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Commission Implementing Regulation (EU) No 484/2014 of 12 May 2014 laying down implementing technical standards with regard to the hypothetical capital of a central counterparty according to Regulation (EU) No 648/2012 of the European Parliament and of the Council (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) No 484/2014

of 12 May 2014

laying down implementing technical standards with regard to the hypothetical capital of a central counterparty according to Regulation (EU) No 648/2012 of the European Parliament and of the Council

(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 648/2012 of 4 July 2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories[(1)], and in particular the third subparagraph of Article 50a(4) and the third subparagraph of Article 50c(3) thereof,

Whereas:

(1) In accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council[(2)] institutions established in the Union are currently reporting their compliance with the own funds requirements on a quarterly basis. In order to minimise inconsistencies between the reference dates set for institutions and the dates set for central counterparties (CCPs) for the calculation and reporting of the information related to the hypothetical capital, the reference dates set for CCPs should cover at least the reference dates already set for institutions. However, a higher frequency of reporting of the information related to the hypothetical capital would also accommodate the fact that clearing members established in third countries can have different reporting dates. Furthermore, there might be large variations in own funds requirements and for them to have an updated view of those requirements, clearing members and their competent authorities might want to monitor those exposures more frequently than quarterly.

(2) In normal situations, the reporting dates for CCPs should not be delayed by more than one week with respect to the date of calculation. A week provides CCPs with sufficient time in order to perform all the internal controls and complete the necessary approval process before reporting the required data. If a CCP develops a fully automated system the reporting date can be close to the calculation date. Currently, however, CCPs might not have the capability to complete the entire process within this time and might therefore need to develop their internal processes and infrastructures in order to be able to do so. Against this background, a transitional provision should be introduced to give CCPs sufficient time to develop the necessary internal processes and infrastructures and,

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at the same time, to start reporting the information related to the hypothetical capital to their clearing members.

(3) Pursuant to Regulation (EU) No 648/2012 the losses following the default of a clearing member would, in the first instance, be covered by the initial margin and by the default fund contribution of the defaulting member itself. Where those prove to be insufficient, the losses are covered by the pre-funded financial resources that are contributed by CCPs to their respective default waterfalls and by the pre-funded default fund contributions of the non-defaulting members. During this period, the frequency of reporting should be increased in order to keep the other non-defaulting clearing members and the competent authorities updated on all the information related to the hypothetical capital needed to calculate the clearing members' own fund requirements. CCPs should have the technical capabilities and the internal processes in place in order to compute and deliver the information related to the hypothetical capital under those stress situations.

(4) Pursuant to Regulation (EU) No 648/2012, a CCP has to replenish its pre-funded own financial resources in the default waterfall within one month. For this reason, the frequencies of calculation and reporting in these situations should be higher than the norm. Daily reporting of the information related to hypothetical capital could be less meaningful because it might take time to establish the total size of the losses following the clearing member's default. Given that they may face a broad range of different scenarios, competent authorities should also have the option to request a higher frequency in periods of stress based on an assessment of the situation that should take into account the degree of actual or foreseen depletion of the pre-funded financial resources available to the CCP (both those contributed by the CCP itself and those contributed by clearing members). The higher frequency should apply until those resources are restored to levels required by the relevant legislation.

(5) The high frequency of reporting in periods of stress can be very demanding given the newly introduced reporting requirement. This may pose challenges as regards the technical implementation for at least some CCPs. To mitigate this, it is appropriate to have a later date of application for the requirements of higher frequency of reporting. That will allow CCPs to improve their internal processes and upgrade their systems.

(6) The provisions in this Regulation are closely linked, since they deal with the calculation and reporting of the hypothetical capital of a CCP. To ensure coherence between those provisions, which should enter into force at the same time, and to facilitate a comprehensive view and compact access to them by persons subject to those obligations, it is desirable to include all the relevant implementing technical standards required by Regulation (EU) No 648/2012 in a single Regulation.

(7) This Regulation is based on the draft implementing technical standards submitted by the European Banking Authority to the Commission.

(8) The European Banking Authority has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking

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Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council[(3)],

HAS ADOPTED THIS REGULATION:

Article 1

Frequency and dates of the calculation required by Article 50a(3) of Regulation (EU) No 648/2012

1 The frequency of the calculation specified in Article 50a(3) of Regulation (EU) No 648/2012 shall be monthly except where the discretion provided for in Article 3(1) of this Regulation is exercised, in which case the frequency shall be either weekly or daily.

2 Where the frequency of the calculation referred to in paragraph 1 is monthly, the CCP shall apply both of the following:

a the reference days for that calculation shall be as follows:

January 31, February 28 (or February 29 in a leap year), March 31, April 30, May 31, June 30, July 31, August 31, September 30, October 31, November 30, December 31;

b the day on which the CCP shall undertake that calculation (day of calculation) shall be respectively:

February 1, March 1, April 1, May 1, June 1, July 1, August 1, September 1, October 1, November 1, December 1, January 1.

3 Where the frequency referred to in paragraph 1 is weekly or daily, the day of the first calculation shall fall on the day following the day of the request of the competent authority. The first reference day shall be the day of the request of the competent authority. For the subsequent calculations the reference day shall be the day before the day of calculation. In case of weekly calculation, the time span between the days of calculation shall be 5 working days.

4 Where the day of calculation is a public holiday, Saturday or Sunday, the calculation shall be carried out on the following working day.

Article 2

Frequency, dates and uniform format of the reporting required by Articles 50c(2) and 89(5a) of Regulation (EU) No 648/2012

1 The frequency of the reporting required by Article 50c(2) of Regulation (EU) No 648/2012 and, where applicable, by the third subparagraph of Article 89(5a) of Regulation (EU) No 648/2012 shall be monthly, except where the discretion provided for in Article 3(1) of this Regulation is exercised, in which case the frequency shall be either weekly or daily.

2 Where the frequency of the reporting in accordance with paragraph 1 is monthly, the reporting date shall fall within five working days from the day of calculation set in Article 1, or earlier where possible.

3 Where the frequency of the reporting referred to in paragraph 1 is daily or weekly, the reporting date shall be the day following the day of calculation.

4 Where the reporting date is a public holiday, Saturday or Sunday, the reporting date shall be the following working day.

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5 CCPs shall report the information referred to in paragraph 1 using the template set out in Annex I (Information related to hypothetical capital) completed in accordance with the instructions set out in Annex II (Instructions for reporting of information related to hypothetical capital).

Article 3

Conditions for higher frequencies of calculation and reporting in accordance with Article 50a(3) and Article 50c(2) of Regulation (EU) No 648/2012

1 Competent authorities of an institution acting as a clearing member may require any CCP in which that institution acts as a clearing member to undertake the calculation referred to in Article 1(1) and the reporting referred to in Article 2(1) with either a daily or a weekly frequency in either of the following situations:

a where, following the default of one clearing member, a CCP is obliged to use any portion of the pre-funded financial resources that it contributed to the default waterfall in accordance with Article 43 of Regulation (EU) No 648/2012;

b where, following the default of one clearing member a CCP is obliged to make use of the default fund contributions of non-defaulting clearing members in accordance with Article 42 of Regulation (EU) No 648/2012.

2 Competent authorities shall base the choice between daily and weekly frequency as provided for in paragraph 1 on the degree of actual or foreseen depletion of the pre-funded financial resources.

3 Where competent authorities require a higher frequency of calculation and reporting from a CCP in accordance with point (a) of paragraph 1, the higher frequency shall apply until the pre-funded financial resources that were contributed by the CCP to the default waterfall are restored at the levels set in Article 35 of Commission Delegated Regulation (EU) No 153/2013[(4)].

4 Where competent authorities require a higher frequency of calculation and reporting from a CCP in accordance with point (b) of paragraph 1, the higher frequency shall apply until the default fund contributions of the non-defaulting members of the CCP are restored to the levels set out in Article 42 of Regulation (EU) No 648/2012.

Article 4

Transitional provision

By way of derogation from Article 2(2), during the period from the date of application of this Regulation until 31 December 2014, CCPs shall report the information referred to in that paragraph at the latest by fifteen working days after the reference day, or earlier where possible.

Article 5

Entry into force and date of application

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

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It shall apply from 2 June 2014, except for Article 1(3), Article 2(3) and Article 3, which shall apply from 1 January 2015.

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

Done at Brussels, 12 May 2014.

For the Commission

The President

José Manuel BARROSO