***Changes to legislation:*** *There are outstanding changes not yet made to Commission Delegated Regulation (EU) No 919/2012. 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 2012 No. 919 may be subject to amendment by EU Exit Instruments made by 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. 1. 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 919/2012 of 5 July 2012 supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps with regard to regulatory technical standards for the method of calculation of the fall in value for liquid shares and other financial instruments (Text with EEA relevance)

## COMMISSION DELEGATED REGULATION (EU) No 919/2012

## of 5 July 2012

## supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps with regard to regulatory technical standards for the method of calculation of the fall in value for liquid shares and other financial instruments

## (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 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps[(1)], and in particular Article 23(8) thereof,

Whereas:

(1) The method of calculation of the significant fall in value of financial instruments contained in Section C of Annex I to Directive 2004/39/EC of the European Parliament and Council of 21 April 2004 on markets in financial instruments[(2)] should be adapted to the various ways in which that fall is reflected depending on the type of financial instrument concerned. That method can take the form of an actual fall in price of the financial instrument, of an increase in the yield of a debt instrument issued by a corporate issuer or an increase in the yield across the yield curve for debt instruments issued by sovereign issuers.

(2) This Regulation should be read in conjunction with Commission Delegated Regulation (EU) No 918/2012[(3)], which defines thresholds for the significant fall in value of illiquid shares, debt instruments issued by sovereign and corporate issuers, exchange-traded funds, money market instruments and derivatives whose sole underlying financial instrument is traded on a trading venue. This Regulation should therefore restrict itself to specifying the method of calculation of the significant fall in value of these instruments.

(3) In order to ensure consistency and legal certainty for market participants and competent authorities, the date of application of this Regulation should be the same as that of Regulation (EU) No 236/2012 and Delegated Regulation (EU) No 918/2012.

(4) Since Regulation (EU) No 236/2012 recognised that binding technical standards should be adopted before that Regulation can be usefully applied, and as it is essential to specify

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before 1 November 2012 the required non-essential elements to facilitate compliance by market participants with that Regulation and enforcement by competent authorities, it is necessary that this Regulation should enter into force on the day following its publication.

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

(6) ESMA 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 Securities and Markets Stakeholder Group established in accordance with Article 37 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)[(4)],

HAS ADOPTED THIS REGULATION:

*Article 1*

**Subject matter**

1 This Regulation specifies the method of calculation of the 10 % fall in value for liquid shares traded on a trading venue as set out in Article 23(5) of Regulation (EU) No 236/2012.

2 This Regulation also specifies the method of calculation of the fall in value for the following financial instruments traded on a trading venue as specified in Delegated Regulation (EU) No 918/2012 adopted pursuant to Article 23(7) of Regulation (EU) No 236/2012:

a illiquid shares;

b the following non-derivative financial instruments:

(i) debt instruments issued by sovereign and corporate issuers;

(ii) exchange-traded funds;

(iii) money market instruments;

c derivatives whose sole underlying is a financial instrument traded on a trading venue.

*Article 2*

**Method of calculation of a significant fall in value for liquid and illiquid shares**

1 For a share traded on a trading venue, the fall in value shall be calculated from the official closing price of the previous trading day at that trading venue defined according to the applicable rules of that trading venue.

2 That method of calculation shall exclude any downward movement of a price resulting exclusively from a split or any corporate action or similar measures adopted by the issuer on its issued share capital which can result in an adjustment of the price by the relevant trading venue.

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*Article 3*

**Method of calculation of a significant fall in value for other non-derivative financial instruments**

1 A significant fall in value for financial instruments other than shares and not falling into the categories of derivatives listed in points (4) to (10) of Section C of Annex I to Directive 2004/39/EC shall be calculated according to the method in paragraphs 2, 3 and 4.

2 For a financial instrument for which the significant fall in value referred to in Article 23(7) of Regulation (EU) No 236/2012 is measured in relation to a price on the relevant trading venue, that fall shall be calculated from the official closing price at the relevant trading venue defined according to the applicable rules of that trading venue.

3 For a financial debt instrument issued by a sovereign issuer for which the significant fall in value referred to in Article 23(7) of Regulation (EU) No 236/2012 is measured in relation to a yield curve, that fall shall be calculated as an increase across the yield curve in comparison with the yield curve of the sovereign issuer at the close of trading of the previous trading day, as calculated based on data available for the issuer on that trading venue.

4 For a financial instrument for which the significant fall in value referred to in Article 23(7) of Regulation (EU) No 236/2012 is measured in relation to a variation of the yield, that fall shall be calculated as an increase of the current yield as compared to the yield of that instrument at the close of trading of the previous trading day, as calculated based on data available for that instrument on that trading venue.

*Article 4*

**Method of calculation of a significant fall in value for derivatives**

A significant fall in value for financial instruments falling under the categories of derivatives listed in points (4) to (10) of Section C of Annex I to Directive 2004/39/EC and which have a sole underlying financial instrument that is traded on a trading venue and for which a significant fall in value has been specified in accordance with Article 2 or Article 3, shall be calculated by reference to the significant fall in value of the underlying financial instrument.

*Article 5*

**Entry into force**

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

It shall apply from 1 November 2012.

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