Changes to legislation: *There are outstanding changes not yet made to Commission Delegated Regulation (EU) No 876/2013. 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 2013 No. 876 may be subject to amendment by EU Exit Instruments made by the Bank of England 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. 3. 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) No 876/2013 of 28 May 2013 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on colleges for central counterparties (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) No 876/2013

of 28 May 2013

supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on colleges for central counterparties

(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 the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories[(1)], and in particular Article 18(6) thereof,

Whereas:

(1) In order to ensure a consistent and coherent functioning of colleges across the Union it is necessary to specify the arrangements for the participation in the colleges for CCPs to facilitate the exercise of the tasks specified in Regulation (EU) No 648/2012.

(2) The exclusion of a central bank of issue of a relevant Union currency of financial instruments cleared in the CCP does not affect the rights of such central bank of issue to request and receive information in accordance with Article 18(3) and Article 84 of Regulation (EU) No 648/2012.

(3) The activity of a CCP may be relevant for a particular central bank of issue in view of the volumes cleared in the currency issued by such central bank. However, the relevance of a currency for the participation of a central bank of issue in the college of the CCP should be determined by the share represented by that currency from among the CCP's average open cleared positions, in order to maintain a proportionate size of the college.

(4) To ensure college meetings achieve an effective result, the objectives of any meeting or activity of the college should be clearly identified by the competent authority of the CCP, in consultation with the college members. Those objectives should be circulated well in advance to the participants together with documentation prepared by the CCP's competent authority or by other members of the college, so as to create effective discussion.

(5) The function of colleges is to facilitate the exercise of the tasks specified in Regulation (EU) No 648/2012, and the tasks assigned to college members as well as their composition, establishment and management of colleges have been articulated by the

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legislator in the Regulation as legal obligations and, therefore, they are binding and directly applicable in all Members States. For the practical functioning of a college a written agreement should be adopted by the members of that college. In order to ensure the use of standard written agreements across CCP colleges, incorporating best practice on college operations, consistent approaches by competent authorities, and to facilitate the swift establishment of CCP colleges within the deadline established by Article 18(1) of Regulation (EU) No 648/2012, ESMA should issue guidelines and recommendations in accordance with the procedure laid down in Article 16 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)[(2)].

(6) Nothing in this act should prejudice the power of the Commission to launch infringement proceedings in accordance with Article 258 of the TFEU, as well as the actions provided for in Article 265 and Article 271(d) of the TFEU.

(7) To ensure the timely and up-to-date exchange of information amongst college members, the college should meet regularly and allow the opportunity for college members to discuss and provide input to the competent authority's review of the arrangements, strategy, process and mechanism employed by the CCP to comply with Regulation (EU) No 648/2012, as well as to discuss the competent authority's evaluation of the risks to which the CCP is, or may be, exposed and that it could pose.

(8) To ensure all the views of the college members are duly taken into account, the competent authority should do its utmost to ensure that any disagreement among authorities that are to become members of a college are resolved before finalising the written agreement for the establishment and functioning of the college. ESMA should facilitate the finalisation of the agreement through its mediation role, where appropriate.

(9) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(10) ESMA has consulted, where relevant, the European Banking Authority (EBA), the European Systemic Risk Board and the members of the European System of Central Banks (ESCB) before submitting the draft technical standards on which this Regulation is based. In accordance with Article 10 of Regulation (EU) No 1095/2010, ESMA has conducted open public consultations on such draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010,

HAS ADOPTED THIS REGULATION:

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Article 1

Determination of most relevant currencies

1 The most relevant Union currencies shall be identified on the basis of the relative share of each currency in the CCP's average end-of-day open positions across all financial instruments cleared by the CCP, calculated over a period of one year.

2 The most relevant Union currencies shall be the three currencies with the highest relative share calculated in accordance with paragraph 1, provided that each individual share exceeds 10 %.

3 The calculation of the relative share of the currencies shall be calculated on an annual basis.

Article 2

The operational organisation of colleges

1 After assessing that an application is complete as referred to in Article 17(3) of Regulation (EU) No 648/2012, the CCP's competent authority shall circulate a proposal for the written agreement under Article 18(5) of Regulation (EU) No 648/2012 to the members of the college determined in accordance with Article 18(2) of Regulation (EU) No 648/2012. That written agreement shall include a process for annual review. It shall also include an amendment process whereby changes may be initiated at any time by the CCP's competent authority or by other members of the college, subject to approval by the college in accordance with the procedure set out in this Article.

2 Where the members of the college referred to in paragraph 1 do not express any comments within 10 calendar days, the CCP's competent authority shall proceed with the adoption of the written agreement by the college and with the establishment of the college in accordance with Article 18(1) of Regulation (EU) No 648/2012.

3 Where the members of the college express comments regarding the proposal for the written agreement circulated pursuant to paragraph 1, they shall submit those comments together with a thorough explanation to the CCP's competent authority within 10 calendar days. If relevant, the CCP's competent authority shall prepare a revised proposal and convene a meeting to agree on the final written agreement taking into account the deadline referred to in Article 18(1) of Regulation (EU) No 648/2012.

4 The college shall be deemed to be established following the adoption of the written agreement.

5 All members of the college will be bound by the written agreement adopted in accordance with paragraphs 1 to 3 of this Article.

Article 3

Participation in the colleges

1 Where a request for information is made to a college by a competent authority of a Member State which is not a member of the college in accordance with Article 18(3) of

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Regulation (EU) No 648/2012, the CCP's competent authority, after having consulted the college, shall decide on the most appropriate way to provide and request information to and from the authorities that are not members of the college.

2 Each member of the college shall designate one participant to attend the meetings of the college and may designate one alternate, with the exception of the CCP's competent authority which may require additional participants who shall have no voting rights.

3 Where the central bank of issue of one of the most relevant Union currencies corresponds to more than one central bank, the relevant central banks shall determine the single representative who will participate in the college.

4 Where an authority has the right to participate in the college under more than one of points (c) to (h) of Article 18(2) of Regulation (EU) No 648/2012, it may nominate additional participants who shall have no voting rights.

5 Where in accordance with this Article there is more than one participant from a college member, or there are more college members belonging to the same Member State than number of votes that can be exercised by those college members in accordance with Article 19(3) of Regulation (EU) No 648/2012, that college member or those college members shall inform the college which participants shall exercise voting rights.

Article 4

Governance of the colleges

1 The CCP's competent authority shall ensure that the work of the college facilitates the tasks to be performed in accordance with Regulation (EU) No 648/2012.

2 The college shall notify ESMA of any tasks that the college performs in accordance with paragraph 1. ESMA shall have a coordination role in monitoring the tasks performed by a college and shall ensure that its objectives are in line with those of other colleges as far as possible.

3 The CCP's competent authority, shall at least ensure that:

a the objectives of any meeting or activity of the college are clearly identified;

b the college meetings or activities remain effective, while ensuring that all college members are fully informed of the college activities that are relevant to them;

c the timetable for meetings or activities of the college is defined so that their outcome provides assistance to the supervision of the CCP;

d the CCP and other key stakeholders have a clear understanding of the role and functioning of the college;

e the activities of the college are regularly reviewed and remedial action is taken if the college is not operating effectively;

f the agenda is set for an annual crisis management planning meeting amongst members of the college in cooperation with the CCP if necessary.

4 To ensure the efficiency and effectiveness of the college, the CCP's competent authority shall act as a central point of contact for any matter related to the practical organisation of the college. The CCP's competent authority shall at least perform the following tasks:

a draw-up, update and circulate the contact list of college members;

b circulate the agenda as well as documentation for meetings or activities of the college;

c record minutes of the meetings and formalise action points;