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► **B** COMMISSION DELEGATED REGULATION (EU) 2016/2251

of 4 October 2016

supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards for risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty

(Text with EEA relevance)

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**COMMISSION DELEGATED REGULATION (EU) 2016/2251****of 4 October 2016****supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards for risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty****(Text with EEA relevance)****CHAPTER I****GENERAL PROVISIONS ON RISK MANAGEMENT PROCEDURES***SECTION 1**Definitions and general requirements**Article 1***Definitions**

For the purposes of this Regulation, the following definitions apply:

- (1) ‘initial margin’ means the collateral collected by a counterparty to cover its current and potential future exposure in the interval between the last collection of margin and the liquidation of positions or hedging of market risk following a default of the other counterparty;
- (2) ‘variation margin’ means the collateral collected by a counterparty to reflect the results of the daily marking-to-market or marking-to-model of outstanding contracts referred to in Article 11(2) of Regulation (EU) No 648/2012;
- (3) ‘netting set’ means a set of non-centrally cleared over-the-counter (‘OTC’) derivative contracts between two counterparties that is subject to a legally enforceable bilateral netting agreement.

*Article 2***General requirements**

1. Counterparties shall establish, apply and document risk management procedures for the exchange of collateral for non-centrally cleared OTC derivative contracts.

2. The risk management procedures referred to in paragraph 1 shall include procedures providing for or specifying the following:

- (a) the eligibility of collateral for non-centrally cleared OTC derivative contracts in accordance with Section 2;

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- (b) the calculation and collection of margins for non-centrally cleared OTC derivative contracts in accordance with Section 3;
- (c) the management and segregation of collateral for non-centrally cleared OTC derivative contracts in accordance with Section 5;
- (d) the calculation of the adjusted value of collateral in accordance with Section 6;
- (e) the exchange of information between counterparties and the authorisation and recording of any exceptions to the risk management procedures referred to in paragraph 1;
- (f) the reporting of the exceptions set out in Chapter II to senior management;
- (g) the terms of all necessary agreements to be entered into by counterparties, at the latest, at the moment in which a non-centrally cleared OTC derivative contract is concluded, including the terms of the netting agreement and the terms of the exchange of collateral agreement in accordance with Article 3;
- (h) the periodic verification of the liquidity of the collateral to be exchanged;
- (i) the timely re-appropriation of the collateral in the event of default by the posting counterparty from the collecting counterparty; and
- (j) the regular monitoring of the exposures arising from OTC derivative contracts that are intragroup transactions and the timely settlement of the obligations resulting from those contracts.

For the purposes of point (g) of the first subparagraph, the terms of the agreements shall comprise all aspects concerning the obligations arising from any non-centrally cleared OTC derivative contract to be concluded, and at least the following:

- (a) any payment obligations arising between counterparties;
- (b) the conditions for netting payment obligations;
- (c) events of default or other termination events of the non-centrally cleared OTC derivative contracts;
- (d) all calculation methods used in relation to payment obligations;
- (e) the conditions for netting payment obligations upon termination;
- (f) the transfer of rights and obligations upon termination;
- (g) the governing law of the transactions of the non-centrally cleared OTC derivative contracts.

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3. Where counterparties enter into a netting or an exchange of collateral agreement, they shall perform an independent legal review of the enforceability of those agreements. That review may be conducted by an internal independent unit or by an independent third party.

The requirement to perform the review referred to in the first subparagraph shall be considered to be satisfied in relation to the netting agreement where that agreement is recognised in accordance with Article 296 of Regulation (EU) No 575/2013.

4. Counterparties shall establish policies to assess on a continuous basis the enforceability of the netting and the exchange of collateral agreements that they enter into.

5. The risk management procedures referred to in paragraph 1 shall be tested, reviewed and updated as necessary and at least annually.

6. Upon request, counterparties using initial margin models in accordance with Section 4 shall provide the competent authorities with any documentation relating to the risk management procedures referred to in paragraph 2(b) at any time.

*Article 3***Exchange of collateral agreement**

The exchange of collateral agreement referred to in point (g) of the first subparagraph of Article 2(2) shall include at least the following terms:

- (a) the levels and type of collateral required;
- (b) the segregation arrangements;
- (c) the netting set to which the exchange of collateral refers;
- (d) the procedures for notification, confirmation and adjustment of margin calls;
- (e) the procedures for settlement of margin calls for each type of eligible collateral;
- (f) the procedures, methods, timeframes and allocation of responsibilities for the calculation of margins and the valuation of collateral;
- (g) the events that are considered to be default or termination events;
- (h) the law applicable to the non-centrally cleared OTC derivative contract;
- (i) the law applicable to the exchange of collateral agreement.

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1. A counterparty shall only collect collateral from the following asset classes:

- (a) cash in the form of money credited to an account in any currency, or similar claims for the repayment of money, such as money market deposits;
- (b) gold in the form of allocated pure gold bullion of recognised good delivery;
- (c) debt securities issued by Member States' central governments or central banks;
- (d) debt securities issued by Member States' regional governments or local authorities whose exposures are treated as exposures to the central government of that Member State in accordance with Article 115(2) of Regulation (EU) No 575/2013;
- (e) debt securities issued by Member States' public sector entities whose exposures are treated as exposures to the central government, regional government or local authority of that Member State in accordance with Article 116(4) of Regulation (EU) No 575/2013;
- (f) debt securities issued by Member States' regional governments or local authorities other than those referred to in point (d);
- (g) debt securities issued by Member States' public sector entities other than those referred to in point (e);
- (h) debt securities issued by multilateral development banks listed in Article 117(2) of Regulation (EU) No 575/2013;
- (i) debt securities issued by the international organisations listed in Article 118 of Regulation (EU) No 575/2013;
- (j) debt securities issued by third countries' governments or central banks;
- (k) debt securities issued by third countries' regional governments or local authorities that meet the requirements of points (d) and (e);
- (l) debt securities issued by third countries' regional governments or local authorities other than those referred to in points (d) and (e);

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- (m) debt securities issued by credit institutions or investment firms including bonds referred to in Article 52(4) of Directive 2009/65/EC of the European Parliament and of the Council ⁽¹⁾;
- (n) corporate bonds;
- (o) the most senior tranche of a securitisation, as defined in Article 4(61) of Regulation (EU) No 575/2013, that is not a re-securitisation as defined in Article 4(63) of that Regulation;
- (p) convertible bonds provided that they can be converted only into equities which are included in an index specified pursuant to point (a) of Article 197 (8) of Regulation (EU) No 575/2013;
- (q) equities included in an index specified pursuant to point (a) of Article 197(8) of Regulation (EU) No 575/2013;
- (r) shares or units in undertakings for collective investments in transferable securities (UCITS), provided that the conditions set out in Article 5 are met.

2. A counterparty shall only collect collateral from the asset classes referred to in points (f), (g) and (k) to (r) of paragraph 1 where all the following conditions apply:

- (a) the assets are not issued by the posting counterparty;
- (b) the assets are not issued by entities which are part of the group to which the posting counterparty belongs;
- (c) the assets are not otherwise subject to any significant wrong way risk, as defined in points (a) and (b) of paragraph 1 of Article 291 of Regulation (EU) No 575/2013.

*Article 5***Eligibility criteria for units or shares in UCITS**

1. For the purposes of point (r) of Article 4(1), a counterparty may only use units or shares in UCITS as eligible collateral where all the following conditions are met:

- (a) the units or shares have a daily public price quote;
- (b) the UCITS are limited to investing in assets that are eligible in accordance with Article 4(1);
- (c) the UCITS meet the criteria laid down in Article 132(3) of Regulation (EU) No 575/2013.

⁽¹⁾ Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

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For the purposes of point (b), UCITS may use derivative instruments to hedge the risks arising from the assets in which they invest.

Where a UCITS invests in shares or units of other UCITS, the conditions laid down in the first subparagraph shall also apply to those UCITS.

2. By way of derogation from point (b) of paragraph 1, where a UCITS or any of its underlying UCITS do not only invest in assets that are eligible in accordance with Article 4(1), only the value of the unit or share of the UCITS that represents investment in eligible assets may be used as eligible collateral pursuant to paragraph 1 of this Article.

The first subparagraph shall apply to any underlying UCITS of a UCITS that has underlying UCITS of its own.

3. Where non-eligible assets of a UCITS can have a negative value, the value of the unit or share of the UCITS that may be used as eligible collateral pursuant to paragraph 1 shall be determined by deducting the maximum negative value of the non-eligible assets from the value of eligible assets.

*Article 6***Credit quality assessment**

1. The collecting counterparty shall assess the credit quality of assets belonging to the asset classes referred to in points (c), (d) and (e) of Article 4(1) that are either not denominated or not funded in the issuer's domestic currency and in points (f), (g), (j) to (n) and (p) of Article 4(1) using one of the following methodologies:

- (a) the internal ratings referred to in paragraph 3 of the collecting counterparty;
- (b) the internal ratings referred to in paragraph 3 of the posting counterparty, where that counterparty is established in the Union or in a third country where the posting counterparty is subject to consolidated supervision assessed equivalent to that governed by Union law in accordance with Article 127 of Directive 2013/36/EU;
- (c) a credit quality assessment issued by a recognised External Credit Assessment Institution (ECAI) as defined in Article 4(98) of Regulation (EU) No 575/2013 or a credit quality assessment of an export credit agency referred to in Article 137 of that Regulation.

2. The collecting counterparty shall assess the credit quality of assets belonging to the asset class referred to in point (o) of Article 4(1) using the methodology referred to in point (c) of paragraph 1 of this Article.

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3. A counterparty permitted to use the Internal Rating Based (IRB) approach pursuant to Article 143 of Regulation (EU) No 575/2013 may use their internal ratings in order to assess the credit quality of the collateral collected for the purposes of this Regulation.

4. A counterparty using the IRB approach in accordance with paragraph 3 shall determine the credit quality step of the collateral in accordance with Annex I.

5. A counterparty using the IRB approach in accordance with paragraph 3 shall communicate to the other counterparty the credit quality step referred to in paragraph 4 associated to the assets to be exchanged as collateral.

6. For the purposes of paragraphs 1(c), the credit quality assessment shall be mapped to credit quality steps specified pursuant to Articles 136 or 270 of Regulation (EU) No 575/2013.

*Article 7***Specific requirements for eligible assets**

1. Counterparties shall only use the assets referred to in points (f), (g) and (j) to (p) of Article 4(1) as collateral where their credit quality has been assessed as credit quality steps 1, 2 or 3 in accordance with Article 6.

2. Counterparties shall only use the assets referred to in points (c), (d) and (e) of Article 4(1) that are not denominated or funded in the issuer's domestic currency as collateral where their credit quality has been assessed as credit quality steps 1, 2, 3 or 4 in accordance with Article 6.

3. Counterparties shall establish procedures for the treatment of assets exchanged as collateral in accordance with paragraphs 1 and 2 whose credit quality is subsequently assessed to be:

(a) step 4 or beyond for assets referred to in paragraph 1;

(b) beyond step 4 for assets referred to in paragraph 2.

4. The procedures referred to in paragraph 3 shall meet all of the following requirements:

(a) they shall prohibit counterparties from exchanging additional assets assessed to be of the credit quality referred to in paragraph 3;

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- (b) they shall establish a schedule by which assets assessed to be of the credit quality referred to in paragraph 3 and already exchanged as collateral are replaced over a period of time not exceeding 2 months;
- (c) they shall set a credit quality step that requires the immediate replacement of the assets referred to in paragraph 3;
- (d) they shall allow counterparties to increase the haircuts on the relevant collateral insofar as the collateral has not been replaced in accordance with the schedule referred to in point (b).

5. Counterparties shall not use assets classes referred to in Article 4(1) as collateral where they have no access to the market for those assets or where they are unable to liquidate those assets in a timely manner in case of default of the posting counterparty.

*Article 8***Concentration limits for initial margin**

1. Where collateral is collected as initial margin in accordance with Article 13, the following limits shall apply for each collecting counterparty:

- (a) the sum of the values of the initial margin collected from the asset classes referred to in points (b), (f), (g), and (l) to (r) of Article 4(1) issued by a single issuer or by entities which belong to the same group does not exceed the greater of the following values:
 - (i) 15 % of the collateral collected from the posting counterparty;
 - (ii) EUR 10 million or the equivalent in another currency;
- (b) the sum of the values of the initial margin collected from the asset classes referred to in points (o), (p) and (q) of Article 4(1), where the asset classes referred to in points (p) and (q) of that Article are issued by institutions as defined in Regulation (EU) No 575/2013, does not exceed the greater of the following values:
 - (i) 40 % of the collateral collected from the posting counterparty;
 - (ii) EUR 10 million or the equivalent in another currency.

The limits laid down in the first subparagraph shall also apply to shares or units in UCITS where the UCITS primarily invests in the asset classes referred to in that subparagraph.

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2. Where collateral is collected as initial margin in accordance with Article 13 in excess of EUR 1 billion and each of the counterparties belong to one of the categories listed in paragraph 3, the following limits to the amount of initial margin in excess of EUR 1 billion collected from a counterparty shall apply:

- (a) the sum of the values of the initial margin collected from the asset classes referred to in points (c) to (l) of Article 4(1) issued by a single issuer or by issuers domiciled in the same country shall not exceed 50 % of the initial margin collected from that counterparty;
- (b) Where initial margin is collected in cash, the 50 % concentration limit referred to in point (a) shall also take into account the risk exposures arising from the third-party holder or custodian holding that cash.

3. The counterparties referred to in paragraph 2 shall be one of the following:

- (a) institutions identified as G-SIIs in accordance with Article 131 of Directive 2013/36/EU;
- (b) institutions identified as O-SIIs in accordance with Article 131 of Directive 2013/36/EU;
- (c) counterparties which are not pension scheme arrangements and for which the sum of the values of the collateral to be collected exceeds EUR 1 billion.

4. Where collateral is collected as initial margin in accordance with Article 13 in excess of EUR 1 billion by or from a pension scheme arrangement, the collecting counterparty shall establish procedures to manage concentration risk with respect to collateral collected from the asset classes referred to in points (c) to (l) of Article 4(1), including adequate diversification of that collateral.

5. Where institutions referred to in points (a) and (b) of paragraph 3 collect initial margin in cash from a single counterparty that is also an institution referred to in those points, the collecting counterparty shall ensure that not more than 20 % of that initial margin is held by a single third-party custodian.

6. Paragraphs 1 to 4 shall not apply to collateral collected in the form of financial instruments that are the same as the underlying financial instrument of the non-centrally cleared OTC derivative contract.

7. The collecting counterparty shall assess compliance with the conditions laid down in paragraph 2 of this Article at least every time that initial margin is calculated in accordance with Article 9(2).

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8. By way of derogation from paragraph 7, a counterparty referred to in points (a), (b) and (c) of Article 2(10) of Regulation (EU) No 648/2012 may assess compliance with the conditions laid down in paragraph 2 quarterly, provided that the amount of initial margin collected from each individual counterparty is at all times below EUR 800 million during the quarter preceding the assessment.

*SECTION 3**Calculation and collection of margins**Article 9***Frequency of calculation and determination of the calculation date**

1. Counterparties shall calculate variation margin in accordance with Article 10 at least on a daily basis.

2. Counterparties shall calculate initial margin in accordance with Article 11 no later than the business day following one of these events:
 - (a) where a new non-centrally cleared OTC derivative contract is executed or added to the netting set;

 - (b) where an existing non-centrally cleared OTC derivative contract expires or is removed from the netting set;

 - (c) where an existing non-centrally cleared OTC derivative contract triggers a payment or a delivery other than the posting and collecting of margins;

 - (d) where the initial margin is calculated in accordance with the standardised approach referred to in Article 11(1) and an existing contract is reclassified in terms of the asset category referred to in paragraph 1 of Annex IV as a result of reduced time to maturity;

 - (e) where no calculation has been performed in the preceding 10 business days.

3. For the purpose of determining the calculation date for initial and variation margin, the following shall apply:
 - (a) where two counterparties are located in the same time-zone, the calculation shall be based on the netting set of the previous business day;

 - (b) where two counterparties are not located in the same time-zone, the calculation shall be based on the transactions in the netting set which are entered into before 16.00 of the previous business day of the time zone where it is first 16.00.

▼B*Article 10***Calculation of variation margin**

The amount of variation margin to be collected by a counterparty shall be the aggregation of the values calculated in accordance with Article 11(2) of Regulation (EU) No 648/2012 of all contracts in the netting set, minus the value of all variation margin previously collected, minus the net value of each contract in the netting set at the point of entry into the contract, and plus the value of all variation margin previously posted.

*Article 11***Calculation of initial margin**

1. Counterparties shall calculate the amount of initial margin to be collected using either the standardised approach set out in Annex IV or the initial margin models referred to in Section 4 or both.
2. The collection of initial margin shall be performed without offsetting the initial margin amounts between the two counterparties.
3. Where counterparties use both the standardised approach set out in Annex IV and the initial margin models referred to in Section 4 in relation to the same netting set, they shall use them consistently for each non-centrally cleared OTC derivative contract.
4. Counterparties calculating the initial margin in accordance with Section 4 shall not take into account any correlations between the value of the unsecured exposure and the collateral in that calculation.
5. Counterparties shall agree on the method each counterparty uses to determine the initial margin it has to collect but are not required to use a common methodology.
6. Where one or both counterparties rely on an initial margin model they shall agree on the model developed pursuant to Section 4.

*Article 12***Provision of variation margin**

1. The posting counterparty shall provide the variation margin as follows:
 - (a) within the same business day of the calculation date determined in accordance with Article 9(3);
 - (b) where the conditions in paragraph 2 are met, within 2 business days of the calculation date determined in accordance with Article 9(3).

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2. The provision of variation margin in accordance with paragraph 1(b) may only be applied to the following:

- (a) netting sets comprising derivative contracts not subject to initial margin requirements in accordance with this Regulation, where the posting counterparty has provided, at or before the calculation date of the variation margin, an advance amount of eligible collateral calculated in the same manner as that applicable to initial margins in accordance with Article 15, for which the collecting counterparty has used a margin period of risk ('MPOR') at least equal to the number of days in between and including the calculation date and the collection date;
- (b) netting sets comprising contracts subject to initial margin requirements in accordance with this Regulation, where the initial margin has been adjusted in one of the following ways:
 - (i) by increasing the MPOR referred to in Article 15(2) by the number of days in between, and including, the calculation date determined in accordance with Article 9(3) and the collection date determined in accordance with paragraph 1 of this Article;
 - (ii) by increasing the initial margin calculated in accordance with the standardised approach referred to in Article 11 using an appropriate methodology taking into account a MPOR that is increased by the number of days in between, and including, the calculation date determined in accordance with Article 9(3) and the collection date determined in accordance with paragraph 2 of this Article.

For the purposes of point (a), in case no mechanism for segregation is in place between the two counterparties, those counterparties may offset the amounts to be provided.

3. In the event of a dispute over the amount of variation margin due, counterparties shall provide, in the same time frame referred to in paragraph 1, at least the part of the variation margin amount that is not being disputed.

*Article 13***Provision of initial margin**

1. The posting counterparty shall provide the initial margin in accordance with Section 5.

2. The posting counterparty shall provide the initial margin within the same business day of the calculation date determined in accordance with Article 9(3).

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3. In the event of a dispute over the amount of initial margin due, counterparties shall provide at least the part of the initial margin amount that is not being disputed within the same business day of the calculation date determined in accordance with Article 9(3).

*SECTION 4**Initial margin models**Article 14***General requirements**

1. Where a counterparty uses an initial margin model, that model may be developed by any of, or both, counterparties or by a third-party agent.

Where a counterparty uses an initial margin model developed by a third-party agent, the counterparty shall remain responsible for ensuring that that model complies with the requirements referred to in this Section.

2. Initial margin models shall be developed in a way that captures all the significant risks arising from entering into the non-centrally cleared OTC derivative contracts included in the netting set, including the nature, scale, and complexity of those risks and shall meet the following requirements:

- (a) the model incorporates risk factors corresponding to the individual currencies in which those contracts in the netting set are denominated;
- (b) the model incorporates interest rate risk factors corresponding to the individual currencies in which those contracts are denominated;
- (c) the yield curve is divided into a minimum of six maturity buckets for exposures to interest-rate risk in the major currencies and markets;
- (d) the model captures the risk of movements between different yield curves and between different maturity buckets;
- (e) the model incorporates separate risk factors at least for each equity, equity index, commodity or commodity index which is significant for those contracts;
- (f) the model captures the risk arising from less liquid positions and positions with limited price transparency within realistic market scenarios;

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- (g) the model captures the risk, otherwise not captured by other features of the model, arising from derivative contracts where the underlying asset class is credit;
- (h) the model captures the risk of movements between similar, but not identical, underlying risk factors and the exposure to changes in values arising from maturity mismatches;
- (i) the model captures main non-linear dependencies;
- (j) the model incorporates methodologies used for back-testing which include statistical tests of the model's performance;
- (k) the model determines which events trigger a model change, calibration or other remedial action.

3. The risk management procedures referred to in Article 2(1) shall ensure that the performance of the model is monitored on a continuous basis including by back-testing the model at least every 3 months.

For the purposes of the first subparagraph, back testing shall include a comparison between the values produced by the model and the realised market values of the non-centrally cleared OTC derivative contracts in the netting set.

4. The risk management procedures referred to in Article 2(1) shall outline the methodologies used for undertaking back-testing, including statistical tests of performance.

5. The risk management procedures referred to in Article 2(1) shall describe what results of the back-testing would lead to a model change, recalibration or other remediation action.

6. The risk management procedures referred to in Article 2(1) shall ensure that counterparties retain records of the results of the back-testing referred to in paragraph 3 of this Article.

7. Counterparties shall provide all the information necessary to explain the calculation of a given value of the initial margin model to the other counterparty in a way that a knowledgeable third party would be able to verify that calculation.

8. The initial margin model shall reflect parameter uncertainty, correlation, basis risk and data quality in a prudent manner.

▼B*Article 15***Confidence interval and MPOR**

1. The assumed variations in the value of the non-centrally cleared OTC derivative contracts within the netting set for the calculation of initial margins using an initial margin model shall be based on a one-tailed 99 percent confidence interval over a MPOR of at least 10 days.
2. The MPOR for the calculation of initial margins using an initial margin model referred to in paragraph 1 shall include:
 - (a) the period that may elapse from the last margin exchange of variation margin to the default of the counterparty;
 - (b) the estimated period needed to replace each of the non-centrally cleared OTC derivative contracts within the netting set or hedge the risks arising from them, taking into account the level of liquidity of the market where those types of contracts are traded, the total volume of the non-centrally cleared OTC derivative contracts in that market and the number of participants in that market.

*Article 16***Calibration of the parameters of the model**

1. Parameters used in initial margin models shall be calibrated, at least annually, based on historical data from a time period with a minimum duration of 3 years and a maximum duration of 5 years.
2. The data used for calibrating the parameters of initial margin models shall include the most recent continuous period from the date on which the calibration referred to in paragraph 1 is performed and at least 25 % of those data shall be representative of a period of significant financial stress ('stressed data').
3. Where stressed data referred to in paragraph 2 does not constitute at least 25 % of the data used in the initial margin model, the least recent data of the historical data referred to in paragraph 1 shall be replaced by data from a period of significant financial stress, until the overall proportion of stressed data is at least 25 % of the overall data used in the initial margin model.
4. The period of significant financial stress used for calibration of the parameters shall be identified and applied separately at least for each of the asset classes referred to in Article 17(2).

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5. The parameters shall be calibrated using equally weighted data.
6. The parameters may be calibrated for shorter periods than the MPOR determined in accordance with Article 15. Where shorter periods are used, the parameters shall be adjusted to that MPOR by an appropriate methodology.
7. Counterparties shall have written policies setting out the circumstances triggering a more frequent calibration.
8. Counterparties shall establish procedures for adjusting the value of the margins to be exchanged in response to a change in the parameters due to a change in market conditions. Those procedures shall provide for counterparties to be able to exchange the additional initial margin resulting from that change of the parameters over a period that ranges between 1 and 30 business days.
9. Counterparties shall establish procedures regarding the quality of the data used in the model in accordance with paragraph 1, including the selection of appropriate data providers and the cleaning and interpolation of that data.
10. Proxies for the data used in initial margin models shall be used only where both of the following conditions are met:
 - (a) available data is insufficient or is not reflective of the true volatility of an OTC derivative contract or portfolio of OTC derivative contracts within the netting set;
 - (b) the proxies lead to a conservative level of margins.

*Article 17***Diversification, hedging and risk offsets across underlying classes**

1. Initial margin models shall only include non-centrally cleared OTC derivative contracts within the same netting set. Initial margin models may provide for diversification, hedging and risk offsets arising from the risks of the contracts within the same netting set, provided that the diversification, hedging or risk offset is only carried out within the same underlying asset class as referred to in paragraph 2.
2. For the purposes of paragraph 1, diversification, hedging and risk offsets may only be carried out within the following underlying asset classes:
 - (a) interest rates, currency and inflation;
 - (b) equity;

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- (c) credit;
- (d) commodities and gold;
- (e) other.

*Article 18***Qualitative requirements**

1. Counterparties shall establish an internal governance process to assess the appropriateness of the initial margin model on a continuous basis, including all of the following:

- (a) an initial validation of the model by suitably qualified persons who are independent from the persons developing the model;
- (b) a follow up validation whenever a significant change is made to the initial margin model and at least annually;
- (c) a regular audit process to assess the following:
 - (i) the integrity and reliability of the data sources;
 - (ii) the management information system used to run the model;
 - (iii) the accuracy and completeness of data used;
 - (iv) the accuracy and appropriateness of volatility and correlation assumptions.

2. The documentation of the risk management procedures referred to in point (b) of Article 2(2) relating to the initial margin model shall meet all of the following conditions:

- (a) it shall allow a knowledgeable third party to understand the design and operational detail of the initial margin model;
- (b) it shall contain the key assumptions and the limitations of the initial margin model;
- (c) it shall define the circumstances under which the assumptions of the initial margin model are no longer valid.

3. Counterparties shall document all changes to the initial margin model. That documentation shall also detail the results of the validations, referred to in paragraph 1, carried out after those changes.

▼ B*SECTION 5**Collateral management and segregation**Article 19***Collateral management and segregation**

1. The procedures referred to in Article 2(2)(c) shall include the following:
 - (a) a daily valuation of the collateral held in accordance with Section 6;
 - (b) the legal arrangements and a collateral holding structure that allow access to the received collateral where it is being held by a third party;
 - (c) where initial margin is held by the collateral provider, that the collateral is held in insolvency-remote custody accounts;
 - (d) that non-cash initial margin is maintained in accordance with paragraphs 3 and 4;
 - (e) that cash collected as initial margin is maintained in cash accounts at central banks or credit institutions which fulfil all of the following conditions:
 - (i) they are authorised in accordance with Directive 2013/36/EU or are authorised in a third country whose supervisory and regulatory arrangements have been found to be equivalent in accordance with Article 142(2) of Regulation (EU) No 575/2013;
 - (ii) they are neither the posting nor the collecting counterparties, nor part of the same group as either of the counterparties;
 - (f) the availability of unused collateral to the liquidator or other insolvency official of the defaulting counterparty;
 - (g) the initial margin is freely transferable to the posting counterparty in a timely manner in case of the default of the collecting counterparty;
 - (h) that non-cash collateral is transferable without any regulatory or legal constraints or third-party claims, including those of the liquidator of the collecting counterparty or third-party custodian, other than liens for fees and expenses incurred in providing the custodial accounts and other than liens routinely imposed on all securities in a clearing system in which such collateral may be held;
 - (i) that any unused collateral is returned to the posting counterparty in full, excluding costs and expenses incurred for the process of collecting and holding the collateral.

▼ B

2. Any collateral posted as initial or variation margin may be substituted by alternative collateral where all of the following conditions are met:

- (a) the substitution is made in accordance with the terms of the agreement between the counterparties referred to in Article 3;
- (b) the alternative collateral is eligible in accordance with Section 2;
- (c) the value of the alternative collateral is sufficient to meet all margin requirements after applying any relevant haircut.

3. Initial margin shall be protected from the default or insolvency of the collecting counterparty by segregating it in either or both of the following ways:

- (a) on the books and records of a third-party holder or custodian;
- (b) via other legally binding arrangements;

4. Counterparties shall ensure that non-cash collateral exchanged as initial margin is segregated as follows:

- (a) where collateral is held by the collecting counterparty on a proprietary basis, it shall be segregated from the rest of the proprietary assets of the collecting counterparty;
- (b) where collateral is held by the posting counterparty on a non-proprietary basis, it shall be segregated from the rest of the proprietary assets of the posting counterparty;
- (c) where collateral is held on the books and records of a custodian or other third-party holder, it shall be segregated from the proprietary assets of that third-party holder or custodian.

5. Where non-cash collateral is held by the collecting party or by a third-party holder or custodian, the collecting counterparty shall always provide the posting counterparty with the option to segregate its collateral from the assets of other posting counterparties.

6. Counterparties shall perform an independent legal review in order to verify that the segregation arrangements meet the requirements referred to in paragraph 1(g) and paragraphs 3, 4 and 5. That legal review may be conducted by an independent internal unit, or by an independent third party.

7. Counterparties shall provide evidence to their competent authorities of compliance with paragraph 6 in relation to each relevant jurisdiction and, upon request by a competent authority, shall establish policies ensuring the continuous assessment of compliance.

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8. For the purposes of paragraph 1(e), the counterparties shall assess the credit quality of the credit institution referred to therein by using a methodology that does not solely or mechanistically rely on external credit quality assessments.

*Article 20***Treatment of collected initial margins**

1. The collecting counterparty shall not rehypothecate, repledge nor otherwise reuse the collateral collected as initial margin.

2. Notwithstanding paragraph 1, a third-party holder may use the initial margin received in cash for reinvestment purposes.

*SECTION 6**Valuation of collateral**Article 21***Calculation of the adjusted value of collateral**

1. Counterparties shall adjust the value of collected collateral in accordance with either the methodology set out in Annex II or a methodology using own volatility estimates accordance with Article 22.

2. When adjusting the value of collateral pursuant to paragraph 1, counterparties may disregard the foreign exchange risk arising from positions in currencies which are subject to a legally binding intergovernmental agreement limiting the variation of those positions relative to other currencies covered by the same agreement.

*Article 22***Own estimates of the adjusted value of collateral**

1. Counterparties shall adjust the value of collected collateral using own volatility estimates in accordance with Annex III.

2. Counterparties shall update their data sets and calculate the own volatility estimates referred to in Article 21 whenever the level of market prices' volatility changes materially and at least quarterly.

3. For the purposes of paragraph 2, counterparties shall pre-determine the levels of volatility that trigger a recalculation of the haircuts as referred to in Annex III.

4. The procedures referred to in Article 2(2)(d) shall include policies to monitor the calculation of the own volatility estimates and the integration of those estimates into the risk management process of that counterparty.

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5. The policies referred to in paragraph 4 shall be subject to an internal review that includes all of the following:

- (a) the integration of the estimates into the risk management process of the counterparty, which shall take place at least annually;
- (b) the integration of estimated haircuts into daily risk management;
- (c) the validation of any significant change in the process for the calculation of the estimates;
- (d) the verification of the consistency, timeliness and reliability of data sources used to calculate the estimates;
- (e) the accuracy and appropriateness of the volatility assumptions.

6. The review referred to in paragraph 5 shall be carried out regularly within the internal auditing process of the counterparty.

CHAPTER II**SPECIFIC PROVISIONS ON RISK MANAGEMENT PROCEDURES***SECTION 1**Exemptions**Article 23***CCPs authorised as credit institutions**

By way of derogation from Article 2(2), counterparties may provide in their risk management procedures that no collateral is exchanged in relation to non-centrally cleared OTC derivative contracts entered into with CCPs authorised as credit institutions in accordance with Directive 2013/36/EU.

*Article 24***Non-financial counterparties and third-country counterparties**

By way of derogation from Article 2(2), counterparties may provide in their risk management procedures that no collateral is exchanged in relation to non-centrally cleared OTC derivative contracts entered into with non-financial counterparties that do not meet the conditions of Article 10(1)(b) of Regulation (EU) No 648/2012, or with non-financial entities established in a third country that would not meet the conditions of Article 10(1)(b) of Regulation (EU) No 648/2012 if they were established in the Union.

▼B*Article 25***Minimum transfer amount**

1. By way of derogation from Article 2(2), counterparties may provide in their risk management procedures that no collateral is collected from a counterparty where the amount due from the last collection of collateral is equal to or lower than the amount agreed by the counterparties ('minimum transfer amount').

The minimum transfer amount shall not exceed EUR 500 000 or the equivalent amount in another currency.

2. Where counterparties agree on a minimum transfer amount, the amount of collateral due shall be calculated as the sum of:

(a) the variation margin due from its last collection calculated in accordance with Article 10, including any excess collateral;

(b) the initial margin due from its last collection calculated in accordance with Article 11, including any excess collateral.

3. Where the amount of collateral due exceeds the minimum transfer amount agreed by the counterparties, the collecting counterparty shall collect the full amount of collateral due without deduction of the minimum transfer amount.

4. Counterparties may agree on separate minimum transfer amounts for initial and variation margins, provided that the sum of those minimum transfer amounts is equal to or lower than EUR 500 000 or the equivalent amount in another currency.

5. Where counterparties agree on separate minimum transfer amounts in accordance with paragraph 4, the collecting counterparty shall collect the full amount of initial or variation margin due without any deduction of those minimum transfer amounts where the amount of initial or variation collateral due exceeds the minimum transfer amount.

*Article 26***Margin calculation with third-country counterparties**

Where a counterparty is domiciled in a third country, counterparties may calculate margins on the basis of a netting set that includes the following types of contracts:

(a) non-centrally cleared OTC derivatives subject to margin requirements under this Regulation;

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- (b) contracts that meet both of the following conditions:
- (i) they are identified as non-centrally cleared OTC derivatives by the regulatory regime applicable to the counterparty domiciled in the third country;
 - (ii) they are subject to margin rules in the regulatory regime applicable to the counterparty domiciled in the third country.

*SECTION 2**Exemptions in calculating levels of initial margin**Article 27***Foreign exchange contracts**

By way of derogation from Article 2(2), counterparties may provide in their risk management procedures that initial margins are not collected with respect to:

- (a) physically settled OTC derivative contracts that solely involve the exchange of two different currencies on a specific future date at a fixed rate agreed on the trade date of the contract covering the exchange ('foreign exchange forwards');
- (b) physically settled OTC derivative contracts that solely involve an exchange of two different currencies on a specific date at a fixed rate that is agreed on the trade date of the contract covering the exchange, and a reverse exchange of the two currencies at a later date and at a fixed rate that is also agreed on the trade date of the contract covering the exchange ('foreign exchange swaps');
- (c) the exchange of principal of non-centrally cleared OTC derivative contracts under which counterparties exchange solely the principal amount and any interest payments in one currency for the principal amount and any interest payments in another currency, at specified points in time according to a specified formula ('currency swap').

*Article 28***Threshold based on notional amount**

1. By way of derogation from Article 2(2), counterparties may provide in their risk management procedures that initial margins are not collected for all new OTC derivative contracts entered into within a calendar year where one of the two counterparties has an aggregate month-end average notional amount of non-centrally cleared OTC derivatives for the months March, April and May of the preceding year of below EUR 8 billion.

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The aggregate month-end average notional amount referred to in the first subparagraph shall be calculated at the counterparty level or at the group level where the counterparty belongs to a group.

2. Where a counterparty belongs to a group, the calculation of the group aggregate month-end average notional amount shall include all non-centrally cleared OTC derivative contracts of the group including all intragroup non-centrally cleared OTC derivatives contracts.

For the purposes of the first subparagraph, OTC derivative contracts which are internal transactions shall only be taken into account once.

3. UCITS authorised in accordance with Directive 2009/65/EC and alternative investment funds managed by alternative investment fund managers authorised or registered in accordance with Directive 2011/61/EU of the European Parliament and of the Council⁽¹⁾ shall be considered distinct entities and treated separately when applying the thresholds referred to in paragraph 1 where the following conditions are met:

- (a) the funds are distinct segregated pools of assets for the purposes of the fund's insolvency or bankruptcy;
- (b) the segregated pools of assets are not collateralised, guaranteed or otherwise financially supported by other investment funds or their managers.

*Article 29***Threshold based on initial margin amounts**

1. By way of derogation from Article 2(2), counterparties may provide in their risk management procedures that initial margin collected is reduced by an amount up to EUR 50 million in the case of points (a) and (b) of this paragraph or EUR 10 million in the case of point (c) where:

- (a) neither counterparty belongs to any group;
- (b) the counterparties are part of different groups;
- (c) both counterparties belong to the same group.

2. Where a counterparty does not collect initial margins in accordance with paragraph 1(b), the risk management procedures referred to in Article 2(1) shall include provisions on monitoring, at group level, whether that threshold is exceeded and provisions for the retention of appropriate records of the group's exposures to each single counterparty in the same group.

⁽¹⁾ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

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3. UCITS authorised in accordance with Directive 2009/65/EC and alternative investment funds managed by alternative investment fund managers authorised or registered in accordance with Directive 2011/61/EU shall be considered distinct entities and treated separately when applying the thresholds referred to in paragraph 1 where the following conditions are met:

- (a) the funds are distinct segregated pools of assets for the purposes of the fund's insolvency or bankruptcy;
- (b) the segregated pools of assets are not collateralised, guaranteed or otherwise financially supported by other investment funds or their managers.

*SECTION 3**Exemptions from the requirement to post or collect initial or variation margin**Article 30***Treatment of derivatives associated to covered bonds for hedging purposes**

1. By way of derogation from Article 2(2) and where the conditions set out in paragraph 2 of this Article are met, counterparties may, in their risk management procedures, provide the following in relation to OTC derivative contracts concluded in connection with covered bonds:

- (a) variation margin is not posted by the covered bond issuer or cover pool but is collected from its counterparty in cash and returned to its counterparty when due;
- (b) initial margin is not posted or collected.

2. Paragraph 1 applies where all of the following conditions are met:

- (a) the OTC derivative contract is not terminated in case of resolution or insolvency of the covered bond issuer or cover pool;
- (b) the counterparty to the OTC derivative concluded with covered bond issuers or with cover pools for covered bonds ranks at least *pari passu* with the covered bond holders except where the counterparty to the OTC derivative concluded with covered bond issuers or with cover pools for covered bonds is the defaulting or the affected party, or waives the *pari passu* rank;
- (c) the OTC derivative contract is registered or recorded in the cover pool of the covered bond in accordance with national covered bond legislation;

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- (d) the OTC derivative contract is used only to hedge the interest rate or currency mismatches of the cover pool in relation to the covered bond;
- (e) the netting set does not include OTC derivative contracts unrelated to the cover pool of the covered bond;
- (f) the covered bond to which the OTC derivative contract is associated meets the requirements of paragraphs (1), (2) and (3) of Article 129 of Regulation (EU) No 575/2013;
- (g) the cover pool of the covered bond to which the OTC derivative contract is associated is subject to a regulatory collateralisation requirement of at least 102 %.

Article 31

Treatment of derivatives with counterparties in third countries where legal enforceability of netting agreements or collateral protection cannot be ensured

1. By way of derogation from Article 2(2), counterparties established in the Union may provide in their risk management procedures that variation and initial margins are not required to be posted for non-centrally cleared OTC derivative contracts concluded with counterparties established in a third country for which any of the following apply:

- (a) the legal review referred to in Article 2(3) confirms that the netting agreement and, where used, the exchange of collateral agreement cannot be legally enforced with certainty at all times;
- (b) the legal review referred to in Article 19(6) confirms that the segregation requirements referred to in Article 19(3), (4) and (5) cannot be met.

For the purposes of the first subparagraph, counterparties established in the Union shall collect margin on a gross basis.

2. By way of derogation from Article 2(2), counterparties established in the Union may provide in their risk management procedures that variation and initial margins are not required to be posted or collected for contracts concluded with counterparties established in a third country where all of the following conditions apply:

- (a) points (a) and, where applicable, point (b) of paragraph 1 apply;

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- (b) the legal reviews referred to in points (a) and (b) of paragraph 1 confirm that collecting collateral in accordance with this Regulation is not possible, even on a gross basis;
- (c) the ratio calculated in accordance with paragraph 3 is lower than 2,5 %.

3. The ratio referred to in paragraph 2(c) shall be the result of dividing the amount resulting from point (a) of this paragraph with that resulting from point (b):

- (a) the sum of the notional amounts of any outstanding OTC derivative contracts of the group to which the counterparty belongs that were concluded after the entry into force of this Regulation and for which no margin has been collected from counterparties established in a third country for which point (b) of paragraph 2 applies;
- (b) the sum of the notional amounts of all outstanding OTC derivative contracts of the group to which the counterparty belongs, excluding OTC derivative contracts that are intragroup transactions.

CHAPTER III

INTRAGROUP DERIVATIVE CONTRACTS

SECTION 1

*Procedures for counterparties competent authorities when applying exemptions for intragroup derivative contracts**Article 32***Procedures for counterparties and relevant competent authorities**

1. The application or notification from a counterparty to the competent authority pursuant to paragraphs 6 to 10 of Article 11 of Regulation (EU) No 648/2012 shall be deemed to have been received when the competent authority receives all of the following information:

- (a) all the information necessary to assess whether the conditions specified in paragraphs 6, 7, 8, 9 or 10, respectively, of Article 11 of Regulation (EU) No 648/2012 have been fulfilled;
- (b) the information and documents referred to in Article 18(2) of Commission Delegated Regulation (EU) No 149/2013 ⁽¹⁾.

⁽¹⁾ Commission Delegated Regulation (EU) No 149/2013 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 indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP (OJ L 52, 23.2.2013, p. 11).

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2. Where a competent authority determines that further information is required in order to assess whether the conditions referred to in paragraph 1(a) are fulfilled, it shall submit a written request for information to the counterparty.

3. A decision by a competent authority under Article 11(6) of Regulation (EU) No 648/2012 shall be communicated to the counterparty within 3 months of receipt of all the information referred to in paragraph 1.

4. Where a competent authority reaches a positive decision under paragraphs 6, 8, or 10 of Article 11 of Regulation (EU) No 648/2012, it shall communicate that positive decision to the counterparty in writing, specifying at least the following:

- (a) whether the exemption is a full exemption or a partial exemption;
- (b) in the case of a partial exemption, a clear identification of the limitations of the exemption.

5. Where a competent authority reaches a negative decision under paragraphs 6, 8, or 10 of Article 11 of Regulation (EU) No 648/2012 or objects to a notification under paragraphs 7 or 9 of Article 11 of that Regulation, it shall communicate that negative decision or objection to the counterparty in writing, specifying at least the following:

- (a) the conditions of paragraphs 6, 7, 8, 9 or 10, respectively, of Article 11 of Regulation (EU) No 648/2012 that are not fulfilled;
- (b) a summary of the reasons for considering that such conditions are not fulfilled.

6. Where one of the competent authorities notified under Article 11(7) of Regulation (EU) No 648/2012 considers that the conditions referred to in points (a) or (b) of the first subparagraph of Article 11(7) of that Regulation are not fulfilled, it shall notify the other competent authority within 2 months of receipt of the notification.

7. The competent authorities shall notify the non-financial counterparties of the objection referred to in paragraph 5 within 3 months of receipt of the notification.

8. A decision by a competent authority under Article 11(8) of Regulation (EU) No 648/2012 shall be communicated to the counterparty established in the Union within 3 months of receipt of all the information referred to in paragraph 1.

9. A decision by the competent authority of a financial counterparty referred to Article 11(10) of Regulation (EU) No 648/2012 shall be communicated to the competent authority of the non-financial counterparty within 2 months from the receipt of the all the information referred to in paragraph 1 and to the counterparties within 3 months of receipt of that information.

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10. Counterparties that have submitted a notification or received a positive decision according to paragraphs 6, 7, 8, 9 or 10, respectively, of Article 11 of Regulation (EU) No 648/2012 shall immediately notify the relevant competent authority of any change that may affect the fulfilment of the conditions set out in those paragraphs, as applicable. The competent authority may object to the application for the exemption or withdraw its positive decision following any change in circumstances that could affect the fulfilment of those conditions.

11. Where a negative decision or objection is communicated by a competent authority, the relevant counterparty may only submit another application or notification where there has been a material change in the circumstances that formed the basis of the competent authority's decision or objection.

*SECTION 2**Applicable criteria for applying exemptions for intragroup derivative contracts**Article 33***Applicable criteria on the legal impediment to the prompt transfer of own funds and repayment of liabilities**

A legal impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties as referred to in paragraphs 5 to 10 of Article 11 of Regulation (EU) No 648/2012 shall be deemed to exist where there are actual or foreseen restrictions of a legal nature including any of the following:

- (a) currency and exchange controls;
- (b) a regulatory, administrative, legal or contractual framework that prevents mutual financial support or significantly affects the transfer of funds within the group;
- (c) any of the conditions on the early intervention, recovery and resolution as referred to in Directive 2014/59/EU of the European Parliament and of the Council ⁽¹⁾ are met, as a result of which the competent authority foresees an impediment to the prompt transfer of own funds or repayment of liabilities;
- (d) the existence of minority interests that limit decision-making power within entities that form the group;
- (e) the nature of the legal structure of the counterparty, as defined in its statutes, instruments of incorporation and internal rules.

⁽¹⁾ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

▼B*Article 34***Applicable criteria on the practical impediments to the prompt transfer of own funds and repayment of liabilities**

A practical impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties as referred to in paragraphs 5 to 10 of Article 11 of Regulation (EU) No 648/2012 shall be deemed to exist where there are restrictions of a practical nature, including any of the following:

- (a) insufficient availability of unencumbered or liquid assets to the relevant counterparty when due;
- (b) impediments of an operational nature which effectively delay or prevent such transfers or repayments when due.

CHAPTER IV

TRANSITIONAL AND FINAL PROVISIONS

*Article 35***Transitional provisions**

Counterparties referred to in Article 11(3) of Regulation (EU) No 648/2012 may continue to apply the risk-management procedures that they have in place at the date of application of this Regulation in respect of non-centrally cleared OTC derivative contracts entered into between 16 August 2012 and the relevant dates of application of this Regulation.

*Article 36***Application of 9(2), Article 11, Articles 13 to 18, points (c), (d) and (f) of Article 19(1), Article 19(3) and Article 20**

1. Article 9(2), Article 11, Articles 13 to 18, points (c), (d) and (f) of Article 19(1), Article 19(3) and Article 20 shall apply as follows:

- (a) from 1 month after the date of entry into force of this Regulation, where both counterparties have, or belong to groups each of which has, an aggregate average notional amount of non-centrally cleared derivatives that is above EUR 3 000 billion;
- (b) from 1 September 2017, where both counterparties have, or belong to groups each of which has, an aggregate average notional amount of non-centrally cleared derivatives that is above EUR 2 250 billion;
- (c) from 1 September 2018, where both counterparties have, or belong to groups each of which has, an aggregate average notional amount of non-centrally cleared derivatives that is above EUR 1 500 billion;

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- (d) from 1 September 2019, where both counterparties have, or belong to groups each of which has, an aggregate average notional amount of non-centrally cleared derivatives that is above EUR 750 billion;
- (e) from 1 September 2020, where both counterparties have, or belong to groups each of which has, an aggregate average notional amount of non-centrally cleared derivatives that is above EUR 8 billion.

2. By way of derogation from paragraph 1, where the conditions of paragraph 3 of this Article are met, Article 9(2), Article 11, Articles 13 to 18, points (c), (d) and (f) of Article 19(1), Article 19(3) and Article 20 shall apply as follows:

- (a) 3 years after the date of entry into force of this Regulation where no equivalence decision has been adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 11(3) of that Regulation in respect of the relevant third country;
- (b) the later of the following dates where an equivalence decision has been adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 11(3) of that Regulation in respect of the relevant third country:
 - (i) 4 months after the date of entry into force of the decision adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 11(3) of that Regulation in respect of the relevant third country;

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- (ii) the applicable date determined pursuant to paragraph 1.

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3. The derogation referred to in paragraph 2 shall only apply where counterparties to a non-centrally cleared OTC derivative contract meet all of the following conditions:

- (a) one counterparty is established in a third country and the other counterparty is established in the Union;
- (b) the counterparty established in a third country is either a financial counterparty or a non-financial counterparty;
- (c) the counterparty established in the Union is one of the following:
 - (i) a financial counterparty, a non-financial counterparty, a financial holding company, a financial institution or an ancillary services undertaking subject to appropriate prudential requirements and the third-country counterparty referred to in point (a) is a financial counterparty;

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- (ii) either a financial counterparty or a non-financial counterparty and the third-country counterparty referred to in point (a) is a non-financial counterparty;
- (d) both counterparties are included in the same consolidation on a full basis in accordance to Article 3(3) of Regulation (EU) No 648/2012;
- (e) both counterparties are subject to appropriate centralised risk evaluation, measurement and control procedures;
- (f) the requirements of Chapter III are met.

*Article 37***Application of Articles 9(1), 10 and 12**

1. Articles 9(1), 10 and 12, shall apply as follows:
 - (a) from 1 month after the date of its entry into force of this Regulation for counterparties both of which have, or belong to groups each of which has, an aggregate average notional amount of non-centrally cleared OTC derivatives above EUR 3 000 billion;
 - (b) from the date that is the latest of 1 March 2017 or 1 month following the date of its entry into force of this Regulation for other counterparties.
2. By way of derogation from paragraph 1 in respect of contracts for foreign exchange forwards referred to in point (a) of Article 27, Articles 9(1), 10 and 12 shall apply on one of the following dates, whichever is earlier:
 - (a) 31 December 2018, where the Regulation referred to in point (b) does not yet apply;
 - (b) the date of entry into application of the Commission Delegated Regulation⁽¹⁾ specifying some technical elements related to the definition of financial instruments with regard to physically settled foreign exchange forwards or the date determined pursuant to paragraph 1, whichever is later.

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3. By way of derogation from paragraph 1, where the conditions of paragraph 4 of this Article are met, Articles 9(1), 10 and 12 shall apply as follows:
 - (a) 3 years after the date of entry into force of this Regulation where no equivalence decision has been adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 11(3) of that Regulation in respect of the relevant third country;

⁽¹⁾ C(2016) 2398 final.

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(b) the later of the following dates where an equivalence decision has been adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 11(3) of that Regulation in respect of the relevant third country:

(i) four months after the date of entry into force of the decision adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 11(3) of that Regulation in respect of the relevant third country;

(ii) the applicable date determined pursuant to paragraph 1.

4. The derogation referred to in paragraph 3 shall only apply where counterparties to a non-centrally cleared OTC derivative contract meet all of the following conditions:

(a) one counterparty is established in a third country and the other counterparty is established in the Union;

(b) the counterparty established in a third country is either a financial counterparty or a non-financial counterparty;

(c) the counterparty established in the Union is one of the following:

(i) a financial counterparty, a non-financial counterparty, a financial holding company, a financial institution or an ancillary services undertaking subject to appropriate prudential requirements and the third country counterparty referred to in point (a) is a financial counterparty;

(ii) either a financial counterparty or a non-financial counterparty and the third country counterparty referred to in point (a) is a non-financial counterparty;

(d) both counterparties are included in the same consolidation on a full basis in accordance to Article 3(3) of Regulation (EU) No 648/2012;

(e) both counterparties are subject to appropriate centralised risk evaluation, measurement and control procedures;

(f) the requirements of Chapter III are met.

▼B*Article 38***Dates of application for specific contracts**

1. By way of derogation from Articles 36(1) and 37, in respect of all non-centrally OTC derivatives which are single-stock equity options or index options, the Articles referred to in paragraph Articles 36(1) and 37 shall apply from 3 years after the date of entry into force of this Regulation.

2. By way of derogation from Articles 36(1) and 37, where a counterparty established in the Union enters into a non-cleared OTC derivative contract with another counterparty which belongs to the same group, the Articles referred to in Articles 36(1) and 37 shall apply from the dates specified in accordance with those Articles or 4 July 2017, whichever is the later.

*Article 39***Calculation of aggregate average notional amount**

1. For the purposes of Articles 36 and 37, the aggregate average notional amount referred to shall be calculated as the average of the total gross notional amount that meets all of the following conditions:

- (a) that are recorded on the last business day of March, April and May of 2016 with respect to counterparties referred to in point (a) of Article 36(1);
- (b) that are recorded on the last business day of March, April and May of the year referred to in each of the points in Article 36(1);
- (c) it includes all the entities of the group;
- (d) it includes all the non-centrally cleared OTC derivative contracts of the group;
- (e) it includes all the intragroup non-centrally cleared OTC derivative contracts of the group, counting each one of them once.

2. For the purpose of paragraph 1, UCITS authorised in accordance with Directive 2009/65/EC and alternative investment funds managed by alternative investment fund managers authorised or registered in accordance with Directive 2011/61/EU shall be considered distinct entities and treated separately, where the following conditions are met:

- (a) the funds are distinct segregated pools of assets for the purposes of the fund's insolvency or bankruptcy;

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- (b) the segregated pools of assets are not collateralised, guaranteed or otherwise financially supported by other investment funds or their managers.

Article 40

Entry into force

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.

▼B*ANNEX I***Correspondence of Probability of default ('PD') to Credit quality steps for the purposes of Articles 6 and 7**

An internal rating with a PD equal to or lower than the value in Table 1 shall be associated to the corresponding credit quality step.

Table 1

Credit Quality Step	Probability of default, as defined in Article 4(54) of Regulation (EU) 575/2013 lower than or equal to:
1	0,10 %
2	0,25 %
3	1 %
4	7,5 %

▼B*ANNEX II***Methodology to adjust the value of collateral for the purposes of Article 21**

1. The value of the collateral shall be adjusted as follows:

$$C_{\text{value}} = C \cdot (1 - H_C - H_{\text{FX}})$$

where:

C = the market value of the collateral;

H_C = the haircut appropriate to the collateral, as calculated under paragraph 2;

H_{FX} = the haircut appropriate to currency mismatch, as calculated under paragraph 6.

2. Counterparties shall apply at least the haircuts provided in the following Tables 1 and 2 to the market value of the collateral:

Table 1

Haircuts for long term credit quality assessments

Credit quality step with which the credit assessment of the debt security is associated	Residual maturity	Haircuts for debt securities issued by entities described in Article 4 (1) (c) to (e) and (h) to (k), in (%)	Haircuts for debt securities issued by entities described in Article 4 (1) (f), (g), (l) to (n) in (%)	Haircuts for securitisation positions meeting the criteria in Article 4 (1) (o) in (%)
1	≤ 1 year	0,5	1	2
	> 1 ≤ 5 years	2	4	8
	> 5 years	4	8	16
2-3	≤ 1 year	1	2	4
	> 1 ≤ 5 years	3	6	12
	> 5 years	6	12	24
4 or below	≤ 1 year	15	N/A	N/A
	> 1 ≤ 5 years	15	N/A	N/A
	> 5 years	15	N/A	N/A

Table 2

Haircuts for short term credit quality assessments

Credit quality step with which the credit assessment of a short term debt security is associated	Haircuts for debt securities issued by entities described in Article 4(1) (c) and (j) in (%)	Haircuts for debt securities issued by entities described in Article 4(1) (m) in (%)	Haircuts for securitisation positions and meeting the criteria in Article 4(1) (o) in (%)
1	0,5	1	2
2-3 or below	1	2	4

1. Equities in main indices, bonds convertible to equities in main indices and gold shall have a haircut of 15 %.

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2. For eligible units in UCITS the haircut is the weighted average of the haircuts that would apply to the assets in which the fund is invested.
3. Cash variation margin shall be subject to a haircut of 0 %.
4. For the purpose of exchanging variation margin, a haircut of 8 % shall apply to all non-cash collaterals posted in a currency other than those agreed in an individual derivative contract, the relevant governing master netting agreement or the relevant credit support annex.
5. For the purpose of exchanging initial margin, a haircut of 8 % shall apply to all cash and non-cash collaterals posted in a currency other than the currency in which the payments in case of early termination or default have to be made in accordance with the single derivative contract, the relevant exchange of collateral agreement or the relevant credit support annex ('termination currency'). Each of the counterparties may choose a different termination currency. Where the agreement does not identify a termination currency, the haircut shall apply to the market value of all the assets posted as collateral.

▼B*ANNEX III***Own volatility estimates of the haircuts to be applied to the market value of collateral for the purposes of Article 22**

1. The calculation of the adjusted value of the collateral shall meet all of the following conditions:
 - (a) counterparties shall base the calculation on a 99th percentile, one-tailed confidence interval;
 - (b) counterparties shall base the calculation on a liquidation period of at least 10 business days;
 - (c) counterparties shall calculate the haircuts by scaling up the daily revaluation haircuts, using the following square-root-of time formula:

$$H = H_M \cdot \sqrt{\frac{N_R + (T_M - 1)}{T_M}}$$

where:

H = the haircut to be applied;

H_M = the haircut where there is daily revaluation;

N_R = the actual number of business days between revaluations;

T_M = the liquidation period for the type of transaction in question;

- (d) counterparties shall take into account the lesser liquidity of low quality assets. They shall adjust the liquidation period upwards in cases where there are doubts concerning the liquidity of the collateral. They shall also identify where historical data may understate potential volatility. Such cases shall be dealt with by means of a stress scenario;
- (e) the length of the historical observation period institutions use for calculating haircuts shall be at least 1 year. For counterparties that use a weighting scheme or other methods for the historical observation period, the length of the effective observation period shall be at least 1 year;
- (f) the market value of the collateral shall be adjusted as follows:

$$C_{\text{value}} = C \cdot (1 - H)$$

where:

C = the market value of the collateral;

H = the haircut as calculated in point (c) above.

2. Cash variation margin may be subject to a haircut of 0 %.
3. For debt securities that have a credit assessment from an ECAI, counterparties may use their own volatility estimate for each category of security.

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4. In determining relevant categories of securities for the purposes of paragraph 3, counterparties shall take into account the type of issuer of the security, the external credit assessment of the securities, their residual maturity, and their modified duration. Volatility estimates shall be representative of the securities included in the category.
5. The calculation of haircuts resulting from the application of point (c) of paragraph 1 shall meet all of the following conditions:
 - (a) a counterparty shall use the volatility estimates in the day-to-day risk management process including in relation to its exposure limits;
 - (b) where the liquidation period used by a counterparty is longer than that referred to in point (b) of paragraph 1 for the type of OTC derivative contract in question, that counterparty shall increase its haircuts in accordance with the square root of time formula referred to in point (c) of that paragraph.

▼B*ANNEX IV***Standardised Method for the calculation of initial margin for the purposes of Articles 9 and 11**

1. The notional amounts or underlying values, as applicable, of the OTC derivative contracts in a netting set shall be multiplied by the percentages in the following Table 1:

Table 1

Category	Add-on factor
Credit: 0-2 year residual maturity	2 %
Credit: 2-5 year residual maturity	5 %
Credit: 5+ year residual maturity	10 %
Commodity	15 %
Equity	15 %
Foreign exchange	6 %
Interest rate and inflation: 0-2 year residual maturity	1 %
Interest rate and inflation: 2-5 year residual maturity	2 %
Interest rate and inflation: 5+ year residual maturity	4 %
Other	15 %

2. The gross initial margin of a netting set shall be calculated as the sum of the products referred to in paragraph 1 for all OTC derivative contracts in the netting set.
3. The following treatment shall be applied to contracts which fall within more than one category:
- where a relevant risk factor for an OTC derivative contract can be clearly identified, contracts shall be assigned to the category corresponding to that risk factor;
 - where the condition referred to in point (a) is not met, contracts shall be assigned to the category with the highest add-on factor among the relevant categories;
 - the initial margin requirements for a netting set shall be calculated in accordance with the following formula:

$$\text{Net initial margin} = 0,4 * \text{Gross initial margin} + 0,6 * \text{NGR} * \text{Gross initial margin.}$$

where:

- net initial margin refers to the reduced figure for initial margin requirements for all OTC derivative contracts with a given counterparty included in a netting set;

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- (ii) NGR refers to the net-to-gross ratio calculated as the quotient of the net replacement cost of a netting set with a given counterparty in the numerator, and the gross replacement cost of that netting set in the denominator;
- (d) for the purposes of point (c), the net replacement cost of a netting set shall be the bigger between zero and the sum of current market values of all OTC derivative contracts in the netting set;
- (e) for the purposes of point (c), the gross replacement cost of a netting set shall be the sum of the current market values of all OTC derivative contracts calculated in accordance with Article 11(2) of Regulation (EU) No 648/2012 and Articles 16 and 17 of Delegated Regulation (EU) No 149/2013 with positive values in the netting set;
- (f) the notional amount referred to in paragraph 1 may be calculated by netting the notional amounts of contracts that are of opposite direction and are otherwise identical in all contractual features except their notional amounts.