models and parameters, extension of CCP activities and services, changes in the client account structure and in the use of payment systems that substantially affect the [F240]United Kingdom];]

b the mechanism for prompt notification to [F238]the Bank of England] where a third-country competent authority deems a CCP it is supervising to be in breach of the conditions of its authorisation or of other law to which it is subject;

c the mechanism for prompt notification to [F238]the Bank of England] by a third-country competent authority where a CCP it is supervising has been granted the right to provide clearing services to clearing members or clients established in the [F241]United Kingdom];

[F102]d the procedures concerning the coordination of supervisory activities F242 ...]

[F162]e the procedures necessary for the effective monitoring of regulatory and supervisory developments in a third country;

f the procedures for third-country authorities to assure the effective enforcement of decisions adopted by [F238]the Bank of England][F243] ...

g the procedures for third-country authorities to inform [F238]the Bank of England][F244] ... without undue delay of any emergency situations relating to the recognised CCP, including developments in financial markets, which may have an adverse effect on market liquidity and the stability of the financial system in the [F245]United Kingdom] and the procedures and contingency plans to address such situations;]

F246 h

[F162]Where [F238]the Bank of England] considers that a third-country competent authority fails to apply any of the provisions laid down in a cooperation arrangement established in accordance with this paragraph, it shall inform the [F247]Treasury] thereof confidentially and without delay. F248 ...]

8 In order to ensure consistent application of this Article, [F249]the Bank of England may make technical standards] specifying the information that the applicant CCP shall [F250]provide the Bank of England] in its application for recognition.

F251 ...

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F251 ...

[^{F2529} This Article is subject to Part 6 of the Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 (which contains transitional provisions).

10 In this Article “competent authority” means a regulatory authority which is responsible for the authorisation and supervision of central counterparties in its territory.]

Textual Amendments

- F102** Substituted by Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019 amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs.
- F162** Inserted by Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019 amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs.
- F192** Words in Art. 25(1) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(2)(a)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F193** Words in Art. 25(1) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(2)(b)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F194** Words in Art. 25(2) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(3)(a)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F195** Words in Art. 25(2)(a) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(3)(b)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F196** Substituted by Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA relevance).
- F197** Words in Art. 25(2)(d) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(3)(c)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F198** Words in Art. 25(2a) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(4)(a)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F199** Words in Art. 25(2a) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(4)(b)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F200** Words in Art. 25(2a)(a) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(4)(c)(i)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)

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- F201** Words in Art. 25(2a)(a) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(4)(c)(ii)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F202** Words in Art. 25(2a)(a)(i) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(4)(d)(i)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F203** Words in Art. 25(2a)(a)(i) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(4)(d)(ii)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F204** Words in Art. 25(2a)(b)(iv) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(4)(e)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F205** Words in Art. 25(2a)(c) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(4)(f)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F206** Words in Art. 25(2a)(d) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(4)(g)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F207** Words in Art. 25(2a)(d) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(4)(f)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F208** Words in Art. 25(2a)(e) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(4)(h)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F209** Words in Art. 25(2a) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(5)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F210** Words in Art. 25(2a) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(6)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F211** Words in Art. 25(2b) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(7)(a)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F212** Words in Art. 25(2b)(a) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(7)(b)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F213** Art. 25(2b)(b) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(7)(c)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)

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- F214** Words in Art. 25(2b)(c) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(7)(d)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F215** Art. 25(2b)(e) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(7)(e)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F216** Art. 25(2c)-(2cb) substituted for Art. 25(2c) (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **21** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F217** Art. 25(3) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(8)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F218** Words in Art. 25(4) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(9)(a)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F219** Words in Art. 25(4) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(9)(b)(i)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F220** Words in Art. 25(4) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(9)(b)(ii)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F221** Words in Art. 25(4) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(9)(c)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F222** Words in Art. 25(4) inserted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(9)(ca)** (as inserted by S.I. 2020/1385, regs. 1(4), **69(2)(a)**) (with savings in S.I. 2019/680, **reg. 11** as amended by S.I. 2020/646, **reg. 12**)
- F223** Words in Art. 25(4) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(9)(d)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F224** Art. 25(4A)(4B) inserted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(10)** (as amended by S.I. 2020/1385, regs. 1(4), **69(2)(b)**) (with savings in S.I. 2019/680, **reg. 11** as amended by S.I. 2020/646, **reg. 12**)
- F225** Words in Art. 25(5) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(11)(a)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F226** Words in Art. 25(5) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(11)(b)(i)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)

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- F227** Words in Art. 25(5) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(11)(b)(ii)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F228** Words in Art. 25(5) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(11)(b)(iii)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F229** Words in Art. 25(6) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(12)(a)(i)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F230** Words in Art. 25(6)(c) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(12)(a)(ii)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F231** Words in Art. 25(6) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(12)(b)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F232** Art. 25(6ZA) inserted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(13)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F233** Art. 25(6a) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(14)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F234** Art. 25(6b) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(14)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F235** Words in Art. 25(7) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(15)(a)(i)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F236** Words in Art. 25(7) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(15)(b)(i)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F237** Words in Art. 25(7) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(15)(b)(ii)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F238** Words in Art. 25(7) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(15)(a)(ii)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F239** Words in Art. 25(7)(a) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(15)(c)(i)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)

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- F240** Words in Art. 25(7)(a) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(15)(c)(ii)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F241** Words in Art. 25(7)(c) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(15)(d)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F242** Words in Art. 25(7)(d) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(15)(e)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F243** Words in Art. 25(7)(f) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(15)(f)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F244** Words in Art. 25(7)(g) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(15)(g)(i)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F245** Words in Art. 25(7)(g) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(15)(g)(ii)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F246** Art. 25(7)(h) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(15)(h)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F247** Word in Art. 25(7) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(15)(i)(i)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F248** Words in Art. 25(7) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(15)(i)(ii)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F249** Words in Art. 25(8) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(16)(a)(i)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F250** Words in Art. 25(8) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(16)(a)(ii)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F251** Words in Art. 25(8) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(16)(b)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F252** Art. 25(9)(10) inserted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **20(17)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)

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^{F162} Article 25a

Comparable compliance

1 A CCP referred to in Article 25(2b) may submit a reasoned request that [^{F253}the Bank of England] assesses whether in its compliance with the applicable third-country framework, taking into account the provisions of the [^{F254}regulations made under] Article 25(6), that CCP may be deemed to satisfy compliance with the requirements set out in Article 16 and Titles IV and V. ^{F255}...

2 The request referred to in paragraph 1 shall provide the factual basis for a finding of comparability and the reasons why compliance with the requirements applicable in the third country satisfies the requirements set out in Article 16 and Titles IV and V.

3 The [^{F256}Bank of England], in order to ensure that the assessment referred to in paragraph 1 effectively reflects the regulatory objectives of the requirements set out in Article 16 and Titles IV and V and the [^{F257}United Kingdom's] interests as a whole, [^{F258}may make technical standards] specifying the following:

- a the minimum elements to be assessed for the purposes of paragraph 1 of this Article;
- b the modalities and conditions to carry out the assessment.

^{F259}
...

Textual Amendments

- F162** Inserted by Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019 amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs.
- F253** Words in Art. 25a(1) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **22(a)(i)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F254** Words in Art. 25a(1) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **22(a)(ii)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F255** Words in Art. 25a(1) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **22(a)(iii)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F256** Words in Art. 25a(3) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **22(b)(i)(aa)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F257** Words in Art. 25a(3) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **22(b)(i)(bb)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F258** Words in Art. 25a(3) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **22(b)(i)(cc)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)

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F259 Words in Art. 25a(3) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **22(b)(ii)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)

Article 25b

Ongoing compliance with the conditions for recognition

1 ^{F260}The Bank of England] shall be responsible for carrying out the duties resulting from this Regulation for the supervision on an ongoing basis of the compliance of recognised Tier 2 CCPs with the requirements referred to in point (a) of Article 25(2b). ^{F261}...

^{F260}The Bank of England] shall require confirmation from each Tier 2 CCP at least on a yearly basis that the requirements referred to in points (a), (c) and (d) of Article 25(2b) continue to be fulfilled.

^{F262} ...

2 Where a Tier 2 CCP fails to provide ^{F260}the Bank of England] with the confirmation referred to in the second subparagraph of paragraph 1 ^{F263}..., the CCP shall be considered as no longer meeting the conditions for recognition pursuant to Article 25(2b) and the procedure set out in Article 25p^{F264}(2) and (3)] shall apply.

^{F265} 3 The Bank of England shall carry out assessments of the resilience of recognised Tier 2 CCPs to adverse market developments.]]

Textual Amendments

- F162** Inserted by Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019 amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs.
- F260** Words in Art. 25b substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **23(a)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F261** Words in Art. 25b(1) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **23(b)(i)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F262** Words in Art. 25b(1) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **23(b)(ii)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F263** Words in Art. 25b(2) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **23(c)(i)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F264** Words in Art. 25b(2) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **23(c)(ii)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)

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F265 Art. 25b(3) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2020 \(S.I. 2020/646\)](#), regs. 1(3), **23(d)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)

F266 Article 25c

Third-country CCP college

Textual Amendments

F266 Arts. 25c-25o omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2020 \(S.I. 2020/646\)](#), regs. 1(3), **24** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)

F266 Article 25d

Fees

Textual Amendments

F266 Arts. 25c-25o omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2020 \(S.I. 2020/646\)](#), regs. 1(3), **24** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)

F266 Article 25e

Exercise of the powers referred to in Articles 25f to 25h

Textual Amendments

F266 Arts. 25c-25o omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2020 \(S.I. 2020/646\)](#), regs. 1(3), **24** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

F266 Article 25f

Request for information

Textual Amendments

F266 Arts. 25c-25o omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2020 \(S.I. 2020/646\)](#), regs. 1(3), **24** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)

F266 Article 25g

General investigations

Textual Amendments

F266 Arts. 25c-25o omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2020 \(S.I. 2020/646\)](#), regs. 1(3), **24** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)

F266 Article 25h

On-site inspections

Textual Amendments

F266 Arts. 25c-25o omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2020 \(S.I. 2020/646\)](#), regs. 1(3), **24** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)

F266 Article 25i

Procedural rules for taking supervisory measures and imposing fines

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

F266 Arts. 25c-25o omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2020 \(S.I. 2020/646\)](#), regs. 1(3), **24** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)

F266 Article 25j

Fines

Textual Amendments

F266 Arts. 25c-25o omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2020 \(S.I. 2020/646\)](#), regs. 1(3), **24** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)

F266 Article 25k

Periodic penalty payments

Textual Amendments

F266 Arts. 25c-25o omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2020 \(S.I. 2020/646\)](#), regs. 1(3), **24** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)

F266 Article 25l

Hearing of the persons concerned

Textual Amendments

F266 Arts. 25c-25o omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2020 \(S.I. 2020/646\)](#), regs. 1(3), **24** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

F266 Article 25m

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

Textual Amendments

F266 Arts. 25c-25o omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2020 \(S.I. 2020/646\)](#), regs. 1(3), **24** (with savings in [S.I. 2019/680](#), reg. 11 as amended by [S.I. 2020/646](#), reg. 12)

F266 Article 25n

Review by the Court of Justice

Textual Amendments

F266 Arts. 25c-25o omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2020 \(S.I. 2020/646\)](#), regs. 1(3), **24** (with savings in [S.I. 2019/680](#), reg. 11 as amended by [S.I. 2020/646](#), reg. 12)

F266 Article 25o

Amendments to Annex IV

Textual Amendments

F266 Arts. 25c-25o omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2020 \(S.I. 2020/646\)](#), regs. 1(3), **24** (with savings in [S.I. 2019/680](#), reg. 11 as amended by [S.I. 2020/646](#), reg. 12)

F162 Article 25p

Withdrawal of recognition

1 ^[F267]The Bank of England may withdraw a recognition decision adopted in accordance with Article 25 where:]

- a the CCP concerned has not made use of the recognition within six months, expressly renounces the recognition or has ceased to engage in business for more than six months;

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- b the CCP concerned has obtained the recognition through false statements or by any other irregular means;
- c the CCP concerned has seriously and systematically infringed any of the conditions for recognition laid down in Article 25 or no longer complies with any of those conditions and in any of those situations has not taken the remedial action requested by [^{F268}the Bank of England]^{F269} ... ;
- d [^{F270}the Bank of England] is unable to exercise effectively its responsibilities under this Regulation over the CCP concerned, due to the failure of the third-country authority of the CCP to provide [^{F270}the Bank of England] with all relevant information or cooperate with [^{F270}the Bank of England] in accordance with Article 25(7);
- ^{F271} the regulations made under Article 25(6) have been revoked, or the conditions specified e in the regulations are no longer satisfied.]

[^{F272}The Bank of England] may limit the withdrawal of the recognition to a particular service, activity or class of financial instruments.

When determining the date of entry into effect of the decision to withdraw the recognition, [^{F273}the Bank of England] shall endeavour to minimise potential market disruption and provide for an appropriate adaptation period which shall not exceed two years.

2 Before withdrawing the recognition in accordance with point (c) of paragraph 1 of this Article, [^{F274}the Bank of England] shall take into account the possibility of applying [^{F275}disciplinary measures in accordance with Chapter 3B of Part 18 of the Financial Services and Markets Act 2000].

[^{F276}If the Bank of England determines that remedial action has not been taken or that the action taken is not appropriate, the Bank of England shall withdraw the recognition decision.]

3 [^{F277}The Bank of England] shall, without undue delay, notify the relevant third-country competent authority of a decision to withdraw the recognition of a recognised CCP.

^{F278} 4]

Textual Amendments

- F162** Inserted by Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019 amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs.
- F267** Words in Art. 25p(1) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **25(a)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F268** Words in Art. 25p(1)(c) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **25(b)(i)(aa)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F269** Words in Art. 25p(1)(c) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **25(b)(i)(bb)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F270** Words in Art. 25p(1)(d) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit)

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- Regulations 2020 (S.I. 2020/646), regs. 1(3), **25(b)(ii)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F271** Art. 25p(1)(e) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **25(b)(iii)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F272** Words in Art. 25p(1) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **25(c)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F273** Words in Art. 25p(1) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **25(d)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F274** Words in Art. 25p(2) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **25(e)(i)(aa)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F275** Words in Art. 25p(2) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **25(e)(i)(bb)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F276** Words in Art. 25p(2) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **25(e)(ii)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F277** Words in Art. 25p(3) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **25(f)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F278** Art. 25p(4) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **25(g)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)

F279 Article 25q

Supervisory measures by ESMA

Textual Amendments

- F279** Art. 25q omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **26** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

TITLE IV

REQUIREMENTS FOR CCPs

CHAPTER 1

Organisational requirements

Article 26

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, the rules governing the CCP, and its admission criteria for clearing membership, available publicly free of charge.

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

9 ^[F280]The Bank of England may make] technical standards specifying the minimum content of the rules and governance arrangements referred to in paragraphs 1 to 8.

F281 ...

F281 ...

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Textual Amendments

- F280** Words in Art. 26(9) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **35(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F281** Words in Art. 26(9) omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **35(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 27

Senior management and the board

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

2 A CCP shall have a board. At least one third, but no less than two, of the members of that board shall be independent. Representatives of the clients of clearing members shall be invited to board meetings for matters relevant to Articles 38 and 39. 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 a CCP's board, including its independent members, shall be of sufficiently good repute and shall have adequate 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 and auditors.

Article 28

Risk committee

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

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

3 The risk committee shall advise the board on any arrangements that may impact the risk management of the CCP, such as a significant change in its risk model, the default

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procedures, the criteria for accepting clearing members, the clearing of new classes of instruments, or the outsourcing of functions. The advice of the risk committee is not required for the daily operations of the CCP. Reasonable efforts shall be made to consult the risk committee on developments impacting the risk management of the CCP in emergency situations.

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.

Article 29

Record keeping

1 A CCP shall maintain, for a period of at least 10 years, all the records on the services and activity provided so as to enable the competent authority to monitor the CCP's compliance with this Regulation.

2 A CCP shall maintain, for a period of at least 10 years following the termination of a contract, all information on all contracts it has processed. That information shall at least enable the identification of the original terms of a transaction 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 were executed, available upon request to the competent authority^{F282} ...

4 [^{F283}The Bank of England may make] technical standards specifying the details of the records and information to be retained as referred to in paragraphs 1 to 3.

F284 ...

F284 ...

5 [^{F285}The Bank of England may make] technical standards specifying the format of the records and information to be retained.

F286 ...

F286 ...

Textual Amendments

F282 Words in Art. 29(3) omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **36(2)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F283 Words in Art. 29(4) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **36(3)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F284 Words in Art. 29(4) omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\)](#)

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Regulations 2019 (S.I. 2019/335), regs. 1(1), **36(3)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F285 Words in Art. 29(5) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **36(4)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F286 Words in Art. 29(5) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **36(4)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 30

Shareholders and members with qualifying holdings

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

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

3 Where close links exist between the CCP and other natural or legal persons, 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, which may include the withdrawal of the authorisation of the CCP.

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 31

Information to [^{F287} competent authority]

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

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, which may include removing that member from the board.

2 Any natural or legal person or such persons acting in concert (the ‘proposed acquirer’), who have taken a decision either to acquire, directly or indirectly, a qualifying holding in a CCP or to further increase, directly or indirectly, such a qualifying holding in a CCP as a result of which the proportion of the voting rights or of the capital held would reach or exceed 10 %, 20

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%, 30 % or 50 % or so that the CCP would become its subsidiary (the ‘proposed acquisition’), shall first notify in writing the competent authority of the CCP in which they are seeking to acquire or increase a qualifying holding, indicating the size of the intended holding and relevant information, as referred to in Article 32(4).

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

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

The competent authority shall have a maximum of 60 working days as from the date of the written acknowledgement of receipt of the notification and all documents required to be attached to the notification on the basis of the list referred to in Article 32(4) (the assessment period), to carry out the assessment provided for in Article 32(1) (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, but no later than on the 50th working day of the assessment period, request any further information that is necessary to complete the assessment. Such request shall be made in writing and shall specify the additional information needed.

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

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

- a situated or regulated outside the [^{F288}United Kingdom];
- [^{F289}b a person not subject to supervision:
 - i) under this regulation; or
 - ii) in the United Kingdom because the person is not—
 - aa) an investment firm within the meaning given in Article 2(1A) of the MIFIR which has permission under Part 4A of the FSMA to carry on regulated activities relating to investment services and activities (as defined in Article 2(1)(2) of the MIFIR) in the United Kingdom;
 - bb) a credit institution which is a CRR firm (within the meaning given in Article 4(1)(2A) of the Capital Requirements Regulation) which has permission under Part 4A of FSMA to carry on the regulated activity of accepting deposits within the meaning given in article 5 of the Regulated Activities Order;

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- cc) an insurance undertaking and reinsurance undertaking within the meaning given in section 417 of the FSMA;
- dd) a UK UCITS (within the meaning given in section 237(3) of the FSMA) and, where relevant, its management company (within the meaning given in section 237(2) of the FSMA);
- ee) an occupational pension scheme within the meaning given in section 1(1) of the Pension Schemes Act 1993; or
- ff) an AIF (within the meaning given in regulation 3 of the Alternative Investment Fund Managers Regulations 2013) managed by an AIFM (within the meaning given in regulation 4 of those Regulations) authorised or registered in accordance with those Regulations.

In this point, “regulated activity” has the meaning given in section 22 of the FSMA.]

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. [F290 Subject to any provision of the law applying in any part of the United Kingdom,] an appropriate statement of the reasons for the decision may be made accessible to the public at the request of the proposed acquirer. [F291 The competent authority may 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.

[F2928 The competent authority shall not impose requirements for notification and approval of direct or indirect acquisitions of voting rights or capital that are more stringent than those set out in this Regulation.]

Textual Amendments

- F287** Words in Art. 31 heading substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **37(2)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F288** Words in Art. 31(4)(a) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **37(3)(a)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F289** Art. 31(4)(b) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **37(3)(b)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F290** Words in Art. 31(5) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **37(4)(a)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F291** Words in Art. 31(5) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **37(4)(b)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

F292 Art. 31(8) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **37(5)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 32

Assessment

1 Where assessing the notification provided for in Article 31(2) and the information referred to in Article 31(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:

- a the reputation and financial soundness of the proposed acquirer;
- b the reputation and experience of any person who will direct the business of the CCP as a result of the proposed acquisition;
- c whether the CCP will be able to comply and continue to comply with this Regulation;
- d whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, [F293 terrorist financing or money laundering within the meaning given respectively in paragraph 2(1) and (2) of Schedule 7 to the Counter-Terrorism Act 2008] 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 CCP's 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, to effectively exchange information among the competent authorities and to determine the allocation of responsibilities among the competent authorities.

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...

2 The [F295 competent authority] 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 [F296 The competent authority] shall neither impose any prior conditions in respect of the level of holding that shall be acquired nor F297 ... examine the proposed acquisition in terms of the economic needs of the market.

4 [F298 The competent authority] shall make publicly available a list specifying the information that is necessary to carry out the assessment and that shall be [F299 made available] at the time of notification referred to in Article 31(2). The information required shall be proportionate and shall be adapted to the nature of the proposed acquirer and the proposed acquisition. [F298 The competent authority] shall not require information that is not relevant for a prudential assessment.

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

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

6 ^{F300} [The Bank of England, the PRA and the FCA, as appropriate] shall cooperate closely with each other when carrying out the assessment where the proposed acquirer is one of the following:

- a another CCP, a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm, market operator, an operator of a securities settlement system, a UCITS management company or an AIFM ^{F301} ... ;
- b the parent undertaking of another CCP, a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm, market operator, an operator of a securities settlement system, a UCITS management company or an AIFM ^{F302} ... ;
- c a natural or legal person controlling another CCP, a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm, market operator, an operator of a securities settlement system, a UCITS management company or an AIFM ^{F303}

7 ^{F304} [The Bank of England, the PRA and the FCA, as appropriate] shall, without undue delay, provide each other with any information which is essential or relevant for the assessment. ^{F304} [The Bank of England, the PRA and the FCA, as appropriate] 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.

Textual Amendments

- F293** Words in Art. 32(1)(d) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **38(2)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F294** Words in Art. 32(1) omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2020 \(S.I. 2020/646\)](#), regs. 1(3), **27** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F295** Words in Art. 32(2) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **38(3)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F296** Words in Art. 32(3) omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **38(4)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F297** Words in Art. 32(3) omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **38(4)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F298** Words in Art. 32(4) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **38(5)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F299** Words in Art. 32(4) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **38(5)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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Regulations 2019 (S.I. 2019/335), regs. 1(1), **38(5)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F300 Words in Art. 32(6) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **38(6)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F301 Words in Art. 32(6)(a) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **38(6)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F302 Words in Art. 32(6)(b) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **38(6)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F303 Words in Art. 32(6)(c) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **38(6)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F304 Words in Art. 32(7) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **38(7)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 33

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 with direct or indirect control or close links, and its clearing members or their clients known to the CCP. It shall maintain and implement adequate procedures aiming at resolving possible conflicts of interest.

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 are 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 shall 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 conflict.

5 A CCP shall take all reasonable steps to prevent any misuse of the information held in its systems and shall prevent the use of that information for other business activities. A

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natural person who has a close link to a CCP or a legal person that has a parent undertaking or a subsidiary relationship with a CCP shall not use confidential information recorded in that CCP for any commercial purposes without the prior written consent of the client to whom such confidential information belongs.

Article 34

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 least 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 A CCP shall establish, implement and maintain an adequate procedure ensuring the timely and orderly settlement or transfer of the assets and positions of clients and clearing members in the event of a withdrawal of authorisation pursuant to a decision under Article 20.

3 ^[F305]The Bank of England may make] technical standards specifying the minimum content and requirements of the business continuity policy and of the disaster recovery plan.

F306 ...

F306 ...

Textual Amendments

F305 Words in Art. 34(3) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **39(a)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F306 Words in Art. 34(3) omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **39(b)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 35

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 ensure at all times that:

- 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 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;

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- e outsourcing does not result in depriving the CCP from the necessary systems and controls to manage the risks it faces;
- f the service provider implements equivalent business continuity requirements to those that the CCP must fulfil under this Regulation;
- g the CCP retains the necessary expertise and resources to evaluate the quality of the services provided and 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 supervises those functions and manages those risks on an ongoing basis;
- h the CCP has direct access to the relevant information of the outsourced functions;
- i the service provider cooperates with the competent authority in connection with the outsourced activities;
- j the service provider protects any confidential information relating to the CCP and its clearing members and clients or, where that service provider is established in a third country, ensures that the data protection standards of that third country, or those set out in the agreement between the parties concerned, are comparable to the data protection standards in effect in the [^{F307}United Kingdom].

[^{F102}A CCP shall not outsource major activities linked to risk management unless such outsourcing is approved by the competent authority. ^{F308} ...]

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

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 this Regulation available on request.

Textual Amendments

F102 Substituted by Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019 amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs.

F307 Words in Art. 35(1)(j) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **40** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F308 Words in Art. 35(1) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **28** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

CHAPTER 2

Conduct of business rules

Article 36

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 such clearing members and clients and sound risk management.
- 2 A CCP shall have accessible, transparent and fair rules for the prompt handling of complaints.

Article 37

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 28(3). Such criteria shall be non-discriminatory, transparent and objective so as to ensure fair and open access to the CCP and shall ensure that clearing members have sufficient financial resources and operational capacity to meet the obligations arising from participation in a CCP. Criteria that restrict access shall be permitted only to the extent that their objective is to control the risk for the CCP.
- 2 A CCP shall ensure that the application of the criteria referred to in paragraph 1 is met on an ongoing basis and shall have timely access to the information relevant for such assessment. A CCP shall conduct, at least once a year, a comprehensive review of compliance with 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. The CCP's rules for clearing members shall allow it to gather relevant basic information to identify, monitor and manage relevant concentrations of risk relating to the provision of services to clients. 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. Responsibility for ensuring that clients comply with their obligations shall remain with clearing members.
- 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 duly justified in writing and based on a comprehensive risk analysis.
- 6 A CCP may impose specific additional obligations on clearing members, such as 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.

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Article 38

Transparency

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

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

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

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

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

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

5 A CCP shall publicly disclose any breaches by clearing members of the criteria referred to in Article 37(1) and the requirements laid down in paragraph 1 of this Article, except where the competent authority ^{F309}... considers that such disclosure would constitute a threat to financial stability or to market confidence or would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

^{F86} A CCP shall provide its clearing members with a simulation tool allowing them to determine the amount of additional initial margin, on a gross basis, that the CCP may require upon the clearing of a new transaction. That tool shall only be accessible on a secured access basis, and the results of the simulation shall not be binding.

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

- a clearly explain the design of the initial margin model and how it operates;
- b clearly describe the key assumptions and limitations of the initial margin model and the circumstances under which those assumptions are no longer valid;
- c be documented.]

Textual Amendments

F86 Inserted by Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (Text with EEA relevance).

F309 Words in Art. 38(5) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit)

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Regulations 2019 (S.I. 2019/335), regs. 1(1), 41 (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 39

Segregation and portability

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 offer to keep separate 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 ('omnibus client segregation').

3 A CCP shall offer to keep separate records and accounts enabling each clearing member to distinguish in accounts with the CCP the assets and positions held for the account of a client from those held for the account of other clients ('individual client segregation'). Upon request, the CCP shall offer clearing members the possibility to open more accounts in their own name or for the account of their clients.

4 A clearing member shall keep separate records and accounts that enable it to distinguish both in accounts held with the CCP and in its own accounts its assets and positions from the assets and positions held for the account of its clients at the CCP.

5 A clearing member shall offer its clients, at least, the choice between omnibus client segregation and individual client segregation and inform them of the costs and level of protection referred to in paragraph 7 associated with each option. The client shall confirm its choice in writing.

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

7 CCPs and clearing members shall publicly disclose the levels of protection and the costs associated with the different levels of segregation that they provide and shall offer those services on reasonable commercial terms. Details of the different levels of segregation shall include a description of the main legal implications of the respective levels of segregation offered including information on the insolvency law applicable in the relevant jurisdictions.

8 A CCP shall have a right of use relating to the margins or default fund contributions collected via a security financial collateral arrangement, within the meaning of [F³¹⁰regulation 3(1) of the Financial Collateral Arrangements (No.2) Regulations 2003] provided that the use of such arrangements is provided for in its operating rules. The clearing member shall confirm its acceptance of the operating rules in writing. The CCP shall publicly disclose that right of use, which shall be exercised in accordance with Article 47.

9 The requirement to distinguish assets and positions with the CCP in accounts is satisfied where:

- a the assets and positions are recorded in separate accounts;
- b the netting of positions recorded on different accounts is prevented;

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

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

F311 11

Textual Amendments

- F310** Words in Art. 39(8) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **42(a)** (as substituted by S.I. 2020/1385, regs. 1(4), **52(4)**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F311** Art. 39(11) omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **42(b)** (as substituted by S.I. 2020/1385, regs. 1(4), **52(4)**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**

CHAPTER 3

Prudential requirements

Article 40

Exposure management

A CCP shall measure and assess its liquidity and credit exposures to each clearing member and, where relevant, to another CCP with which it has concluded an interoperability 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. This shall be done on a reasonable cost basis.

Article 41

Margin requirements

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

2 A CCP shall adopt models and parameters in setting its margin requirements that capture the risk characteristics of the products cleared and take into account the interval between

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margin collections, market liquidity and the possibility of changes over the duration of the transaction. The models and parameters shall be validated by the competent authority ^{F312}...

3 A CCP shall call and collect margins on an intraday basis, at least when predefined thresholds are exceeded.

4 A CCP shall call and collect margins that are adequate to cover the risk stemming from the positions registered in each account kept in accordance with Article 39 with respect to specific financial instruments. A CCP may calculate margins with respect to a portfolio of financial instruments provided that the methodology used is prudent and robust.

5 [^{F313}The Bank of England may make] 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, taking into account the objective to limit procyclicality, and the conditions under which portfolio margining practices referred to in paragraph 4 can be implemented.

F314 ...

F314 ...

Textual Amendments

F312 Words in Art. 41(2) omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/335), regs. 1(1), **43(2)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F313 Words in Art. 41(5) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/335), regs. 1(1), **43(3)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F314 Words in Art. 41(5) omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/335), regs. 1(1), **43(3)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 42

Default fund

1 To limit its credit exposures to its clearing members further, a CCP shall maintain a pre-funded default fund to cover losses that exceed the losses to be covered by margin requirements laid down in Article 41, arising from the default, including the opening of an insolvency procedure, of one or more clearing members.

The CCP shall establish a minimum amount below which the size of the default fund is not to fall under any circumstances.

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.

3 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

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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.

4 A CCP may establish more than one default fund for the different classes of instrument that it clears.

5 ^[F315]The Bank of England may make] technical standards specifying the framework for defining extreme but plausible market conditions referred to in paragraph 3, that should be used when defining the size of the default fund and the other financial resources referred to in Article 43.

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Textual Amendments

F315 Words in Art. 42(5) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **44(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F316 Words in Art. 42(5) omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **44(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 43

Other financial resources

1 A CCP shall maintain sufficient pre-funded available financial resources to cover potential losses that exceed the losses to be covered by margin requirements laid down in Article 41 and the default fund as referred to in Article 42. Such pre-funded financial resources shall include dedicated resources of the CCP, shall be freely available to the CCP and shall not be used to meet the capital required under Article 16.

2 The default fund referred to in Article 42 and the other financial resources referred to in paragraph 1 of this Article 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 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.

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Article 44

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 shall not provide more than 25 % 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 ^[F317]The Bank of England may make] technical standards specifying the framework for managing the liquidity risk that CCPs are to withstand in accordance with paragraph 1.

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Textual Amendments

F317 Words in Art. 44(2) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **45(a)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F318 Words in Art. 44(2) omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **45(b)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 45

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 those 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 43(1) only after having exhausted the contributions of the defaulting clearing member.

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

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

5 [F319The Bank of England may make] 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 4.

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Textual Amendments

F319 Words in Art. 45(5) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **46(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F320 Words in Art. 45(5) omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **46(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 46

Collateral requirements

1 A CCP shall accept highly liquid collateral with minimal credit and market risk to cover its initial and ongoing exposure to its clearing members. For non-financial counterparties, a CCP may accept bank guarantees, taking such guarantees into account when calculating its exposure to a bank that is a clearing member. 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 may accept, where appropriate and sufficiently prudent, the underlying of the derivative contract or the financial instrument that originates the CCP exposure as collateral to cover its margin requirements.

3 [F321The Bank of England may make] technical standards specifying:

- the type of collateral that could be considered highly liquid, such as cash, gold, government and high-quality corporate bonds and covered bonds;
- the haircuts referred to in paragraph 1; and
- the conditions under which commercial bank guarantees may be accepted as collateral under paragraph 1.

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Textual Amendments

F321 Words in Art. 46(3) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **47(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

F322 Words in Art. 46(3) omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **47(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 47

Investment policy

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

2 The amount of capital, including retained earnings and reserves of a CCP which are not invested in accordance with paragraph 1, shall not be taken into account for the purposes of Article 16(2) or Article 45(4).

3 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 financial instruments. Alternatively, other highly secure arrangements with authorised financial institutions may be used.

4 Cash deposits of a CCP shall be performed through highly secure arrangements with authorised financial institutions or, alternatively, through the use of the standing deposit facilities of central banks or other comparable means provided for by central banks.

5 Where a CCP deposits assets with a third party, it shall ensure that the assets belonging to the clearing members are identifiable separately from the assets belonging to the CCP and from assets belonging to that third party by means of differently titled accounts on the books of the third party or any other equivalent measures that achieve the same level of protection. A CCP shall have prompt access to the financial instruments when required.

6 A CCP shall not invest its capital or the sums arising from the requirements laid down in Article 41, 42, 43 or 44 in its own securities or those of its parent undertaking or its subsidiary.

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

8 ^{[F323}The Bank of England may make] 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 paragraphs 3 and 4 and the concentration limits referred to in paragraph 7.

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Textual Amendments

F323 Words in Art. 47(8) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **48(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

F324 Words in Art. 47(8) omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **48(b)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 48

Default procedures

1 A CCP shall have detailed procedures in place to be followed where a clearing member does not comply with the participation requirements of the CCP laid down in Article 37 within the time limit and in accordance with the procedures established by the CCP. The CCP shall set out in detail the procedures to be followed in the event the default of a clearing member is not declared by the CCP. Those procedures shall be reviewed annually.

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 Where a CCP considers that the clearing member will not be able to meet its future obligations, it shall promptly inform the competent authority before the default procedure is declared or triggered. The competent authority shall promptly communicate that information to ^{F325}the authority responsible for the supervision of the defaulting clearing member].

4 A CCP shall verify that its default procedures are enforceable. It shall take all 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.

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

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

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

to those positions, including liquidating the assets and positions held by the defaulting clearing member for the account of the client.

7 Clients' collateral distinguished in accordance with Article 39(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 those clients when they are known to the CCP or, if they are not, to the clearing member for the account of its clients.

Textual Amendments

F325 Words in Art. 48(3) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), 49 (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 49

Review of models, stress testing and back testing

[^{F1021} A CCP shall regularly review the models and parameters adopted to calculate its margin requirements, default fund contributions, collateral requirements and other risk control mechanisms. It shall subject the models to rigorous and frequent stress tests to assess their resilience in extreme but plausible market conditions and shall perform back tests to assess the reliability of the methodology adopted. The CCP shall obtain independent validation, shall inform [^{F326}the Bank of England] of the results of the tests performed and shall obtain [^{F327}its] validation in accordance with paragraphs 1a, ^{F328}... 1d and 1e before adopting any significant change to the models and parameters.

^{F329} ...

^{F329} ...]

[^{F1621a} Where a CCP intends to adopt any significant change to the models and parameters referred to in paragraph 1, it shall apply to the [^{F330}Bank of England] for validation of that change. The CCP shall enclose an independent validation of the intended change to its applications. The [^{F330}Bank of England] shall ^{F331}... confirm the receipt of the complete application to the CCP.

^{F332} 1b

^{F333} 1c

1d Within 90 working days of the receipt of the applications referred to in paragraph 1a, the [^{F334}Bank of England shall inform the CCP] in writing, including a fully reasoned explanation, whether the validation has been granted or refused.

1e The CCP may not adopt any significant change to the models and parameters referred to in paragraph 1 before obtaining the validations by [^{F335}the Bank of England]. The [^{F336}Bank of England] may allow for a provisional adoption of a significant change of those models or parameters prior to their validations where duly justified.]

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

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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 ^{F337} [The Bank of England may make] technical standards specifying:
- a the type of tests to be undertaken for different classes of financial instruments and portfolios;
 - b the involvement of clearing members or other parties in the tests;
 - c the frequency of the tests;
 - d the time horizons of the tests;
 - e the key information referred to in paragraph 3.

F338 ...

F338 ...

^{F339} 5 The Bank of England may make technical standards specifying the conditions under which changes to the models and parameters referred to in paragraph 1 are significant.]

Textual Amendments

- F102** Substituted by Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019 amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs.
- F162** Inserted by Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019 amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs.
- F326** Words in Art. 49(1) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **50(2)(a)** (as substituted by S.I. 2020/646, regs. 1(2)(c), **6(7)(a)**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F327** Word in Art. 49(1) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **50(2)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F328** Words in Art. 49(1) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **50(2)(ba)** (as inserted by S.I. 2020/646, regs. 1(2)(c), **6(7)(b)**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F329** Words in Art. 49(1) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **50(2)(c)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F330** Words in Art. 49(1a) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **29(a)(i)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F331** Word in Art. 49(1a) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **29(a)(ii)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F332** Art. 49(1b) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit)

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- Regulations 2020 (S.I. 2020/646), regs. 1(3), **29(b)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F333** Art. 49(1c) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **29(b)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F334** Words in Art. 49(1d) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **29(c)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F335** Words in Art. 49(1e) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **29(d)(i)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F336** Words in Art. 49(1e) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **29(d)(ii)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F337** Words in Art. 49(4) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **50(3)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F338** Words in Art. 49(4) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **50(3)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F339** Art. 49(5) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **29(2)** (with savings in S.I. 2019/680, **reg. 11** as amended by S.I. 2020/646, **reg. 12**)

Article 50

Settlement

1 A CCP shall, where practical and available, use central bank money to settle its transactions. Where central bank money is not used, steps shall be taken to strictly limit cash settlement 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, it shall eliminate principal risk through the use of delivery-versus-payment mechanisms to the extent possible.

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

[^{F340}]^{X1}CHAPTER 4

Calculations and reporting for the purposes of Regulation (EU) No 575/2013

Article 50a

Calculation of K_{CCP}

1 For the purposes of [^{F341}Article 308 of Chapter 3 of the Counterparty Credit Risk (CRR) Part of the PRA Rulebook][^{F342}and Chapter 10 of the Prudential Sourcebook for MiFID Investment Firms (MIFIDPRU) in the FCA Handbook], a CCP shall calculate K_{CCP} as specified in paragraph 2 of this Article for all contracts and transactions it clears for all its clearing members falling within the coverage of the given default fund.

[^{F343} 2 A CCP shall calculate the hypothetical capital as follows:

$$K_{CCP} = \sum EAD_i \cdot RW \cdot \text{capital ratio}$$

where:

K_{CCP} = the hypothetical capital;

i = the index denoting the clearing member;

EAD_i = the exposure amount of the CCP to clearing member i , including the clearing member's own transactions with the CCP, the client transactions guaranteed by the clearing member, and all values of collateral held by the CCP, including the clearing member's pre-funded default fund contribution, against those transactions, relating to the valuation at the end of the regulatory reporting date before the margin called on the final margin call of that day is exchanged;

RW = a risk weight of 20%; and

capital ratio = 8%..]

3 A CCP shall undertake the calculation required by paragraph 2 at least quarterly or more frequently where required by the competent authorities of those of its clearing members which are institutions [^{F344}or FCA investment firms].

4 For the purpose of paragraph 3, [^{F345}the Bank of England, having consulted the PRA and the FCA, may make technical standards specifying] the following:

- a the frequency and dates of the calculation laid down in paragraph 2;
- b the situations in which the competent authority of an institution [^{F346}or FCA investment firm] acting as a clearing member may require higher frequencies of calculation and reporting than those referred to in point (a).

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Textual Amendments

F341 Words in Art. 50a(1) substituted (1.1.2022) by [The Financial Services Act 2021 \(Prudential Regulation of Credit Institutions and Investment Firms\) \(Consequential Amendments and Miscellaneous Provisions\) Regulations 2021 \(S.I. 2021/1376\)](#), regs. 1(3), **24(4)**

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- F342** Words in Art. 50a(1) inserted (17.8.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2022 (S.I. 2022/838), regs. 1(2), **19(3)(a)** (with regs. 24-26)
- F343** Art. 50a(2) substituted (1.1.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (S.I. 2021/1376), regs. 1(3), **24(5)**
- F344** Words in Art. 50a(3) inserted (17.8.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2022 (S.I. 2022/838), regs. 1(2), **19(3)(b)** (with regs. 24-26)
- F345** Words in Art. 50a(4) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **51(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F346** Words in Art. 50a(4)(b) inserted (17.8.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2022 (S.I. 2022/838), regs. 1(2), **19(3)(c)** (with regs. 24-26)
- F347** Words in Art. 50a(4) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **51(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

^{F348} Article 50b

General rules for the calculation of K_{CCP}

For the purpose of calculating K_{CCP} referred to in Article 50a(2), the following provisions shall apply:

- a) CCPs shall calculate the value of the exposures they have to their clearing members as follows:
- i) for exposures arising from contracts and transactions listed in points (a) or (c) of Article 301(1) of Chapter 3 of the Counterparty Credit Risk (CRR) Part of the PRA Rulebook, CCPs shall calculate the value in accordance with the method set out in Section 3 of Chapter 3 of the Counterparty Credit Risk (CRR) Part of the PRA Rulebook by using a margin period of risk of 10 business days;
 - ii) for exposures arising from contracts and transactions listed in point (b) of Article 301(1) of Chapter 3 of the Counterparty Credit Risk (CRR) Part of the PRA Rulebook, CCPs shall calculate the value (EAD_i) in accordance with the following formula:

$$EAD_i = \max \{EBRM_i - IM_i - DF_i; 0\}$$

where:

EAD_i = the exposure value;

i = the index denoting the clearing member;

$EBRM_i$ = the exposure value before risk mitigation that is equal to the exposure value of the CCP to clearing member i arising from all the contracts and transactions with that clearing member, calculated without taking into account the collateral posted by that clearing member;

IM_i = the initial margin posted with the CCP by clearing member i ;

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DF_i = the pre-funded default fund contribution of clearing member i .

All values in this formula shall relate to the valuation at the end of the day before the margin called on the final margin call of that day is exchanged;

- iii) for situations referred to in the third sentence of the second subparagraph of Article 301(1) of Chapter 3 of the Counterparty Credit Risk (CRR) Part of the PRA Rulebook, CCPs shall calculate the value of the transactions referred to in the first sentence of that subparagraph in accordance with the formula set out in point (a)(ii) of this Article, and shall determine $EBRM_i$ in accordance with Title V of Part Three of the Capital Requirements Regulation;
- b) for institutions that fall under the scope of the Capital Requirements Regulation the netting sets are the same as those defined in point (4) of Article 272 of that Regulation;
- [^{F349}ba) for FCA investment firms that fall under the scope of Part 9C rules, the netting sets are the same as those set out in the definition of “netting set (in MIFIDPRU)” in the Glossary of the FCA Handbook;]
- c) a CCP that has exposures to one or more CCPs shall treat those exposures as if they were exposures to clearing members and include any margin or pre-funded contributions received from those CCPs in the calculation of K_{CCP} ;
- d) a CCP that has in place a binding contractual arrangement with its clearing members that allows that CCP to use all or part of the initial margin received from its clearing members as if they were pre-funded contributions shall consider that initial margin as pre-funded contributions for the purposes of the calculation in paragraph 1 and not as initial margin;
- e) where collateral is held against an account containing more than one of the types of contracts and transactions referred to in Article 301(1) of Chapter 3 of the Counterparty Credit Risk (CRR) Part of the PRA Rulebook, CCPs shall allocate the initial margin provided by their clearing members or clients, as applicable, in proportion to the EADs of the respective types of contracts and transactions calculated in accordance with point (a) of this paragraph, without taking into account initial margin in the calculation;
- f) CCPs that have more than one default fund shall carry out the calculation for each default fund separately;
- g) where a clearing member provides client clearing services, and the transactions and collateral of the clearing member’s clients are held in sub-accounts which are separate from those of the clearing member’s proprietary business, CCPs shall carry out the calculation of EAD_i for each sub-account separately and shall calculate the clearing member’s total EAD_i as the sum of the EADs of the clients’ sub-accounts and the EAD of the clearing member’s proprietary business sub-account;
- h) for the purposes of point (f), where DF_i is not split between the clients’ sub-accounts and the clearing member’s proprietary business sub-accounts, CCPs shall allocate DF_i per sub-account according to the respective fraction the initial margin of that sub-account has in relation to the total initial margin posted by the clearing member or for the account of the clearing member;
- i) CCPs shall not carry out the calculation in accordance with Article 50a(2) where the default fund covers cash transactions only.

For the purposes of point (a)(ii) of this Article, the CCP shall use the method specified in Article 223 of the Capital Requirements Regulation with supervisory volatility adjustments set out in Article 224 of that Regulation to calculate the exposure value.]

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Textual Amendments

F348 Art. 50b substituted (1.1.2022) by [The Financial Services Act 2021 \(Prudential Regulation of Credit Institutions and Investment Firms\) \(Consequential Amendments and Miscellaneous Provisions\) Regulations 2021 \(S.I. 2021/1376\)](#), regs. 1(3), **24(6)**

F349 Art. 50b(ba) inserted (17.8.2022) by [The Financial Services Act 2021 \(Prudential Regulation of Credit Institutions and Investment Firms\) \(Consequential Amendments and Miscellaneous Provisions\) Regulations 2022 \(S.I. 2022/838\)](#), regs. 1(2), **19(4)** (with regs. 24-26)

Article 50c

Reporting of information

1 For the purposes of Article 308 of ^{F350}Chapter 3 of the Counterparty Credit Risk (CRR) Part of the PRA Rulebook^{F351} and Chapter 10 of the Prudential Sourcebook for MiFID Investment Firms (MIFIDPRU) in the FCA Handbook], a CCP shall report the following information to those of its clearing members which are institutions ^{F352}or FCA investment firms] and to their competent authorities:

- a the hypothetical capital (K_{CCP});
- b the sum of pre-funded contributions (DF_{CM});
- c the amount of its pre-funded financial resources that it is required to use — by law or due to a contractual agreement with its clearing members — to cover its losses following the default of one or more of its clearing members before using the default fund contributions of the remaining clearing members (DF_{CCP});

- ^{F353} d
- ^{F354} e

Where the CCP has more than one default fund, it shall report the information in the first subparagraph for each default fund separately.

2 The CCP shall notify those of its clearing members which are institutions ^{F355}or FCA investment firms] at least quarterly or more frequently where required by the competent authorities of those clearing members.

3 ^{F356}The Bank of England, having consulted the PRA and the FCA, may make technical standards specifying] the following:

- a the uniform template for the purpose of the reporting specified in paragraph 1;
- b the frequency and dates of the reporting specified in paragraph 2;
- c the situations in which the competent authority of an institution ^{F357}or FCA investment firm] acting as a clearing member may require higher frequencies of reporting than those referred to in point (b).

- ^{F358} ...
- ^{F358} ...

Textual Amendments

F350 Words in Art. 50c(1) substituted (1.1.2022) by [The Financial Services Act 2021 \(Prudential Regulation of Credit Institutions and Investment Firms\) \(Consequential Amendments and Miscellaneous Provisions\) Regulations 2021 \(S.I. 2021/1376\)](#), regs. 1(3), **24(7)(a)**

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- F351** Words in Art. 50c(1) inserted (17.8.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2022 (S.I. 2022/838), regs. 1(2), **19(5)(a)(i)** (with regs. 24-26)
- F352** Words in Art. 50c(1) inserted (17.8.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2022 (S.I. 2022/838), regs. 1(2), **19(5)(a)(ii)** (with regs. 24-26)
- F353** Art. 50c(1)(d) omitted (1.1.2022) by virtue of The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (S.I. 2021/1376), regs. 1(3), **24(7)(b)**
- F354** Art. 50c(1)(e) omitted (1.1.2022) by virtue of The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (S.I. 2021/1376), regs. 1(3), **24(7)(b)**
- F355** Words in Art. 50c(2) inserted (17.8.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2022 (S.I. 2022/838), regs. 1(2), **19(5)(b)** (with regs. 24-26)
- F356** Words in Art. 50c(3) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **52(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F357** Words in Art. 50c(3)(c) inserted (17.8.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2022 (S.I. 2022/838), regs. 1(2), **19(5)(c)** (with regs. 24-26)
- F358** Words in Art. 50c(3) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **52(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 50d

Calculation of specific items to be reported by the CCP

For the purposes of Article 50c, the following shall apply:

- (a) where the rules of a CCP provide that it use part or all of its financial resources in parallel to the pre-funded contributions of its clearing members in a manner that makes those resources equivalent to pre-funded contributions of a clearing member in terms of how they absorb the losses incurred by the CCP in the case of the default or insolvency of one or more of its clearing members, the CCP shall add the corresponding amount of those resources to DF_{CM} ;
- (b) where the rules of a CCP provide that it use part or all of its financial resources to cover its losses due to the default of one or more of its clearing members after it has depleted its default fund, but before it calls on the contractually committed contributions of its clearing members, the CCP shall add the corresponding amount of those additional financial resources

to the total amount of pre-funded contributions (DF) as follows:

$$DF = DF_{CCP} + DF_{CM} + DF_{aCCP}$$

- (c) ^{F359}

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Textual Amendments

F359 Art. 50d(c) omitted (1.1.2022) by virtue of [The Financial Services Act 2021 \(Prudential Regulation of Credit Institutions and Investment Firms\) \(Consequential Amendments and Miscellaneous Provisions\) Regulations 2021 \(S.I. 2021/1376\)](#), regs. 1(3), **24(8)**

Editorial Information

X1 Substituted by [Corrigendum to Regulation \(EU\) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation \(EU\) No 648/2012 \(OJ L 176, 27.6.2013, p. 1\)](#).

Textual Amendments

F340 Inserted by [Regulation \(EU\) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation \(EU\) No 648/2012 \(Text with EEA relevance\)](#).

TITLE V

INTEROPERABILITY ARRANGEMENTS

Article 51

Interoperability arrangements

- 1 A CCP may enter into an interoperability arrangement with another CCP where the requirements laid down in Articles 52, 53 and 54 are fulfilled.
- 2 When establishing an interoperability arrangement with another CCP for the purpose of providing services to a particular trading venue, the CCP shall have non-discriminatory access, both to the data that it needs for the performance of its functions from that particular trading venue, to the extent that the CCP complies with the operational and technical requirements established by the trading 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 be rejected or restricted, directly or indirectly, only in order to control any risk arising from that arrangement or access.

Article 52

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;

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- 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 relating to clearing member concentrations, and pooled financial resources.

For the purposes of point (b) of the first subparagraph, CCPs shall use the same rules concerning the moment of entry of transfer orders into their respective systems and the moment of irrevocability as set out in [F360the Financial Markets and Insolvency (Settlement Finality) Regulations 1999], where relevant.

For the purposes of point (c) of the first subparagraph, 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) of the first subparagraph, CCPs shall have robust controls over the re-use of clearing members' collateral under the arrangement, if permitted by their competent authorities. The arrangement shall outline how those 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 therefrom 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.

3 Any associated costs that arise from paragraphs 1 and 2 shall be borne by the CCP requesting interoperability or access, unless otherwise agreed between the parties.

Textual Amendments

F360 Words in Art. 52(1) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **53** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 53

Provision of margins among 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 [F361that are designated systems within the meaning given in regulation 2(1) of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999].

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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.

Textual Amendments

F361 Words in Art. 53(3) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **54** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 54

Approval of interoperability arrangements

1 An interoperability arrangement shall be subject to the prior approval of the [^{F362}CCP's competent authority]. The procedure under Article 17 shall apply.

2 The [^{F363}competent authority] shall grant approval of the interoperability arrangement only where the CCPs involved have been authorised to clear under Article 17 or recognised under Article 25 ^{F364}... , the requirements laid down in Article 52 are met and the technical conditions for clearing transactions under the terms of the arrangement allow for a smooth and orderly functioning of financial markets and the arrangement does not undermine the effectiveness of supervision.

[^{F365}3 Where the competent authority considers that the requirements laid down in paragraph 2 are not met, it shall provide explanations in writing regarding its risk considerations to the CCPs involved.]

^{F366}4

Textual Amendments

F362 Words in Art. 54(1) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **55(2)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F363 Words in Art. 54(2) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **55(3)(a)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F364 Words in Art. 54(2) omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **55(3)(b)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F365 Art. 54(3) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **55(4)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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F366 Art. 54(4) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **55(5)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

TITLE VI

REGISTRATION AND SUPERVISION OF TRADE REPOSITORIES

CHAPTER 1

Conditions and procedures for registration of a trade repository

Article 55

Registration of a trade repository

- 1 A trade repository shall register with [^{F367}the FCA] for the purposes of Article 9.
- 2 To be eligible to be registered under this Article, a trade repository shall be a legal person established in the [^{F368}United Kingdom] and meet the requirements laid down in Title VII.
- ^{F369}3
- 4 A registered trade repository shall comply at all times with the conditions for registration. A trade repository shall, without undue delay, notify [^{F370}the FCA] of any material changes to the conditions for registration.

Textual Amendments

- F367** Words in Art. 55(1) substituted (31.12.2020) by The Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018 (S.I. 2018/1318), regs. 1(3), **2(2)(a)** (with regs. 14-19) (as amended by S.I. 2020/56, regs. 1, **9** and with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F368** Words in Art. 55(2) substituted (31.12.2020) by The Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018 (S.I. 2018/1318), regs. 1(3), **2(2)(b)** (with regs. 14-19) (as amended by S.I. 2020/56, regs. 1, **9** and with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, Sch. 5 para. 1(1)
- F369** Art. 55(3) omitted (31.12.2020) by virtue of The Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018 (S.I. 2018/1318), regs. 1(3), **2(2)(c)** (with regs. 14-19) (as amended by S.I. 2020/56, regs. 1, **9** and with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, Sch. 5 para. 1(1)
- F370** Words in Art. 55(4) substituted (31.12.2020) by The Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018 (S.I. 2018/1318), regs. 1(3), **2(2)(d)** (with regs. 14-19) (as amended by S.I. 2020/56, regs. 1, **9** and with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, Sch. 5 para. 1(1)

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Article 56

Application for registration

^{F62}1 For the purposes of Article 55(1), a trade repository shall submit either of the following to ^{F371}the FCA]:

- a an application for registration;
- b an application for an extension of the registration where the trade repository is already registered under Chapter III of Regulation (EU) 2015/2365.]

2 ^{F372}The FCA] shall assess whether the application is complete within 20 working days of receipt of the application.

Where the application is not complete, ^{F373}the FCA] shall set a deadline by which the trade repository is to provide additional information.

After assessing an application as complete, ^{F373}the FCA] shall notify the trade repository accordingly.

^{F374}3 The FCA may make technical standards specifying the form and content of applications under paragraph 1.]

^{F375}4

Textual Amendments

- F62** Substituted by Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (Text with EEA relevance).
- F371** Words in Art. 56(1) substituted (31.12.2020) by The Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018 (S.I. 2018/1318), regs. 1(3), **2(3)(a)** (with regs. 14-19) (as amended by S.I. 2020/56, regs. 1, 9 and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F372** Words in Art. 56(2) substituted (31.12.2020) by The Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018 (S.I. 2018/1318), regs. 1(3), **2(3)(b)(i)** (with regs. 14-19) (as amended by S.I. 2020/56, regs. 1, 9 and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F373** Words in Art. 56(2) substituted (31.12.2020) by The Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018 (S.I. 2018/1318), regs. 1(3), **2(3)(b)(ii)** (with regs. 14-19) (as amended by S.I. 2020/56, regs. 1, 9 and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F374** Art. 56(3) substituted (31.12.2020) by The Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018 (S.I. 2018/1318), regs. 1(3), **2(3)(c)** (with regs. 14-19) (as amended by S.I. 2020/56, regs. 1, 9 and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F375** Art. 56(4) omitted (31.12.2020) by virtue of The Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018 (S.I. 2018/1318), regs. 1(3), **2(3)(d)** (with regs. 14-19) (as amended by S.I. 2020/56, regs. 1, 9 and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

^{F376} Article 57

Notification of and consultation with competent authorities prior to registration

Textual Amendments

F376 Art. 57 omitted (31.12.2020) by virtue of [The Trade Repositories \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1318), regs. 1(3), **2(4)** (with regs. 14-19) (as amended by S.I. 2020/56, regs. 1, 9 and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 58

Examination of the application

1 ^[F377]The FCA] shall, within 40 working days from the notification referred to in the third subparagraph of Article 56(2), examine the application for registration based on the compliance of the trade repository with Articles 78 to 81 and shall adopt a fully reasoned registration decision or decision refusing registration.

^{F378}2

Textual Amendments

- F377** Words in Art. 58(1) substituted (31.12.2020) by [The Trade Repositories \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1318), regs. 1(3), **2(5)(a)** (with regs. 14-19) (as amended by S.I. 2020/56, regs. 1, 9 and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F378** Art. 58(2) omitted (31.12.2020) by virtue of [The Trade Repositories \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1318), regs. 1(3), **2(5)(b)** (with regs. 14-19) (as amended by S.I. 2020/56, regs. 1, 9 and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

^{F379} Article 59

Notification of ESMA decisions relating to registration

Textual Amendments

F379 Art. 59 omitted (31.12.2020) by virtue of [The Trade Repositories \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1318), regs. 1(3), **2(6)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

F380 Article 60

Exercise of the powers referred to in Articles 61 to 63

Textual Amendments

F380 Arts. 60-70 omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **56(1)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F380 Article 61

Request for information

Textual Amendments

F380 Arts. 60-70 omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **56(1)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F380 Article 62

General investigations

Textual Amendments

F380 Arts. 60-70 omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **56(1)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F380 Article 63

On-site inspections

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

F380 Arts. 60-70 omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **56(1)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F380 Article 64

Procedural rules for taking supervisory measures and imposing fines

Textual Amendments

F380 Arts. 60-70 omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **56(1)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F380 Article 65

Fines

Textual Amendments

F380 Arts. 60-70 omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **56(1)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F380 Article 66

Periodic penalty payments

Textual Amendments

F380 Arts. 60-70 omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **56(1)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

F380 Article 67

Hearing of the persons concerned

Textual Amendments

F380 Arts. 60-70 omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **56(1)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F380 Article 68

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

Textual Amendments

F380 Arts. 60-70 omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **56(1)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F380 Article 69

Review by the Court of Justice

Textual Amendments

F380 Arts. 60-70 omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **56(1)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F380 Article 70

Amendments to Annex II

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

F380 Arts. 60-70 omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **56(1)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

^{F381} Article 71

Withdrawal of registration

- 1 The FCA may, on its own initiative, withdraw the registration of a trade repository where the trade repository:
 - a expressly renounces the registration or has provided no services for the preceding 6 months;
 - b obtained the registration by making false statements or by any other irregular means; or
 - c no longer meets the conditions for registration.
- 2 The FCA may also, on its own initiative, withdraw the registration of a trade repository where it is desirable to do so to advance one or more of its operational objectives set out in section 1B(3) of the FSMA.
- 3 The FCA may, on an application by a trade repository, withdraw the registration of the trade repository.
- 4 The decision to withdraw the registration of a trade repository under paragraph 1, 2 and 3 shall be reflected in the Register.]

Textual Amendments

F381 Arts. 71-71b substituted for Art. 71 (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **56(2)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

^{F381} Article 71a

Publication and notification of decisions about registration of trade repositories

- 1 The FCA must publish on its website a list of trade repositories registered in accordance with Article 58 (“the Register”).
- 2 On the adoption of a decision under Article 58 or 71, the FCA must notify its decision to the trade repository concerned.
- 3 A refusal of an application to register under Article 58 comes into effect on the fifth working day following the day on which it is adopted.
- 4 A withdrawal of registration under Article 71 takes effect:
 - a immediately upon the adoption of the decision if the notice states that is the case;
 - b on such date as may be specified in that notice; or

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- c if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.
- 5 A decision to withdraw a registration on the FCA's own initiative under paragraph 1 or 2 of Article 71 may be expressed to take effect immediately (or on a specified date) only if the FCA, having regard to the ground on which it is exercising its power reasonably considers that it is necessary for the withdrawal or direction to take effect immediately (or on that date).
- 6 If the decision referred to in paragraph 2 is:
- a to refuse the application for registration made under Article 58;
 - b to exercise the FCA's power under paragraph 1 or 2 of Article 71; or
 - c to refuse an application made by a trade repository under paragraph 3 of Article 71,
- the FCA must give the trade repository a written notice.
- 7 A written notice under paragraph 6 must:
- a give details of the decision made by the FCA;
 - b state the FCA's reasons for the decision;
 - c state when the decision takes effect; and
 - d inform the trade repository that it may either:
 - i) request a review of the decision by the FCA, and make written representations for the purpose of the review, within such period as may be specified in the notice; or
 - ii) refer the matter to the Upper Tribunal (“the Tribunal”) within such period as may be specified in the notice; and
 - e indicate the procedure on a reference to the Tribunal.
- 8 If the trade repository requests a review of the decision made by the FCA (“the original decision”) the FCA must consider any written representations made by the trade repository and review the original decision.
- 9 On a review under paragraph 8, the FCA may adopt any decision (“the new decision”) it could have adopted on the application.
- 10 The FCA must give the trade repository written notice of its decision on the review.
- 11 This paragraph applies to a decision—
- a to maintain a decision to refuse an application for registration, made under Article 58;
 - b to refuse to revoke a decision made under paragraph 1 or 2 of Article 71; or
 - c to maintain a decision to refuse an application from a trade repository under paragraph 3 of Article 71.
- 12 A written notice in relation to a decision to which paragraph 11 applies must:
- a give details of the new decision made by the FCA;
 - b state the FCA's reasons for the new decision;
 - c state whether the decision takes effect immediately or on such date as may be specified in the notice;
 - d inform the trade repository that it may, within such period as may be specified in the notice, refer the new decision to the Tribunal; and
 - e indicate the procedure on a reference to the Tribunal.]

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

F381 Arts. 71-71b substituted for Art. 71 (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **56(2)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

^{F381} Article 71b

Reference to the Tribunal

1 A trade repository may, subject to paragraph 2, refer to the Tribunal the FCA's decision to:

- a refuse to register the trade repository under Article 58;
- b exercise its power under paragraph 1 or 2 of Article 71; or
- c refuse the trade repository's application under paragraph 3 of Article 71.

2 Where there is a review under paragraph 8 of Article 71a, paragraph 1 applies only in relation to the FCA's decision in response to that review.]

Textual Amendments

F381 Arts. 71-71b substituted for Art. 71 (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **56(2)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

^{F382} Article 72

Supervisory fees

Textual Amendments

F382 Arts. 72-74 omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **56(3)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

^{F382} Article 73

Supervisory measures by ESMA

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

F382 Arts. 72-74 omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **56(3)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

^{F382} Article 74

Delegation of tasks by ESMA to competent authorities

Textual Amendments

F382 Arts. 72-74 omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **56(3)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

CHAPTER 2

Relations with third countries

Article 75

Equivalence ^{F383} ...

1 ^{F384}[The Treasury may by regulations determine] 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 those laid down in this Regulation ^{F385}[including compliance with the requirements to give direct and immediate access to the data to the entities referred to in paragraph 3 of Article 81];
- b effective supervision and enforcement of trade repositories takes place in that third country on an ongoing basis; and
- c 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.

^{F386}[Regulations made under the first sub-paragraph must also specify the relevant authorities in third countries which are entitled to access data held by trade repositories established in the United Kingdom.]

^{F387}2

3 ^{F388}[The FCA] shall establish cooperation arrangements with the competent authorities of the relevant third countries. Those arrangements shall specify at least:

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- a a mechanism for the exchange of information between [^{F389}the FCA] on the one hand and the relevant competent authorities of third countries concerned on the other; and
- b procedures concerning the coordination of supervisory activities.

^{F390}4

Textual Amendments

- F383** Words in Art. 75 heading omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **56(5)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F384** Words in Art. 75(1) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **56(6)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F385** Words in Art. 75(1)(a) inserted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **56(6)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F386** Words in Art. 75(1) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **56(6)(c)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F387** Art. 75(2) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **56(7)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F388** Words in Art. 75(3) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **56(8)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F389** Words in Art. 75(3)(a) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **56(8)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F390** Art. 75(4) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **56(9)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 76

Cooperation arrangements

Relevant authorities of third countries that do not have any trade repository established in their jurisdiction may contact [^{F391}the FCA] with a view to establishing cooperation arrangements to access information on derivatives contracts held in [^{F392}trade repositories established in the United Kingdom].

[^{F393}The FCA] may establish cooperation arrangements with those relevant authorities regarding access to information on derivatives contracts held in [^{F392}trade repositories established in the United Kingdom] that these authorities need to fulfil their respective

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responsibilities and mandates, provided that guarantees of professional secrecy exist, including the protection of business secrets shared by the authorities with third parties.

Textual Amendments

- F391** Word in Art. 76 substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **56(10)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F392** Words in Art. 76 substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **56(10)(c)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F393** Word in Art. 76 substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **56(10)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

^{F86} Article 76a

Mutual direct access to data

1 Where necessary for the exercise of their duties, relevant authorities of third countries in which one or more trade repositories are established shall have direct access to information in trade repositories established in the [^{F394}United Kingdom], provided that [^{F395}the Treasury has made regulations] in accordance with paragraph 2 to that effect.

2 Upon the submission of a request by the authorities referred to in paragraph 1 of this Article, the [^{F396}Treasury may by regulations determine] whether the legal framework of the third country of the requesting authority fulfils all of the following conditions:

- a trade repositories established in that third country are duly authorised;
- b effective supervision and enforcement of trade repositories takes place in that third country on an ongoing basis;
- c 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;
- d trade repositories authorised in that third country are subject to a legally binding and enforceable obligation to grant the entities referred to in Article 81(3) direct and immediate access to the data.]

Textual Amendments

- F86** Inserted by Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (Text with EEA relevance).
- F394** Words in Art. 76a(1) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1416), regs. 1(3), **31(a)(i)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/628, regs. 1(3), 13(2); 2020 c. 1, Sch. 5 para. 1(1)

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- F395** Words in Art. 76a(1) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1416), regs. 1(3), **31(a)(ii)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/628, regs. 1(3), 13(2); 2020 c. 1, Sch. 5 para. 1(1))
- F396** Words in Art. 76a(2) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1416), regs. 1(3), **31(b)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/628, regs. 1(3), 13(2); 2020 c. 1, Sch. 5 para. 1(1))

Article 77

Recognition of trade repositories

1 A trade repository established in a third country may provide its services and activities to entities established in the [F397United Kingdom] for the purposes of Article 9 only after its recognition by [F398the FCA] in accordance with paragraph 2.

2 A trade repository referred to in paragraph 1 shall submit to [F399the FCA] 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 F400 ...

Within 30 working days of receipt of the application [F401or the date on which a cooperation arrangement with a third country prescribed in accordance with paragraph 3 of Article 75 is entered into, whichever is later], [F399the FCA] shall assess whether the application is complete. If the application is not complete, [F399the FCA] 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, [F399the FCA] shall inform the applicant trade repository in writing with a fully reasoned explanation whether the recognition has been granted or refused.

[F399The FCA] shall publish on its website a list of the trade repositories recognised in accordance with this Regulation.

[F402] The FCA may grant recognition to a trade repository established in a third country only if:

- a the trade repository is authorised and subject to supervision in that third country;
- b the third country is recognised by regulations made by the Treasury as one in which the arrangements for trade repositories are equivalent to those in the United Kingdom (in accordance with paragraph 1 of Article 75); and
- c cooperation arrangements entered into with the third country (in accordance with paragraph 3 of Article 75) provide for the FCA to have immediate and continuous access to the information needed for the performance of their duties, including information on derivative contracts held in trade repositories established in the third country.

4 The FCA may, on its own initiative, withdraw the recognition of a trade repository granted under paragraph 2 where the trade repository:

- a no longer meets the conditions for recognition in points (a) to (c) of paragraph 3;
- b expressly renounces the recognition or has provided no services for the preceding 6 months; or
- c obtained the recognition by making false statements or by any other irregular means.

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

5 A trade repository must, without undue delay, notify the FCA of any material changes affecting the condition for recognition in point (a) of paragraph 3.]

Textual Amendments

- F397** Words in Art. 77(1) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **56(12)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F398** Words in Art. 77(1) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **56(12)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F399** Words in Art. 77(2) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **56(13)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F400** Words in Art. 77(2) omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **56(13)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F401** Words in Art. 77(2) inserted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **56(13)(c)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F402** Art. 77(3)-(5) inserted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **56(14)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

TITLE VII

REQUIREMENTS FOR TRADE REPOSITORIES

Article 78

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 any disclosure of confidential information.

2 A trade repository shall maintain and operate effective written organisational and administrative arrangements to identify and manage any potential conflicts of interest concerning its managers, employees, or any person directly or indirectly linked to them by close links.

3 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.

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

4 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.

5 Where a trade repository offers ancillary services such as trade confirmation, trade matching, credit event servicing, portfolio reconciliation or portfolio compression services, the trade repository shall maintain those ancillary services operationally separate from the trade repository's function of centrally collecting and maintaining records of derivatives.

6 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.

7 A trade repository shall have objective, non-discriminatory and publicly disclosed requirements for access by undertakings subject to the reporting obligation under Article 9. A trade repository shall grant service providers non-discriminatory access to information maintained by the trade repository, on condition that 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.

8 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 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.

[^{F403}9 A trade repository must establish the following procedures and policies—

- a procedures for the effective reconciliation of data between trade repositories;
- b procedures to verify the completeness and correctness of the data reported;
- c policies for the orderly transfer of data to other trade repositories where requested by the counterparties or CCPs referred to in Article 9 or where otherwise necessary.

10 The FCA may make rules applying to trade repositories relating to—

- a procedures described in paragraph 9(a) and (b),
- b procedures to be applied to verify compliance by counterparties and CCPs with the reporting obligation under Article 9, and
- c policies described in paragraph 9(c).]

Textual Amendments

F403 Art. 78(9)(10) inserted (1.7.2021) by [Financial Services Act 2021 \(c. 22\)](#), **ss. 40(3)**, 49(5) (with s. 40(5)); S.I. 2021/739, reg. 3(v)

Modifications etc. (not altering text)

C2 Arts. 78-80 modified (30.1.2024 for specified purposes) by [The Securitisation Regulations 2024 \(S.I. 2024/102\)](#), regs. 2(1)(e)(2), **14(4)** (with Sch. 3)

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Article 79

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 maintenance 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.

3 A trade repository from which registration has been withdrawn shall ensure orderly substitution including the transfer of data to other trade repositories and the redirection of reporting flows to other trade repositories.

Modifications etc. (not altering text)

C2 Arts. 78-80 modified (30.1.2024 for specified purposes) by [The Securitisation Regulations 2024 \(S.I. 2024/102\)](#), regs. 2(1)(e)(2), **14(4)** (with Sch. 3)

Article 80

Safeguarding and recording

1 A trade repository shall ensure the confidentiality, integrity and protection of the information received under Article 9.

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

3 A trade repository shall promptly record the information received under Article 9 and shall maintain it for at least 10 years following the termination of the relevant contracts. It shall employ timely and efficient record keeping procedures to document changes to recorded information.

4 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 9.

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

[^{F86}5a Upon request, a trade repository shall provide counterparties that are not required to report the details of their OTC derivative contracts pursuant to Article 9(1a) to (1d) and counterparties and CCPs which have delegated their reporting obligation pursuant to Article 9(1f) with access to the information reported on their behalf.]

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

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

A natural person who has a close link with a trade repository or a legal person that has a parent undertaking or a subsidiary relationship with the trade repository shall not use confidential information recorded in a trade repository for commercial purposes.

Textual Amendments

F86 Inserted by Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (Text with EEA relevance).

Modifications etc. (not altering text)

C2 Arts. 78-80 modified (30.1.2024 for specified purposes) by The Securitisation Regulations 2024 (S.I. 2024/102), regs. 2(1)(e)(2), **14(4)** (with Sch. 3)

Article 81

Transparency and data availability

1 A trade repository shall regularly, and in an easily accessible way, publish aggregate positions by class of derivatives on the contracts reported to it.

2 A trade repository shall collect and maintain data and shall ensure that the entities referred to in paragraph 3 have direct and immediate access to the details of derivatives contracts they need to fulfil their respective responsibilities and mandates.

[^{F143} A trade repository shall make the necessary information available to the following entities to enable them to fulfil their respective responsibilities and mandates:

- [^{F404} a the FCA;
- b the Bank of England;
- c the Pensions Regulator;]
- [^{F405} d) the relevant authorities of a third country where the third country is recognised by regulations made by the Treasury as one in which the arrangements for trade repositories are equivalent to those in the United Kingdom (in accordance with paragraph 1 of Article 75);
- e) the relevant authorities of a third country that has entered into a cooperation arrangement with the FCA as referred to in Article 76;]
- [^{F406} f) the relevant authorities of a third country in respect of which the Treasury has made regulations under Article 76a;]
- [^{F407} g) the body known as the Panel on Takeovers and Mergers;
- h) the PRA.]

[^{F113} A trade repository shall transmit data to competent authorities in accordance with the requirements under Article 26 of Regulation (EU) No 600/2014 ⁽²⁷⁾ .]

^{F408} 4

[^{F625} [^{F409} The FCA may make] technical standards specifying the following:

- a the information to be published or made available in accordance with paragraphs 1 and 3;

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- b the frequency of publication of the information referred to in paragraph 1;
- c the operational standards required to aggregate and compare data across trade repositories and for the entities referred to in paragraph 3 to access that information;
- d the terms and conditions, the arrangements and the required documentation under which trade repositories grant access to the entities referred to in paragraph 3.

F410 ...

F410 ...

F410 ...]

Textual Amendments

- F14** Substituted by Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (Text with EEA relevance).
- F62** Substituted by Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (Text with EEA relevance).
- F113** Inserted by Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (Text with EEA relevance).
- F404** Art. 81(3)(a)-(c) substituted for Art. 81(3)(a)-(q) (31.12.2020) by The Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018 (S.I. 2018/1318), regs. 1(3), **3(a)** (as amended by S.I. 2019/1416, regs. 1(2), 8(a) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F405** Art. 81(3)(d)(e) inserted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **56(15)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F406** Art. 81(3)(f) inserted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1416), regs. 1(3), **33(a)** (with savings in S.I. 2019/680, **reg. 11** as amended by S.I. 2020/628, regs. 1(3), **13(2)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F407** Art. 81(3)(g)(h) inserted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **30** (as amended by S.I. 2020/1385, regs. 1(4), **69(3)**) (with savings in S.I. 2019/680, **reg. 11** as amended by S.I. 2020/646, **reg. 12**)
- F408** Art. 81(4) omitted (31.12.2020) by virtue of The Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018 (S.I. 2018/1318), regs. 1(3), **3(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F409** Words in Art. 81(5) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1416), regs. 1(3), **33(b)(i)** (with savings in S.I. 2019/680, **reg. 11** as amended by S.I. 2020/628, regs. 1(3), **13(2)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F410** Words in Art. 81(5) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1416), regs. 1(3), **33(b)(ii)** (with savings in S.I. 2019/680, **reg. 11** as amended by S.I. 2020/628, regs. 1(3), **13(2)**); 2020 c. 1, **Sch. 5 para. 1(1)**

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

^{F411} Article 82

Exercise of the delegation

Textual Amendments

F411 Art. 82 omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/335), regs. 1(1), **56(16)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

TITLE VIII

COMMON PROVISIONS

Article 83

Professional secrecy

1 The obligation of professional secrecy shall apply to all persons who work or have worked for the competent authorities ^{F412}... , or for auditors and experts instructed by the competent authorities ^{F413}... . No confidential information that those persons receive in the course of their duties shall be divulged to any person or authority, except in summary or aggregate form such that an individual CCP, trade repository or any other person cannot be identified, without prejudice to cases covered by criminal or tax law or to this Regulation.

2 Where a CCP has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties may be divulged in civil or commercial proceedings where necessary for carrying out the proceeding.

3 Without prejudice to cases covered by criminal or tax law, the competent authorities, ^{F414}... 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, 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 relating to the exercise of those functions, or both. Where ^{F414}... the competent authority or another authority, body or person communicating information consents thereto, the authority receiving the information may use it for other non-commercial 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 ^{F415}... the competent authorities ^{F416}... from exchanging or transmitting confidential information in accordance with this Regulation and with other legislation applicable to investment firms, credit institutions, pension funds, UCITS, AIFMs, insurance and reinsurance intermediaries, insurance undertakings, regulated markets or market operators or otherwise with the consent of the ^{F417}... authority or body or natural or legal person that communicated the information.

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

5 Paragraphs 1, 2 and 3 shall not prevent the competent authorities from exchanging or transmitting confidential information, in accordance with [F418 any provision of the law applying in any part of the United Kingdom].

Textual Amendments

- F412** Words in Art. 83(1) omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **57(2)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F413** Words in Art. 83(1) omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **57(2)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F414** Words in Art. 83(3) omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **57(3)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F415** Word in Art. 83(4) omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **57(4)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F416** Words in Art. 83(4) omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **57(4)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F417** Words in Art. 83(4) omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **57(4)(c)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F418** Words in Art. 83(5) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **57(5)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

^{F419} Article 84

Exchange of information

Textual Amendments

- F419** Art. 84 omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **58** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

TITLE IX

TRANSITIONAL AND FINAL PROVISIONS

*[^{F420} Article 84a***Regulations**

- 1 Any power to make regulations conferred on the Treasury by this Regulation is exercisable by statutory instrument.
- 2 Any power to make regulations under this Regulation includes power to make:
 - a different provision for different purposes;
 - b consequential, supplementary, incidental, transitional, transitory or saving provision.
- 3 A statutory instrument containing regulations under this Regulation is subject to annulment in pursuance of a resolution of either House of Parliament.]

Textual Amendments

F420 Art. 84a inserted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/335), regs. 1(1), **59(1)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

*[^{F421} Article 84b***FCA rules**

- 1 The provisions of Part 9A of FSMA (rules and guidance) listed in paragraph 2 apply in relation to rules made by the FCA under Article 4(4A) or 78(10) as they apply in relation to rules made by the FCA under that Part of that Act, subject to the modification in paragraph 3.
- 2 The provisions are—
 - a section 137T (general supplementary powers);
 - b section 138C (evidential provision);
 - c section 138E (limits on effect of contravening rules);
 - d sections 138F, 138G and 138H (notification and verification etc);
 - e sections 138I and 138L (consultation);
 - f section 141A (power to make consequential amendments of references to rules).
- 3 Section 137T applies as if the reference to authorised persons were—
 - a for the purposes of rules made under Article 4(4A), a reference to clearing members, clients and undertakings described in Article 4(3D), and
 - b for the purposes of rules made under Article 78(10), a reference to trade repositories.]

Textual Amendments

F421 Art. 84b inserted (1.7.2021) by [Financial Services Act 2021](#) (c. 22), ss. **40(4)**, 49(5) (with s. 40(5)); S.I. 2021/739, reg. 3(v)

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

^{F422} Article 84c

Bank of England rules

1 The provisions of Part 9A of FSMA (rules and guidance) listed in paragraph 2 apply in relation to rules made by the Bank of England under Article 6b, subject to the modifications in paragraphs 3 to 5.

2 The provisions are—

- a section 137T (general supplementary powers);
- b sections 138A and 138B (modification or waiver of rules), but with the omission of subsection (4)(b) of section 138A and subsection (4) of section 138B;
- c section 138C (evidential provisions);
- d section 138E (limits on effect of contravening rules);
- e section 138F (notification of rules);
- f section 138G (rule-making instruments);
- g section 138H (verification of rules);
- h section 138J (consultation by the PRA), but with the omission of subsections (2)(c) and (5)(b);
- i section 138L (consultation: general exceptions), but with the omission of subsection (1).

3 Any reference in any of those provisions to an authorised person is to be read as a reference to a person to whom the clearing obligation referred to in Article 4(1) applies.

4 Section 138J(2)(d) has effect in relation to rules proposed to be made by the Bank of England as if the reference to the compatibility of the proposed rules with the provisions mentioned in section 138J(2)(d) were a reference to their compatibility with the Bank of England's financial stability objective under section 2A of the Bank of England Act 1998.

5 Section 138L(2) has effect as if for paragraphs (a) and (b) there were substituted “be prejudicial to financial stability”.]

Textual Amendments

F422 Art. 84c inserted (29.8.2023) by [Financial Services and Markets Act 2023 \(c. 29\)](#), s. 86(3), [Sch. 2 para. 30](#) (with s. 2(3)); S.I. 2023/779, reg. 4(zz)(ii)

^{F423} Article 85

Reports and review

Textual Amendments

F423 Arts. 85-87 omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\)](#)

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Regulations 2019 (S.I. 2019/335), regs. 1(1), **59(2)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

^{F423} Article 86

Committee procedure

Textual Amendments

F423 Arts. 85-87 omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **59(2)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

^{F423} Article 87

Amendment to Directive 98/26/EC

Textual Amendments

F423 Arts. 85-87 omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **59(2)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 88

Websites

1 ^{F424}The Bank of England and the FCA must each, where appropriate,] maintain a website which provides details of the following:

- a contracts eligible for the clearing obligation under Article 5;
- b penalties imposed for breaches of Articles 4, 5 and 7 to 11;
- c CCPs authorised to offer services or activities in the ^{F425}United Kingdom] that are established in the ^{F425}United Kingdom], and the services or activities which they are authorised to provide or perform, including the classes of financial instruments covered by their authorisation;
- d penalties imposed for breaches of Titles IV and V;
- e CCPs authorised to offer services or activities in the ^{F426}United Kingdom] established in a third country, and the services or activities which they are authorised to provide or perform, including the classes of financial instruments covered by their authorisation;
- f trade repositories authorised to offer services or activities in the ^{F427}United Kingdom];

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- g fines and periodic penalty payments imposed in accordance with ^{F428}regulation 68 of the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019];
- h the public register referred to in Article 6.

^{F429}2

3 ^{F430}The websites] referred to in this Article shall be publicly accessible and regularly updated, and shall provide information in a clear format.

Textual Amendments

- F424** Words in Art. 88(1) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **59(3)(a)(i)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F425** Words in Art. 88(1)(c) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **59(3)(a)(ii)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F426** Words in Art. 88(1)(e) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **59(3)(a)(ii)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F427** Words in Art. 88(1)(f) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **59(3)(a)(ii)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F428** Words in Art. 88(1)(g) substituted (31.12.2020) by [The Financial Services \(Miscellaneous\) \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/710\)](#), regs. 1(3), **26** (as amended by S.I. 2020/646, regs. 1(2)(c), **14**; S.I. 2020/1385, regs. 1(4), **64(3)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F429** Art. 88(2) omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **59(3)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F430** Words in Art. 88(3) substituted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **59(3)(c)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 89

Transitional provisions

^{F621} Until ^{F431}18 June 2023], the clearing obligation set out in Article 4 shall not apply to OTC derivative contracts that are objectively measurable as reducing investment risks that directly relate to the financial solvency of pension scheme arrangements ^{F432}or EEA pension scheme arrangements], and to entities established to provide compensation to members of such arrangements in case of default.

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

The clearing obligation set out in Article 4 shall not apply to OTC derivative contracts as referred to in the first subparagraph of this paragraph entered into by pension scheme arrangements from 17 August 2018 until 16 June 2019 .]

The OTC derivative contracts, which would otherwise be subject to the clearing obligation under Article 4, entered into by those entities during this period shall be subject to the requirements laid down in Article 11.

[^{F433}The Treasury may make regulations extending the exemption referred to in the first sub-paragraph by a period of up to two years at a time where it concludes that no appropriate technical solution has been developed for the transfer by pension scheme arrangements and EEA pension scheme arrangements of cash and non-cash collateral as variation margins and that the adverse effect of centrally clearing derivative contracts on the retirement benefits of future pensioners remains.

In this paragraph, and in paragraph 2, “EEA pension scheme arrangement” means a pension scheme arrangement as defined by Article 2(10) of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories as it has effect in EU law.]

[^{F434}2 This paragraph applies to:

- a pension scheme arrangements that fall within point (c) of Article 2(10); and
- b EEA pension scheme arrangements that fall within points (c) or (d) of Article 2(10) of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories as it has effect in EU law.

For the pension scheme arrangements and EEA pension scheme arrangements to which this paragraph applies, the exemption referred to in the first sub-paragraph of paragraph 1 shall only apply where it is granted by the FCA for types of entities or types of arrangements. The FCA shall only grant an exemption where it is satisfied that the type of entities or the type of arrangements fall within the description of those arrangements to which this paragraph applies, and that they encounter difficulties in meeting the variation margin requirements. The FCA must grant or refuse an exemption within 30 calendar days of receipt of a request for an exemption.

The FCA shall publish on its website a list of types of entities and types of arrangements which have been granted an exemption in accordance with this paragraph.]

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[^{F437} 5a Until 15 December 2021 or until a decision is made under Article 25 on the recognition of a CCP, whichever is earlier, that CCP shall apply the treatment specified in the second subparagraph of this paragraph.

Until the deadline defined in the first sub-paragraph of this paragraph, and subject to the third sub-paragraph of this paragraph, where the CCP neither has a default fund nor

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has in place a binding arrangement with its clearing members that allows it to use all or part of the initial margin received from its clearing members as if they were pre-funded contributions, the information it is to report in accordance with paragraph 1 of Article 50c shall include the total amount of initial margin it has received from its clearing members.

The Treasury may by regulations extend the deadline referred to in the first subparagraph by 12 months.]

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Textual Amendments

- F62** Substituted by Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (Text with EEA relevance).
- F431** Words in Art. 89(1) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1416), regs. 1(3), **34(a)(i)**; 2020 c. 1, Sch. 5 para. 1(1)
- F432** Words in Art. 89(1) inserted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1416), regs. 1(3), **34(a)(ii)** (with savings in S.I. 2019/680, **reg. 11** as amended by S.I. 2020/628, regs. 1(3), **13(2)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F433** Words in Art. 89(1) inserted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1416), regs. 1(3), **34(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F434** Art. 89(2) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1416), regs. 1(3), **34(c)** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/628, regs. 1(3), 13(2); 2020 c. 1, Sch. 5 para. 1(1))
- F435** Art. 89(3)(4)(5) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **59(4)(a)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F436** Art. 89(3a)-(3c) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **31** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)
- F437** Art. 89(5A) substituted (31.12.2020) by The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **59(4)(b)** (as amended by S.I. 2020/1385, regs. 1(4), **52(5)**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F438** Art. 89(6)-(9) omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335), regs. 1(1), **59(4)(c)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Modifications etc. (not altering text)

- C3** Art. 89(1) modified (12.6.2023) by [The Pension Fund Clearing Obligation Exemption and Intragroup Transaction Transitional Clearing and Risk-Management Obligation Exemptions \(Extension and Amendment\) Regulations 2023 \(S.I. 2023/472\)](#), regs. 1(2), 2

^{F439} Article 89a

Further transitional provision

- 1 Until 3 January 2021:
- a the clearing obligation set out in Article 4 and the risk mitigation procedures set out in paragraph 3 of Article 11 do not apply to C6 energy derivative contracts entered into by non-financial counterparties that meet the conditions in paragraph 1 of Article 10 of this Regulation or by non-financial counterparties that are authorised for the first time as investment firms on or after 3 January 2018; and
 - b such C6 energy derivative contracts are not considered to be OTC derivative contracts for the purposes of the clearing threshold set out in Article 10.

C6 energy derivative contracts benefiting from the transitional regime set out in point (a) shall be subject to all other requirements laid down in this Regulation.

- 2 The FCA shall determine whether paragraph 1 applies to the contract concerned. The FCA shall publish on its website a list of those C6 energy derivative contracts to which that paragraph does apply.

- 3 In this Article:

“C6 energy derivative contracts” means options, futures, swaps, and any other derivative contracts mentioned in paragraph 6 of Part 1 of Schedule 2 to the Regulated Activities Order relating to coal or oil that are traded on a UK OTF and must be physically settled;

“investment firms” means investment firms within point (a) of point (8) of Article 2;

“UK OTF” has the meaning given in Article 2(1)(13A) of the MIFIR.]

Textual Amendments

- F439** Art. 89a inserted (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **59(5)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

^{F440} Article 90

Staff and resources of ESMA

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Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

Textual Amendments

F440 Art. 90 omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/335), regs. 1(1), **59(6)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

^{F441} Article 91

Entry into force

Textual Amendments

F441 Art. 91 omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/335), regs. 1(1), **59(6)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

F⁴⁴² ANNEX I

List of infringements referred to in Article 65(1)

Textual Amendments

F⁴⁴² Annex 1 omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/335), regs. 1(1), **60** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F⁴⁴³ ANNEX II

List of the coefficients linked to aggravating and mitigating factors for the application of Article 65(3)

Textual Amendments

F⁴⁴³ Annex 2 omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/335), regs. 1(1), **61** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F⁴⁴⁴ ANNEX III

List of infringements referred to in Article 25j(1)

Textual Amendments

F⁴⁴⁴ Annex 3 omitted (31.12.2020) by virtue of [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2020](#) (S.I. 2020/646), regs. 1(3), **32** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

F445 ANNEX IV

List of the coefficients linked to aggravating and mitigating factors for the application of Article 25j(3)

Textual Amendments

F445 Annex 4 omitted (31.12.2020) by virtue of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646), regs. 1(3), **32** (with savings in S.I. 2019/680, reg. 11 as amended by S.I. 2020/646, reg. 12)

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (1) [OJ C 57, 23.2.2011, p. 1.](#)
- (2) [OJ C 54, 19.2.2011, p. 44.](#)
- (3) Position of the European Parliament of 29 March 2012 (not yet published in the Official Journal) and decision of the Council of 4 July 2012.
- (4) [OJ L 331, 15.12.2010, p. 12.](#)
- (5) [OJ L 331, 15.12.2010, p. 48.](#)
- (6) [OJ L 331, 15.12.2010, p. 84.](#)
- (7) [OJ L 145, 30.4.2004, p. 1.](#)
- (8) [OJ L 177, 30.6.2006, p. 1.](#)
- (9) [OJ L 228, 16.8.1973, p. 3.](#)
- (10) [OJ L 345, 19.12.2002, p. 1.](#)
- (11) [OJ L 323, 9.12.2005, p. 1.](#)
- (12) [OJ L 302, 17.11.2009, p. 32.](#)
- (13) [OJ L 235, 23.9.2003, p. 10.](#)
- (14) [OJ L 174, 1.7.2011, p. 1.](#)
- (15) [OJ L 110, 20.4.2001, p. 28.](#)
- (16) Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts ([OJ L 193, 18.7.1983, p. 1.](#)).
- (17) Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards ([OJ L 243, 11.9.2002, p. 1.](#)).
- (18) Commission Regulation (EC) No 1569/2007 of 21 December 2007 establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities pursuant to Directives 2003/71/EC and 2004/109/EC of the European Parliament and of the Council ([OJ L 340, 22.12.2007, p. 66.](#)).
- (19) Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions ([OJ L 177, 30.6.2006, p. 201.](#)).
- (20) [OJ L 241, 2.9.2006, p. 1.](#)
- (21) [OJ L 166, 11.6.1998, p. 45.](#)
- (22) [OJ L 281, 23.11.1995, p. 31.](#)
- (23) [OJ L 8, 12.1.2001, p. 1.](#)
- (24) [OJ L 55, 28.2.2011, p. 13.](#)
- (25) [OJ L 390, 31.12.2004, p. 38.](#)
- (26) [^{F33}Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 ([OJ L 347, 28.12.2017, p. 35.](#))]
- (27) [^{F14}[^{F113}Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 ([OJ L 173, 12.6.2014, p. 84.](#))]]

Textual Amendments

- F14** Substituted by [Regulation \(EU\) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation \(EU\) No 648/2012 \(Text with EEA relevance\).](#)

Changes to legislation: Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

- F33** Inserted by Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012.
- F113** Inserted by Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (Text with EEA relevance).

Changes to legislation:

Regulation (EU) No 648/2012 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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Changes and effects yet to be applied to :

- Regulation revoked by [2023 c. 29 Sch. 1 Pt. 1](#)
- Art. 4 para. 3a replacement by [EUR 2019/834 Regulation](#) (This amendment by the EU not applied to legislation.gov.uk because it is brought into force after IP completion day.)
- Art. 6(2)(b) words inserted by [S.I. 2019/335 reg. 16\(3\)\(a\)](#) (This amendment not applied to legislation.gov.uk. Reg. 16(3)(a) substituted (25.6.2020) by S.I. 2020/646, regs. 1(2)(c), 6(3))
- Art. 9(1) words omitted by [S.I. 2019/1416 reg. 29\(2\)\(a\)](#) (This amendment not applied to legislation.gov.uk. Reg. 29(2)(a) omitted immediately before IP completion day by virtue of S.I. 2020/1385, regs. 1(4), 67(2))
- Art. 9(6) substituted by [S.I. 2019/335 reg. 19\(5\)](#) (This amendment not applied to legislation.gov.uk. Reg. 19(5) omitted (30.10.2019) by virtue of S.I. 2019/1416, regs. 1(2), 16)
- Art. 10(2) word substituted by [S.I. 2019/335 reg. 20\(3\)](#) (This amendment not applied to legislation.gov.uk. Reg. 20(2) substituted (30.10.2019) by S.I. 2019/1416, regs. 1(2), 17(b))
- Art. 17(3) words omitted by [S.I. 2019/335 reg. 28\(4\)](#) (This amendment not applied to legislation.gov.uk. Reg. 28(4) omitted (25.6.2020) by virtue of S.I. 2020/646, regs. 1(2)(c), 6(4))
- Art. 25(1) words substituted by [S.I. 2018/1184 reg. 8\(2\)\(a\)](#) (This amendment not applied to legislation.gov.uk. Reg. 8 omitted (25.6.2020) by virtue of S.I. 2020/646, regs. 1(2)(c), 4(3))
- Art. 25(1) words substituted by [S.I. 2018/1184 reg. 8\(2\)\(b\)](#) (This amendment not applied to legislation.gov.uk. Reg. 8 omitted (25.6.2020) by virtue of S.I. 2020/646, regs. 1(2)(c), 4(3))
- Art. 25(2) words substituted by [S.I. 2018/1184 reg. 8\(3\)\(a\)](#) (This amendment not applied to legislation.gov.uk. Reg. 8 omitted (25.6.2020) by virtue of S.I. 2020/646, regs. 1(2)(c), 4(3))
- Art. 25(2)(a) words substituted by [S.I. 2018/1184 reg. 8\(3\)\(b\)](#) (This amendment not applied to legislation.gov.uk. Reg. 8 omitted (25.6.2020) by virtue of S.I. 2020/646, regs. 1(2)(c), 4(3))
- Art. 25(2)(d) words substituted by [S.I. 2018/1184 reg. 8\(3\)\(c\)](#) (This amendment not applied to legislation.gov.uk. Reg. 8 omitted (25.6.2020) by virtue of S.I. 2020/646, regs. 1(2)(c), 4(3))
- Art. 25(3) omitted by [S.I. 2018/1184 reg. 8\(4\)](#) (This amendment not applied to legislation.gov.uk. Reg. 8 omitted (25.6.2020) by virtue of S.I. 2020/646, regs. 1(2)(c), 4(3))
- Art. 25(4) words inserted by [S.I. 2018/1184 reg. 8\(5\)\(c\)](#) (This amendment not applied to legislation.gov.uk. Reg. 8 omitted (25.6.2020) by virtue of S.I. 2020/646, regs. 1(2)(c), 4(3))
- Art. 25(4) words inserted by [S.I. 2018/1184 reg. 8\(5\)\(e\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. Reg. 8 omitted (25.6.2020) by virtue of S.I. 2020/646, regs. 1(2)(c), 4(3))
- Art. 25(4) words omitted by [S.I. 2018/1184 reg. 8\(5\)\(d\)](#) (This amendment not applied to legislation.gov.uk. Reg. 8 omitted (25.6.2020) by virtue of S.I. 2020/646, regs. 1(2)(c), 4(3))
- Art. 25(4) words substituted by [S.I. 2018/1184 reg. 8\(5\)\(a\)](#) (This amendment not applied to legislation.gov.uk. Reg. 8 omitted (25.6.2020) by virtue of S.I. 2020/646, regs. 1(2)(c), 4(3))

- Art. 25(4) words substituted by [S.I. 2018/1184 reg. 8\(5\)\(b\)](#) (This amendment not applied to legislation.gov.uk. Reg. 8 omitted (25.6.2020) by virtue of S.I. 2020/646, regs. 1(2)(c), 4(3))
- Art. 25(4) words substituted by [S.I. 2018/1184 reg. 8\(5\)\(e\)\(i\)](#) (This amendment not applied to legislation.gov.uk. Reg. 8 omitted (25.6.2020) by virtue of S.I. 2020/646, regs. 1(2)(c), 4(3))
- Art. 25(4) words substituted by [S.I. 2018/1184 reg. 8\(5\)\(f\)](#) (This amendment not applied to legislation.gov.uk. Reg. 8 omitted (25.6.2020) by virtue of S.I. 2020/646, regs. 1(2)(c), 4(3))
- Art. 25(4A) inserted by [S.I. 2018/1184 reg. 8\(6\)](#) (This amendment not applied to legislation.gov.uk. Reg. 8 omitted (25.6.2020) by virtue of S.I. 2020/646, regs. 1(2)(c), 4(3))
- Art. 25(5) words inserted by [S.I. 2018/1184 reg. 8\(7\)\(c\)](#) (This amendment not applied to legislation.gov.uk. Reg. 8 omitted (25.6.2020) by virtue of S.I. 2020/646, regs. 1(2)(c), 4(3))
- Art. 25(5) words omitted by [S.I. 2018/1184 reg. 8\(7\)\(a\)](#) (This amendment not applied to legislation.gov.uk. Reg. 8 omitted (25.6.2020) by virtue of S.I. 2020/646, regs. 1(2)(c), 4(3))
- Art. 25(5) words substituted by [S.I. 2018/1184 reg. 8\(7\)\(b\)\(i\)](#) (This amendment not applied to legislation.gov.uk. Reg. 8 omitted (25.6.2020) by virtue of S.I. 2020/646, regs. 1(2)(c), 4(3))
- Art. 25(5) words substituted by [S.I. 2018/1184 reg. 8\(7\)\(b\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. Reg. 8 omitted (25.6.2020) by virtue of S.I. 2020/646, regs. 1(2)(c), 4(3))
- Art. 25(6) words substituted by [S.I. 2018/1184 reg. 8\(8\)\(a\)](#) (This amendment not applied to legislation.gov.uk. Reg. 8 omitted (25.6.2020) by virtue of S.I. 2020/646, regs. 1(2)(c), 4(3))
- Art. 25(6) words substituted by [S.I. 2018/1184 reg. 8\(8\)\(b\)](#) (This amendment not applied to legislation.gov.uk. Reg. 8 omitted (25.6.2020) by virtue of S.I. 2020/646, regs. 1(2)(c), 4(3))
- Art. 25(7) words substituted by [S.I. 2018/1184 reg. 8\(10\)\(a\)](#) (This amendment not applied to legislation.gov.uk. Reg. 8 omitted (25.6.2020) by virtue of S.I. 2020/646, regs. 1(2)(c), 4(3))
- Art. 25(7) words substituted by [S.I. 2018/1184 reg. 8\(10\)\(b\)](#) (This amendment not applied to legislation.gov.uk. Reg. 8 omitted (25.6.2020) by virtue of S.I. 2020/646, regs. 1(2)(c), 4(3))
- Art. 25(8) words omitted by [S.I. 2018/1184 reg. 8\(11\)\(b\)](#) (This amendment not applied to legislation.gov.uk. Reg. 8 omitted (25.6.2020) by virtue of S.I. 2020/646, regs. 1(2)(c), 4(3))
- Art. 25(8) words substituted by [S.I. 2018/1184 reg. 8\(11\)\(a\)\(i\)](#) (This amendment not applied to legislation.gov.uk. Reg. 8 omitted (25.6.2020) by virtue of S.I. 2020/646, regs. 1(2)(c), 4(3))
- Art. 25(8) words substituted by [S.I. 2018/1184 reg. 8\(11\)\(a\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. Reg. 8 omitted (25.6.2020) by virtue of S.I. 2020/646, regs. 1(2)(c), 4(3))
- art. 25(9)(10) inserted by [S.I. 2018/1184 reg. 8\(12\)](#) (This amendment not applied to legislation.gov.uk. Reg. 8 omitted (25.6.2020) by virtue of S.I. 2020/646, regs. 1(2)(c), 4(3))
- Art. 39(8) words substituted by [S.I. 2019/335 reg. 42](#) (This amendment not applied to legislation.gov.uk. Reg. 42 substituted immediately before IP completion day by S.I. 2020/1385, regs. 1(4), 52(4))
- Art. 49(1) words omitted by [S.I. 2019/335 reg. 50\(2\)\(a\)](#) (This amendment not applied to legislation.gov.uk. Reg. 50(2)(a) substituted (25.6.2020) by S.I. 2020/646, regs. 1(2)(c), 6(7)(a))
- Art. 50a para. 2 replacement by [EUR 2019/876 Regulation](#) (This amendment by the EU not applied to legislation.gov.uk because it is brought into force after IP completion day.)

- Art. 50b replacement by [EUR 2019/876 Regulation](#) (This amendment by the EU not applied to legislation.gov.uk because it is brought into force after IP completion day.)
- Art. 50c para. 1 Point (e) repeal by [EUR 2019/876 Regulation](#) (This amendment by the EU not applied to legislation.gov.uk because it is brought into force after IP completion day.)
- Art. 50c para. 1 Point (d) repeal by [EUR 2019/876 Regulation](#) (This amendment by the EU not applied to legislation.gov.uk because it is brought into force after IP completion day.)
- Art. 50d Point (c) repeal by [EUR 2019/876 Regulation](#) (This amendment by the EU not applied to legislation.gov.uk because it is brought into force after IP completion day.)
- Art. 78 para. 9 addition by [EUR 2019/834 Regulation](#) (This amendment by the EU not applied to legislation.gov.uk because it is brought into force after IP completion day.)
- Art. 78 para. 10 addition by [EUR 2019/834 Regulation](#) (This amendment by the EU not applied to legislation.gov.uk because it is brought into force after IP completion day.)
- Art. 80(5a) words omitted by [S.I. 2019/1416 reg. 32](#) (This amendment not applied to legislation.gov.uk. Reg. 32 omitted immediately before IP completion day by virtue of S.I. 2020/1385, regs. 1(4), 67(4))
- Art. 81(5) substituted by [S.I. 2018/1318 reg. 3\(c\)](#) (This amendment not applied to legislation.gov.uk. Reg. 3(c) omitted (30.10.2019) by virtue of S.I. 2019/1416, regs. 1(2), 8(b))
- Art. 89 para. 5a replacement by [EUR 2019/876 Regulation](#) (This amendment by the EU not applied to legislation.gov.uk because it is brought into force after IP completion day.)

Changes and effects yet to be applied to the whole legislation item and associated provisions

- Art. 2(30)-(33) inserted by [S.I. 2018/1184 reg. 7](#) (This amendment not applied to legislation.gov.uk. S.I. 2018/1184, reg. 7 substituted (1.3.2019) by The Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019 (S.I. 2019/405), regs. 1(2), 9)
- Art. 4(1)(a)(v) words substituted by [S.I. 2019/335 reg. 14\(2\)\(a\)](#) (This amendment not applied to legislation.gov.uk. Reg. 14(2)(a) substituted (30.10.2019) by S.I. 2019/1416, regs. 1(2), 14(a))
- Art. 4(1)(a)(iv) words substituted by [S.I. 2019/335 reg. 14\(2\)\(a\)](#) (This amendment not applied to legislation.gov.uk. Reg. 14(2)(a) substituted (30.10.2019) by S.I. 2019/1416, regs. 1(2), 14(a))
- Art. 4(1)(b)(ii) words substituted by [S.I. 2019/335 reg. 14\(2\)\(b\)\(i\)](#) (This amendment not applied to legislation.gov.uk. Reg. 14(2)(b) omitted (30.10.2019) by virtue of S.I. 2019/1416, regs. 1(2), 14(b))
- Art. 4(1)(b)(ii) words substituted by [S.I. 2019/335 reg. 14\(2\)\(b\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. Reg. 14(2)(b) omitted (30.10.2019) by virtue of S.I. 2019/1416, regs. 1(2), 14(b))
- Art. 10(1)(a) word omitted by [S.I. 2019/335 reg. 20\(2\)\(b\)](#) (This amendment not applied to legislation.gov.uk. Reg. 20(2) substituted (30.10.2019) by S.I. 2019/1416, regs. 1(2), 17(a))
- Art. 10(1)(a) words omitted by [S.I. 2019/335 reg. 20\(2\)\(a\)](#) (This amendment not applied to legislation.gov.uk. Reg. 20(2) substituted (30.10.2019) by S.I. 2019/1416, regs. 1(2), 17(a))
- Art. 25(6A) inserted by [S.I. 2018/1184 reg. 8\(9\)](#) (This amendment not applied to legislation.gov.uk. Reg. 8 omitted (25.6.2020) by virtue of S.I. 2020/646, regs. 1(2)(c), 4(3))

- Art. 25(7)(c) words substituted by [S.I. 2018/1184 reg. 8\(10\)\(c\)](#) (This amendment not applied to legislation.gov.uk. Reg. 8 omitted (25.6.2020) by virtue of S.I. 2020/646, regs. 1(2)(c), 4(3))