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► **B** COMMISSION DELEGATED REGULATION (EU) No 149/2013
of 19 December 2012

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

(Text with EEA relevance)

(OJ L 52, 23.2.2013, p. 11)

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CHAPTER I

GENERAL

*Article 1***Definitions**

For the purposes of this Regulation the following definitions apply:

(a) ‘indirect client’ means the client of a client of a clearing member;

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(b) ‘indirect clearing arrangements’ means the set of contractual relationships between providers and recipients of indirect clearing services provided by a client, an indirect client or a second indirect client;

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(c) ‘confirmation’ means the documentation of the agreement of the counterparties to all the terms of an over the counter (OTC) derivative contract;

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(d) ‘second indirect client’ means a client of an indirect client;

(e) ‘third indirect client’ means a client of a second indirect client.

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CHAPTER II

INDIRECT CLEARING ARRANGEMENTS

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

▼M1*Article 2***Requirements for the provision of indirect clearing services by clients**

1. A client may only provide indirect clearing services to indirect clients provided that all of the following conditions are fulfilled:

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- (a) the client is an authorised credit institution or investment firm or an entity established in a third country that would be considered to be a credit institution or investment firm if that entity were established in the Union;
- (b) the client provides indirect clearing services on reasonable commercial terms and publicly discloses the general terms and conditions under which it provides those services;
- (c) the clearing member has agreed to the general terms and conditions referred to in point (b) of this paragraph.

2. The client referred to in paragraph 1 and the indirect client shall conclude, in writing, an indirect clearing arrangement. The indirect clearing arrangement shall include at least the following contractual terms:

- (a) the general terms and conditions referred to in paragraph 1(b);
- (b) the client's commitment to honour all obligations of the indirect client towards the clearing member with regard to the transactions covered by the indirect clearing arrangement.

All aspects of the indirect clearing arrangement shall be clearly documented.

3. A CCP shall not prevent the conclusion of indirect clearing arrangements that are entered into on reasonable commercial terms.

*Article 3***Obligations of CCPs**

1. A CCP shall open and maintain any of the accounts referred to in Article 4(4) in accordance with the request of the clearing member.

2. A CCP that holds the assets and positions of several indirect clients in an account as referred to in Article 4(4)(b) shall keep separate records of the positions of each indirect client, calculate the margins in respect of each indirect client and collect the sum of those margins on a gross basis, based on the information referred to in Article 4(3).

3. A CCP shall identify, monitor and manage any material risks arising from the provision of indirect clearing services that could affect the resilience of the CCP to adverse market developments.

*Article 4***Obligations of clearing members**

1. A clearing member that provides indirect clearing services shall do so on reasonable commercial terms and shall publicly disclose the general terms and conditions under which it provides those services.

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The general terms and conditions referred to in the first subparagraph shall include the minimum financial resources and operational capacity requirements for clients that provide indirect clearing services.

2. A clearing member that provides indirect clearing services shall open and maintain at least the following accounts in accordance with the request of the client:

- (a) an omnibus account with the assets and positions held by that client for the account of its indirect clients;
- (b) an omnibus account with the assets and positions held by that client for the account of its indirect clients, in which the clearing member shall ensure that the positions of an indirect client do not offset the positions of another indirect client and that the assets of an indirect client cannot be used to cover the positions of another indirect client.

3. A clearing member holding assets and positions for the account of several indirect clients in an account as referred to in paragraph 2(b) shall provide the CCP on a daily basis with all the necessary information to allow the CCP to identify the positions held for the account of each indirect client. That information shall be based on the information referred to in Article 5(4).

4. A clearing member that provides indirect clearing services shall at least open and maintain in the CCP the following accounts in accordance with the request made by the client:

- (a) a segregated account for the exclusive purpose of holding the assets and positions of indirect clients held by the clearing member in an account as referred to in paragraph 2(a);
- (b) a segregated account for the exclusive purpose of holding the assets and positions of indirect clients of each client held by the clearing member in an account as referred to in paragraph 2(b).

5. A clearing member shall establish procedures to manage the default of a client that provides indirect clearing services.

6. A clearing member holding the assets and positions of indirect clients in an account as referred to in paragraph 2(a) shall:

- (a) ensure that the procedures referred to in paragraph 5 allow for the prompt liquidation of those assets and positions following the default of a client, including the liquidation of those assets and positions at the level of the CCP, and include a detailed procedure to communicate to the indirect clients the default of the client and the expected period of time to liquidate the assets and positions of those indirect clients;

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- (b) after the completion of the default management process for the default of a client, readily return to that client, for the account of the indirect clients, any balance owed from the liquidation of those assets and positions.

7. A clearing member holding assets and positions of indirect clients in an account as referred to in paragraph 2(b) shall:

- (a) include in the procedures referred to in paragraph 5:
 - (i) the steps to transfer the assets and positions held by a defaulting client for the account of its indirect clients to another client or to a clearing member;
 - (ii) the steps to pay each indirect client the proceeds from the liquidation of the assets and positions of that indirect client;
 - (iii) a detailed procedure to communicate to the indirect clients the default of the client and the expected period of time to liquidate the assets and positions of those indirect clients;
- (b) contractually commit itself to trigger the procedures for the transfer of the assets and positions held by a defaulting client for the account of its indirect clients to another client or clearing member that has been designated by the relevant indirect clients of the defaulting client at the request of those indirect clients and without obtaining the consent of the defaulting client. That other client or clearing member shall be obliged to accept those assets and positions only where that other client or clearing member has previously entered into a contractual relationship with those relevant indirect clients committing to do so;
- (c) ensure that the procedures referred to in paragraph 5 allow for the prompt liquidation of those assets and positions following the default of a client, including the liquidation of those assets and positions at the level of the CCP, in case the transfer referred to in point (b) has not taken place for any reason within a predefined transfer period specified in the indirect clearing arrangement;
- (d) following the liquidation of those assets and positions, contractually commit itself to trigger the procedures for the payment of the liquidation proceeds to each of the indirect clients;
- (e) where the clearing member has not been able to identify the indirect clients or to complete the payment of the liquidation proceeds referred to in point (d) to each of the indirect clients, readily return to the client for the account of the indirect clients any balance owed from the liquidation of those assets and positions.

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8. A clearing member shall identify, monitor and manage any material risks arising from the provision of indirect clearing services that could affect its resilience to adverse market developments. The clearing member shall establish internal procedures to ensure that the information referred to in Article 5(8) cannot be used for commercial purposes.

*Article 5***Obligations of clients**

1. A client that provides indirect clearing services shall offer indirect clients a choice between at least the types of accounts referred to in Article 4(2) and shall ensure that those indirect clients are fully informed about the different levels of segregation and the risks associated with each type of account.

2. The client referred to in paragraph 1 shall assign one of the types of accounts referred to in Article 4(2) to indirect clients that have not chosen one within a reasonable period of time established by the client. The client shall inform the indirect client about the risks associated with the type of account assigned without undue delay. The indirect client may choose a different type of account at any time by requesting so in writing to the client.

3. A client that provides indirect clearing services shall keep separate records and accounts that enable it to distinguish between its own assets and positions and those held for the account of its indirect clients.

4. Where the assets and positions of several indirect clients are held by the clearing member in an account as referred to in Article 4(2)(b), the client shall provide the clearing member with all the necessary information on a daily basis to allow the clearing member to identify the positions held for the account of each indirect client.

5. A client that provides indirect clearing services shall, in accordance with the choice of its indirect clients, request the clearing member to open and maintain in the CCP the accounts referred to in Article 4(4).

6. A client shall provide its indirect clients with sufficient information to allow those indirect clients to identify the CCP and the clearing member used to clear their positions.

7. Where the assets and positions of one or more indirect clients are held by the clearing member in an account as referred to in Article 4(2)(b), the client shall include in the indirect clearing arrangement with its indirect clients all necessary terms and conditions to ensure that, in the case of default of that client, the clearing member may promptly return to the indirect clients the proceeds from the liquidation of the positions and assets held for the account of those indirect clients in accordance with Article 4(7).

8. A client shall provide the clearing member with sufficient information to identify, monitor and manage any material risks arising from the provision of indirect clearing services that could affect the resilience of the clearing member.

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9. A client shall have arrangements in place to ensure that, when it defaults, all information it holds in respect of its indirect clients is made immediately available to the clearing member, including the identity of the indirect clients referred to in Article 5(4).

*Article 5a***Requirements for the provision of indirect clearing services by indirect clients**

1. An indirect client may only provide indirect clearing services to second indirect clients provided that the parties to the indirect clearing arrangements fulfil one of the requirements set out in paragraph 2 and that all of the following conditions are met:

- (a) the indirect client is an authorised credit institution or investment firm or an entity established in a third country that would be considered to be a credit institution or investment firm if that entity were established in the Union;
- (b) the indirect client and the second indirect client conclude, in writing, an indirect clearing arrangement. The indirect clearing arrangement shall include at least the following contractual terms:
 - (i) the general terms and conditions referred to in Article 2(1)(b);
 - (ii) the indirect client's commitment to honour all obligations of the second indirect client towards the client with regard to transactions covered by the indirect clearing arrangement;
- (c) the assets and positions of the second indirect client are held by the clearing member in an account as referred to in Article 4(2)(a).

All aspects of the indirect clearing arrangement referred to in point (b) shall be clearly documented.

2. For the purposes of paragraph 1, the parties to the indirect clearing arrangements shall fulfil one of the following requirements:

- (a) the clearing member and the client are part of the same group, but the indirect client is not part of that group;
- (b) the client and the indirect client are part of the same group, but neither the clearing member nor the second indirect client is part of that group.

3. For indirect clearing arrangements entered into by parties in the situation referred to in paragraph 2(a):

- (a) Articles 4(1), 4(5), 4(6) and 4(8) shall apply to the client as if that client were a clearing member;
- (b) Articles 2(1)(b), 5(2), 5(3), 5(6), 5(8) and 5(9) shall apply to the indirect client as if that indirect client were a client.

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4. For indirect clearing arrangements entered into by parties in the situation referred to in paragraph 2(b):

- (a) Articles 4(5) and 4(6) shall apply to the client as if that client were a clearing member;
- (b) Articles 2(1)(b), 5(2), 5(3), 5(6), 5(8) and 5(9) shall apply to the indirect client as if that indirect client were a client.

*Article 5b***Requirements for the provision of indirect clearing services by second indirect clients**

1. A second indirect client may only provide indirect clearing services to third indirect clients provided that all of the following conditions are met:

- (a) the indirect client and the second indirect client are authorised credit institutions or an investment firms or entities established in a third country that would be considered to be a credit institution or an investment firm if that entity were established in the Union;
- (b) the clearing member and the client are part of the same group, but the indirect client is not part of that group;
- (c) the indirect client and the second indirect client are part of the same group, but the third indirect client is not part of that group;
- (d) the second indirect client and the third indirect client conclude, in writing, an indirect clearing arrangement. The indirect clearing arrangement shall include at least the following contractual terms:
 - (i) the general terms and conditions referred to in Article 2(1)(b);
 - (ii) the second indirect client's commitment to honour all obligations of the third indirect client towards the indirect client with regard to transactions covered by the indirect clearing arrangement;
- (e) the assets and positions of the third indirect client are held by the clearing member in an account as referred to in Article 4(2)(a).

All aspects of the indirect clearing arrangement referred to in point (d) of the first subparagraph shall be clearly documented.

2. Where second indirect clients provide indirect clearing services pursuant to paragraph 1:

- (a) Articles 4(1), 4(5), 4(6) and 4(8) shall apply to both the client and to the indirect client as if they were clearing members;
- (b) Articles 2(1)(b), 5(2), 5(3), 5(6), 5(8) and 5(9) shall apply to both the indirect client and the second indirect client as if they were clients.



CHAPTER III

NOTIFICATION TO ESMA FOR THE PURPOSE OF THE CLEARING OBLIGATION

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

*Article 6***Details to be included in the notification**

1. The notification for the purpose of the clearing obligation shall include the following information:

- (a) the identification of the class of OTC derivative contracts;
- (b) the identification of the OTC derivative contracts within the class of OTC derivative contracts;
- (c) other information to be included in the public register in accordance with Article 8;
- (d) any further characteristics necessary to distinguish OTC derivative contracts within the class of OTC derivative contracts from OTC derivative contracts outside that class;
- (e) evidence of the degree of standardisation of the contractual terms and operational processes for the relevant class of OTC derivative contracts;
- (f) data on the volume of the class of OTC derivative contracts;
- (g) data on the liquidity of the class of OTC derivative contracts;
- (h) evidence of availability to market participants of fair, reliable and generally accepted pricing information for contracts in the class of OTC derivative contracts;
- (i) evidence of the impact of the clearing obligation on availability to market participants of pricing information.

2. For the purpose of assessing the date or dates from which the clearing obligation takes effect, including any phasing-in and the categories of counterparties to which the clearing obligation applies, the notification for the purpose of the clearing obligation shall include:

- (a) data relevant for assessing the expected volume of the class of OTC derivative contracts if it becomes subject to the clearing obligation;
- (b) evidence of the ability of the CCP to handle the expected volume of the class of OTC derivative contracts if it becomes subject to the clearing obligation and to manage the risk arising from the clearing of the relevant class of OTC derivative contracts, including through client or indirect client clearing arrangements;

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- (c) the type and number of counterparties active and expected to be active within the market for the class of OTC derivative contracts if it becomes subject to the clearing obligation;
- (d) an outline of the different tasks to be completed in order to start clearing with the CCP, together with the determination of the time required to fulfil each task;
- (e) information on the risk management, legal and operational capacity of the range of counterparties active in the market for the class of OTC derivative contracts if it becomes subject to the clearing obligation.

3. The data pertaining to the volume and the liquidity shall contain for the class of OTC derivative contracts and for each derivative contract within the class, the relevant market information, including historical data, current data as well as any change that is expected to arise if the class of OTC derivative contracts becomes subject to the clearing obligation, including:

- (a) the number of transactions;
- (b) the total volume;
- (c) the total open interest;
- (d) the depth of orders including the average number of orders and of requests for quotes;
- (e) the tightness of spreads;
- (f) the measures of liquidity under stressed market conditions;
- (g) the measures of liquidity for the execution of default procedures.

4. The information related to the degree of standardisation of the contractual terms and operational processes for the relevant class of OTC derivative contracts provided in point (e) of paragraph 1 shall include, for the class of OTC derivative contracts and for each derivative contract within the class, data on the daily reference price as well as the number of days per year with a reference price it considers reliable over at least the previous 12 months.

CHAPTER IV

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

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

*Article 7***Criteria to be assessed by ESMA**

1. In relation to the degree of standardisation of the contractual terms and operational processes of the relevant class of OTC derivative contracts, the European Securities and Markets Authority (ESMA) shall take into consideration:

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

CHAPTER V

PUBLIC REGISTER

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

*Article 8***Details to be included in ESMA's Register**

1. The ESMA public register shall include for each class of OTC derivative contracts subject to the clearing obligation:
- (a) the asset class of OTC derivative contracts;
 - (b) the type of OTC derivative contracts within the class;
 - (c) the underlyings of OTC derivative contracts within the class;

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- (d) for underlyings which are financial instruments, an indication of whether the underlying is a single financial instrument or issuer or an index or portfolio;
- (e) for other underlyings an indication of the category of the underlying;
- (f) the notional and settlement currencies of OTC derivative contracts within the class;
- (g) the range of maturities of OTC derivative contracts within the class;
- (h) the settlement conditions of OTC derivative contracts within the class;
- (i) the range of payment frequency of OTC derivative contracts within the class;
- (j) the product identifier of the relevant class of OTC derivative contracts;
- (k) any other characteristic required to distinguish one contract in the relevant class of OTC derivative contracts from another.

2. In relation to CCPs that are authorised or recognised for the purpose of the clearing obligation, the ESMA public register shall include for each CCP:

- (a) the identification code, in accordance with Article 3 of Implementing Commission Regulation (EU) No 1247/2012 ⁽¹⁾;
- (b) the full name;
- (c) the country of establishment;
- (d) the competent authority designated in accordance with Article 22 of Regulation (EU) No 648/2012.

3. In relation to the dates from which the clearing obligation takes effect, including any phased-in implementation, the ESMA public register shall include:

- (a) the identification of the categories of counterparties to which each phase-in period applies;
- (b) any other condition required pursuant to the regulatory technical standards adopted under Article 5(2) of Regulation (EU) No 648/2012, in order for the phase-in period to apply.

4. The ESMA public register shall include the reference of the regulatory technical standards adopted under Article 5(2) of Regulation (EU) No 648/2012, according to which each clearing obligation was established.

5. In relation to the CCP that has been notified to ESMA by the competent authority, the ESMA public register shall include at least:

⁽¹⁾ OJ L 352, 21.12.2012, p. 20.

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- (a) the identification of the CCP;
- (b) the asset class of OTC derivative contracts that are notified;
- (c) the type of OTC derivative contracts;
- (d) the date of the notification;
- (e) the identification of the notifying competent authority.

CHAPTER VI

LIQUIDITY FRAGMENTATION

(Article 8(5) of Regulation (EU) No 648/2012)

*Article 9***Specification of the notion of liquidity fragmentation**

1. Liquidity fragmentation shall be deemed to occur when the participants in a trading venue are unable to conclude a transaction with one or more other participants in that venue because of the absence of clearing arrangements to which all participants have access.
2. Access by a CCP to a trading venue which is already served by another CCP shall not be deemed to give rise to liquidity fragmentation within the trading venue if, without the need to impose a requirement on clearing members of the incumbent CCP to become clearing members of the requesting CCP, all participants to the trading venue can clear, directly or indirectly, through one of the following:
 - (a) at least one CCP in common;
 - (b) clearing arrangements established by the CCPs.
3. The arrangements for the fulfilment of the conditions under point (a) or (b) of paragraph 2 shall be established before the requesting CCP starts providing clearing services to the relevant trading venue.
4. Access to a common CCP as referred to in point (a) of paragraph 2 may be established through two or more clearing members, or two or more clients or through indirect clearing arrangements.
5. Clearing arrangements referred to in point (b) of paragraph 2 may foresee the transfer of transactions executed by such market participants to clearing members of other CCPs. Although access by a CCP to a trading venue should not require interoperability, an interoperability arrangement which has been agreed by the relevant CCPs and approved by the relevant competent authorities may be used to fulfil the requirement for access to common clearing arrangements.



CHAPTER VII
NON-FINANCIAL COUNTERPARTIES

Article 10

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

Criteria for establishing which OTC derivative contracts are objectively reducing risks

1. An OTC derivative contract shall be objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the non-financial counterparty or of that group, when, by itself or in combination with other derivative contracts, directly or through closely correlated instruments, it meets one of the following criteria:

- (a) it covers the risks arising from the potential change in the value of assets, services, inputs, products, commodities or liabilities that the non-financial counterparty or its group owns, produces, manufactures, processes, provides, purchases, merchandises, leases, sells or incurs or reasonably anticipates owning, producing, manufacturing, processing, providing, purchasing, merchandising, leasing, selling or incurring in the normal course of its business;
- (b) it covers the risks arising from the potential indirect impact on the value of assets, services, inputs, products, commodities or liabilities referred to in point (a), resulting from fluctuation of interest rates, inflation rates, foreign exchange rates or credit risk;
- (c) it qualifies as a hedging contract pursuant to International Financial Reporting Standards (IFRS) adopted in accordance with Article 3 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council ⁽¹⁾.

Article 11

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

Clearing thresholds

The clearing thresholds values for the purpose of the clearing obligation shall be:

- (a) EUR 1 billion in gross notional value for OTC credit derivative contracts;
- (b) EUR 1 billion in gross notional value for OTC equity derivative contracts;
- (c) EUR 3 billion in gross notional value for OTC interest rate derivative contracts;

⁽¹⁾ OJ L 243, 11.9.2002, p. 1.

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- (d) EUR 3 billion in gross notional value for OTC foreign exchange derivative contracts;
- (e) EUR 3 billion in gross notional value for OTC commodity derivative contracts and other OTC derivative contracts not provided for under points (a) to (d).

CHAPTER VIII

**RISK-MITIGATION TECHNIQUES FOR OTC DERIVATIVE
CONTRACTS NOT CLEARED BY A CCP***Article 12*

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

Timely confirmation

1. An OTC derivative contract concluded between financial counterparties or non-financial counterparties referred to in Article 10 of Regulation (EU) No 648/2012 and which is not cleared by a CCP shall be confirmed, where available via electronic means, as soon as possible and at the latest:

- (a) for credit default swaps and interest rate swaps that are concluded up to and including 28 February 2014, by the end of the second business day following the date of execution of the OTC derivative contract;
- (b) for credit default swaps and interest rate swaps that are concluded after 28 February 2014, by the end of the business day following the date of execution of the OTC derivative contract;
- (c) for equity swaps, foreign exchange swaps, commodity swaps and all other derivatives not provided for in point (a) that are concluded up to and including 31 August 2013, by the end of the third business day following the date of execution of the derivative contract;
- (d) for equity swaps, foreign exchange swaps, commodity swaps and all other derivatives not provided for in point (a) that are concluded after 31 August 2013 up to and including 31 August 2014, by the end of the second business day following the date of execution of the derivative contract;
- (e) for equity swaps, foreign exchange swaps, commodity swaps and all other derivatives not provided for in point (a) that are concluded after 31 August 2014, by the end of the business day following the date of execution of the derivative contract.

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2. An OTC derivative contract concluded with a non-financial counterparty not referred to in Article 10 of Regulation (EU) No 648/2012, shall be confirmed as soon as possible, where available via electronic means, and at the latest:

- (a) for credit default swaps and interest rate swaps that are concluded up to and including 31 August 2013, by the end of the fifth business day following the date of execution of the OTC derivative contract;
- (b) for credit default swaps and interest rate swaps that are concluded after 31 August 2013 up to and including 31 August 2014, by the end of the third business day following the date of execution of the OTC derivative contract;
- (c) for credit default swaps and interest rate swaps that are concluded after 31 August 2014, by the end of the second business day following the date of execution of the OTC derivative contract;
- (d) for equity swaps, foreign exchange swaps, commodity swaps and all other derivatives not provided for in point (a) that are concluded up to and including 31 August 2013, by the end of the seventh business day following the date of execution of the derivative contract;
- (e) for equity swaps, foreign exchange swaps, commodity swaps and all other derivatives not provided for in point (a) that are concluded after 31 August 2013 up to and including 31 August 2014, by the end of the fourth business day following the date of execution of the derivative contract;
- (f) for equity swaps, foreign exchange swaps, commodity swaps and all other derivatives not provided for in point (a) that are concluded after 31 August 2014, by the end of the second business day following the date of execution.

3. Where a transaction referred to in paragraph 1 or 2 is concluded after 16.00 local time, or with a counterparty located in a different time zone which does not allow confirmation by the set deadline, the confirmation shall take place as soon as possible and, at the latest, one business day following the deadline set in paragraph 1 or 2 as relevant.

4. Financial counterparties shall have the necessary procedure to report on a monthly basis to the competent authority designated in accordance with Article 48 of Directive 2004/39/EC of the European Parliament and of the Council⁽¹⁾ the number of unconfirmed OTC derivative transactions referred to in paragraphs 1 and 2 that have been outstanding for more than five business days.

⁽¹⁾ OJ L 145, 30.4.2004, p. 1.

▼B*Article 13*

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

Portfolio reconciliation

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

2. Portfolio reconciliation shall be performed by the counterparties to the OTC derivative contracts with each other or by a qualified third party duly mandated to this effect by a counterparty. The portfolio reconciliation shall cover key trade terms that identify each particular OTC derivative contract and shall include at least the valuation attributed to each contract in accordance with Article 11(2) of Regulation (EU) No 648/2012.

3. In order to identify at an early stage any discrepancy in a material term of the OTC derivative contract, including its valuation, the portfolio reconciliation shall be performed:

(a) for a financial counterparty or a non-financial counterparty referred to in Article 10 of Regulation (EU) No 648/2012:

(i) each business day when the counterparties have 500 or more OTC derivative contracts outstanding with each other;

(ii) once per week when the counterparties have between 51 and 499 OTC derivative contracts outstanding with each other at any time during the week;

(iii) once per quarter when the counterparties have 50 or less OTC derivative contracts outstanding with each other at any time during the quarter;

(b) for a non-financial counterparty not referred to in Article 10 of Regulation (EU) No 648/2012:

(i) once per quarter when the counterparties have more than 100 OTC derivative contracts outstanding with each other at any time during the quarter;

(ii) once per year when the counterparties have 100 or less OTC derivative contracts outstanding with each other.

▼B*Article 14*

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

Portfolio compression

Financial counterparties and non-financial counterparties with 500 or more OTC derivative contracts outstanding with a counterparty which are not centrally cleared shall have in place procedures to regularly, and at least twice a year, analyse the possibility to conduct a portfolio compression exercise in order to reduce their counterparty credit risk and engage in such a portfolio compression exercise.

Financial counterparties and non-financial counterparties shall ensure that they are able to provide a reasonable and valid explanation to the relevant competent authority for concluding that a portfolio compression exercise is not appropriate.

Article 15

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

Dispute resolution

1. When concluding OTC derivative contracts with each other, financial counterparties and non-financial counterparties shall have agreed detailed procedures and processes in relation to:

- (a) the identification, recording, and monitoring of disputes relating to the recognition or valuation of the contract and to the exchange of collateral between counterparties. Those procedures shall at least record the length of time for which the dispute remains outstanding, the counterparty and the amount which is disputed;
- (b) the resolution of disputes in a timely manner with a specific process for those disputes that are not resolved within five business days.

2. Financial counterparties shall report to the competent authority designated in accordance with Article 48 of Directive 2004/39/EC any disputes between counterparties relating to an OTC derivative contract, its valuation or the exchange of collateral for an amount or a value higher than EUR 15 million and outstanding for at least 15 business days.

Article 16

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

Market conditions that prevent marking-to-market

1. Market conditions that prevent marking-to market of an OTC derivative contract shall be considered to occur in either of the following situations:

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- (a) when the market is inactive;
- (b) where the range of reasonable fair values estimates is significant and the probabilities of the various estimates cannot reasonably be assessed.

2. A market for an OTC derivative contract shall be considered inactive when quoted prices are not readily and regularly available and those prices available do not represent actual and regularly occurring market transactions on an arm's length basis.

Article 17

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

Criteria for using marking-to-model

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

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

Article 18

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

Details of the intragroup transaction notification to the competent authority

1. The application or notification to the competent authority of the details of the intragroup transaction shall be in writing and shall include:

- (a) the legal counterparties to the transactions including their identifiers in accordance with Article 3 of Implementing Regulation (EU) No 1247/2012;
- (b) the corporate relationship between the counterparties;

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- (c) details of the supporting contractual relationships between the parties;
- (d) the category of intragroup transaction as specified under paragraph 1 and points (a) to (d) of paragraph 2 of Article 3 of Regulation (EU) No 648/2012;
- (e) details of the transactions for which the counterparty is seeking the exemption, including:
 - (i) the asset class of OTC derivative contracts;
 - (ii) the type of OTC derivative contracts;
 - (iii) the type of underlyings;
 - (iv) the notional and settlement currencies;
 - (v) the range of contract tenors;
 - (vi) the settlement type;
 - (vii) the anticipated size, volumes and frequency of OTC derivative contracts per annum.

2. As part of its application or notification to the relevant competent authority, a counterparty shall also submit supporting information evidencing that the conditions of Article 11(6) to (10) of Regulation (EU) No 648/2012 are fulfilled. The supporting documents shall include copies of documented risk management procedures, historical transaction information, copies of the relevant contracts between the parties and may include a legal opinion upon request from the competent authority.

Article 19

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

Details of the intragroup transaction notification to ESMA

1. The notification by a competent authority of the details of the intragroup transaction shall be submitted to ESMA in writing:
 - (a) within one month of the receipt of the notification with respect to a notification under Article 11(7) or (9) of Regulation (EU) No 648/2012;
 - (b) within one month from the decision being submitted to the counterparty with respect to a decision of the competent authority under Article 11(6), (8) or (10) of Regulation (EU) No 648/2012.
2. The notification to ESMA shall include:
 - (a) the information listed in Article 18;
 - (b) whether there is a positive or a negative decision;

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

Article 20

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

Information on the intragroup exemption to be publicly disclosed

The information on an intragroup exemption to be disclosed publicly shall include:

- (a) the legal counterparties to the transactions including their identifiers in accordance with Article 3 of Implementing Regulation (EU) No 1247/2012;
- (b) the relationship between the counterparties;
- (c) whether the exemption is a full exemption or a partial exemption;
- (d) the notional aggregate amount of the OTC derivative contracts for which the intragroup exemption applies.

*Article 21***Entry into force and application**

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

Articles 13, 14 and 15 shall apply six months after the date of entry into force of this Regulation.

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