Changes to legislation: *There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2018/728. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)EUR 2018 No. 728 may be subject to amendment by EU Exit Instruments made by both the Prudential Regulation Authority and the Financial Conduct Authority under powers set out in The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), regs. 2, 3, Sch. Pt. 4. These amendments are not currently available on legislation.gov.uk. Details of relevant amending instruments can be found on their website/s. (See end of Document for details) View outstanding changes*

Commission Delegated Regulation (EU) 2018/728 of 24 January 2018 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for procedures for excluding transactions with non-financial counterparties established in a third country from the own funds requirement for credit valuation adjustment risk (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2018/728

of 24 January 2018

supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for procedures for excluding transactions with non-financial counterparties established in a third country from the own funds requirement for credit valuation adjustment risk

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 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[(1)], and in particular the fourth subparagraph of Article 382(5) thereof,

Whereas:

(1) Pursuant to point (a) of Article 382(4) of Regulation (EU) No 575/2013, transactions between an institution, on the one hand, and a non-financial counterparty as defined in point (9) of Article 2 of Regulation (EU) No 648/2012 of the European Parliament and of the Council[(2)], on the other hand, that do not exceed the clearing threshold referred to in Article 10(3) and Article 10(4) of that Regulation (EU) No 648/2012, are excluded from the own funds requirements for credit valuation adjustment (CVA) risk, irrespective of whether that non-financial counterparty is established in the Union or in a third country.

(2) Point (9) of Article 2 of Regulation (EU) No 648/2012 defines a 'non-financial counterparty' as an undertaking established in the Union. As a result, the clearing threshold referred to in Article 10(1) of that Regulation does not apply to non-financial counterparties established in a third country.

(3) Article 382(4) of Regulation (EU) No 575/2013 does not differentiate between non-financial counterparties established in the Union and non-financial counterparties established in a third country. To ensure a level playing field, the same rules should apply to non-financial counterparties established in the Union and non-financial counterparties established in a third country.

(4) Article 11 of Commission Delegated Regulation (EU) No 149/2013[(3)] sets out clearing threshold values per class of OTC derivatives, as required by point (b) of Article 10(4) of

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Regulation (EU) No 648/2012. Recital 25 of Delegated Regulation (EU) No 149/2013 clarifies that the 'excess of one of the values set for a class of OTC derivatives should trigger the excess of the clearing threshold for all classes'.

(5) For a contract to be exempt until the date of its maturity, as laid down in the last subparagraph of Article 382(4) of Regulation (EU) No 575/2013, it should be sufficient that the requirements of that Regulation are met at contract inception. There might be cases, however, where an institution enters into trades with a given non-financial counterparty very frequently, and in some cases, on a daily basis. Verification of whether the status of the non-financial counterparty established in a third country is accurately reflected in the institution's own funds requirements for CVA risk may in those cases impose a disproportionate burden on the institution. It is therefore appropriate to provide for an alternative in the form of an annual verification of the status of the non-financial counterparty established in a third country. The frequency of verification should be increased to quarterly, however, where the gross notional amount of transactions for a class of OTC derivatives by a non-financial counterparty is close to exceeding the clearing threshold for that class. That should allow for more frequent monitoring of whether that clearing threshold has been exceeded, given the higher likelihood that this will be the case.

(6) Article 382(4)(a) of Regulation (EU) No 575/2013 states that transactions with non-financial counterparties, that do not exceed the clearing threshold specified in paragraphs 3 and 4 of Article 10 of Regulation (EU) No 648/2012, shall be excluded from the own funds requirements for CVA risk. Therefore, where, following the assessment set out in Regulation (EU) No 575/2013, an institution discovers that one of its counterparties established in a third country either does not qualify as a non-financial counterparty or where the transactions concerned exceed the clearing threshold as specified therein, the institution is required to compute own funds requirements for CVA risk in accordance with Title VI of that Regulation for all OTC derivative instruments with that counterparty that fall within the scope of Article 382(1) of that Regulation.

(7) This Regulation is based on the draft regulatory technical standards developed in cooperation with the European Securities and Markets Authority and submitted by the European Banking Authority to the Commission.

(8) The European Banking Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits, and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010[(4)],

HAS ADOPTED THIS REGULATION:

Article 1

1 For the purposes of point (a) of Article 382(4) of Regulation (EU) No 575/2013, institutions shall consider as non-financial counterparties established in a third country, counterparties that meet both of the following conditions:

a they are established in a third country;

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b they would qualify as a non-financial counterparty within the meaning of point (9) of Article 2 of Regulation (EU) No 648/2012 if they were established in the Union.

2 Institutions shall verify whether a counterparty is a non-financial counterparty established in a third country:

a at trade inception when trading with a new counterparty;

b on an annual basis for existing counterparties;

c where there is reason to believe that the counterparty is no longer a non-financial counterparty established in a third country.

3 Institutions shall substantiate their opinion that an undertaking is a non-financial counterparty established in a third country.

Article 2

1 For the purpose of excluding transactions with a non-financial counterparty established in a third country from the own funds requirements for CVA risk in accordance with point (a) of Article 382(4) of Regulation (EU) No 575/2013, institutions shall verify, for each class of OTC derivative contracts referred to in Article 11 of Delegated Regulation (EU) No 149/2013, that the gross notional value of the OTC derivative contracts of that non-financial counterparty within that class does not exceed the relevant clearing threshold referred to in Article 11 of that Regulation.

2 Institutions shall carry out the verification referred to in paragraph 1 in one of the following cases:

a at the inception of each new trade with that counterparty;

b on a periodic basis.

3 For the purpose of point (b) of paragraph 2, the periodic verification shall be performed in accordance with one of the following frequencies:

a on an annual basis;

b on a quarterly basis, where for any of the classes of OTC derivatives the gross notional value of OTC derivatives transactions of the non-financial counterparty established in a third country is greater than 75 % of the clearing threshold value for that class referred to in Article 11 of Delegated Regulation (EU) No 149/2013.

4 Institutions shall substantiate their opinion that, for each class of OTC derivatives contracts referred to in Article 11 of Delegated Regulation (EU) No 149/2013, the gross notional value of the OTC derivative contracts of a non-financial counterparty established in a third country, for that class, does not exceed the corresponding clearing threshold referred to in that Article.

Article 3

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

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