Changes to legislation: *There are outstanding changes not yet made to Commission Delegated Regulation (EU) No 152/2013. 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. 152 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 152/2013 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 capital requirements for central counterparties (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) No 152/2013

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 capital requirements 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 the opinion of the European Central Bank[(1)],

Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on over the counter (OTC) derivatives transactions, central counterparties and trade repositories[(2)], and in particular Article 16(3) thereof,

Whereas:

(1) Regulation (EU) No 648/2012 establishes, among other matters, prudential requirements for central counterparties (CCPs) to ensure that they are safe and sound and comply at all times with the capital requirements. Given that to a great extent risks stemming from clearing activities are covered by specific financial resources, such capital requirements should ensure that a CCP is at all times adequately capitalised against credit risks, counterparty risks, market risks, operational risks, legal and business risks which are not already covered by those specific financial resources and that it is able to conduct an orderly winding down or restructuring of its operations if necessary.

(2) The capital treatment of credit institutions and investment firms should be specifically taken into account in respect of technical standards because CCPs are exposed, while performing non-covered activities, to risks that are similar to the risks incurred by credit institutions and investment firms. Relevant parts of the Principles for Financial Market Infrastructure issued by the Committee on Payment and Settlement Systems and the International Organization of Securities Commissions ('CPSS-IOSCO Principles') should also be taken into account. In order to ensure that they are able to organise an orderly winding down or restructuring of their activities, CCPs should hold sufficient financial resources to withstand operational expenses over an appropriate period of time. A CCP should be able during such a period of time to set up any kind of arrangement in order to reorganise its critical operations, including recapitalising, replacing management, revising its business strategies, cost or fee

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structures, restructuring the services it provides, liquidating its clearing portfolio or merging with — or transferring its clearing activities to — another CCP. During the winding down or restructuring a CCP still needs to continue its operations. While in this case some costs, such as marketing ones, may decrease, other costs, such as legal expenses, may increase. Therefore, using the gross annual operating expenses is deemed to be an appropriate approximation of the actual expenses during the winding down or restructuring of a CCP's operations. In order to take into account the diversity of accounting practices among CCPs, the operational expenses should be considered in accordance with International Financial Reporting Standards (IFRS) adopted pursuant to Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards[(3)] or in accordance with a number of limited other rules applicable in the field, as indicated by Union law.

(3) As the capital shall be at all times sufficient to ensure an orderly winding down and an adequate protection against the relevant risks as required by Article 16(2) of Regulation (EU) No 648/2012, it is necessary to establish an early warning tool to enable the competent authorities to gain knowledge sufficiently in advance of the situation in which the capital of the CCP is close to the capital requirement, by introducing a notification threshold set at 110 % of the capital requirement.

(4) Notwithstanding the difficulties in quantifying the exposure to operational risk, 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[(4)] is the relevant benchmark for the purpose of establishing the capital requirement for CCPs. Consistently with Directive 2006/48/EC, the definition of operational risk should include legal risk in respect of technical standards on capital requirements for central counterparties.

(5) Directive 2006/48/EC and 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[(5)] are an appropriate benchmark for the purpose of establishing capital requirements to cover credit, counterparty and market risks non covered by specific financial resources, since they are similar to those carried out by credit institutions or investment firms.

(6) A CCP does not have to hold capital for trade exposures and default fund contributions which arise under an interoperability arrangement where the requirements of Articles 52 and 53 of Regulation (EU) No 648/2012 are fulfilled. However, where these requirements are not fulfilled, links between CCPs might expose them to additional risk if the collateral posted by them is not fully protected and bankruptcy remote or if the default fund contributions are at risk in case a clearing member of the receiving CCP defaults. Therefore, in such cases capital charges should apply to default fund contributions and to trade exposures with other CCPs. In order to avoid contagion effects, the treatment regarding default fund contributions to other CCPs should in general be more conservative than the treatment of credit institution exposures to CCPs. The own resources of a CCP used to contribute to the default fund of another CCP should not be taken into account for the purposes of Article 16(2) of Regulation

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(EU) No 648/2012 as they are not invested in accordance with its investment policy. They should also not be double-counted for the purpose of calculating risk weighted exposures stemming from these contributions.

(7) The time necessary for an orderly winding down is strictly dependent on the clearing services provided by the single CCP and on the market environment in which it operates, especially in the case where another CCP can take on its services. Therefore, the number of months required for winding down should be based on the CCP's own estimate, subject to the approval of the competent authority. A minimum number of six months needs to be introduced in order to ensure a prudent level of the capital requirements.

(8) Business risk refers to the risk a CCP assumes due to its efficiency and potential changes in general business conditions which are likely to impair its financial position as a consequence of decline in its revenues or an increase in its expenses resulting in a loss that must be charged against its capital. Since the level of business risk is highly dependent on the individual situation of each CCP and can be caused by various factors such as inefficient procedures, adverse market environment, ineffective response to technological progress, or poor execution of business strategies, the capital requirement should be based on a CCP's own estimate subject to the approval of the competent authority. A floor needs to be introduced in order to ensure a prudent level of the capital requirements.

(9) The European Banking Authority (EBA) has worked in close cooperation with the European System of Central Banks (ESCB) and has consulted the European Securities and Markets Authority (ESMA) before submitting the draft technical standards on which this Regulation is based. It has also conducted open public consultations on the draft regulatory technical standards, 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 of the European Parliament and of the Council[6].

(10) This Regulation is based on the draft regulatory technical standards submitted by the European Supervisory Authority (European Banking Authority) to the European Commission,

HAS ADOPTED THIS REGULATION:

Article 1

Capital requirements

1 A CCP shall hold capital, including retained earnings and reserves, which shall be at all times more than or equal to the sum of:

a the CCP's capital requirements for winding down or restructuring its activities calculated in accordance with Article 2;

b the CCP's capital requirements for operational and legal risks calculated in accordance with Article 3;

c the CCP's capital requirements for credit, counterparty and market risks calculated in accordance with Article 4;

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d the CCP's capital requirements for business risk calculated in accordance with Article 5.

2 A CCP shall have procedures in place to identify all sources of risks that may impact its on-going functions and shall consider the likelihood of potential adverse effects on its revenues or expenses and its level of capital.

3 If the amount of capital held by a CCP according to paragraph 1 is lower than 110 % of the capital requirements or lower than 110 % of EUR 7,5 million ('notification threshold'), the CCP shall immediately notify the competent authority and keep it updated at least weekly, until the amount of capital held by the CCP returns above the notification threshold.

4 That notification shall be made in writing and shall contain the following elements:

a the reasons for the CCP's capital being below the notification threshold and a description of the short-term perspective of the CCP's financial situation;

b a comprehensive description of the measures the CCP intends to adopt to ensure the on-going compliance with the capital requirements.

Article 2

Capital requirements for winding down or restructuring

1 A CCP shall divide its annual gross operational expenses by twelve in order to determine its monthly gross operational expenses, and multiply the resulting number by its time span for winding down or restructuring its activities determined according to paragraph 2. The result of this calculation is the capital required to ensure an orderly winding down or restructuring of the activities of the CCP.

2 In order to determine the time span for winding down or restructuring its activities referred to in paragraph 1, a CCP shall submit to the competent authority for approval in accordance with that competent authority's powers under Title III of Regulation (EU) No 648/2012 its own estimate of the appropriate time span for winding down or restructuring its activities. The estimated time span shall be sufficient to ensure, including in stressed market conditions, an orderly winding down or restructuring of its activities, reorganising its operations, liquidating its clearing portfolio or transferring its clearing activities to another CCP. The estimate shall take into account the liquidity, size, maturity structure and potential cross-border obstacles of the positions of the CCP and the type of products cleared. The time span for winding down or restructuring its activities used for the calculation of the capital requirement is subject to a minimum number of six months.

3 A CCP shall update its estimate of the appropriate time span for winding down or restructuring its activities whenever there is a significant change in the assumptions underlying the estimation and submit this updated estimate to the competent authority for approval.

4 For the purposes of this Article, operational expenses shall be considered in accordance with International Financial Reporting Standards (IFRS) adopted pursuant to Regulation (EC) No 1606/2002 or, in accordance with Council Directives 78/660/EEC[(7)], 83/349/EEC[(8)] and 86/635/EEC[(9)] or, 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[(10)] or accounting standards of a third country the use of which is permitted in accordance with Article 4 of that Regulation, as applicable. CCPs shall use the most recent audited information from their annual financial statement.