

# Service Level Agreement

between the Hellenic Capital Markets Commission and ESMA for the validation of a significant CCP model change

## Service Level Agreement

("The Agreement")

The European Securities and Markets Authority, represented by Natasha Cazenave, Executive Director;

("ESMA")

of the one part,

And

the Hellenic Capital Markets Commission (HCMC) with its Head office at 3-5 Ippokratous Str., 106 79 Athens, Greece, represented by Kalliopi Benetatou, General Director;

("NCA")

of the other part,

(Individually a "Party" and collectively the "Parties"),

taking into account the following considerations:

(1) In accordance with Article 28(1) of Regulation (EU) No 1095/2010<sup>1</sup> ("ESMA Regulation") the NCA may delegate supervisory tasks to ESMA;

(2) A delegation of tasks to ESMA means that tasks are carried out by ESMA in lieu of the NCA responsible for such tasks under the acts referred to in Article 1(2) of the ESMA Regulation, while the responsibility and the authority for supervisory decisions remains with the delegating NCA;

(3) Regulation (EU) No 648/2012<sup>2</sup> (EMIR) requires Member States to designate a competent authority responsible for the authorisation and supervision of CCPs established on its territory; the NCA is the designated competent authority for the authorisation and supervision of ATHEXClear.

(4) The NCA has to ensure that a CCP complies with, among other requirements, the prudential requirements set out in EMIR (Title 3 and 4 thereof) and further specified in

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<sup>1</sup> OJ L 331, 15.12.2010, p. 84.

<sup>2</sup> OJ L 201/1, 27.7.2012, p. 1.

Commission Delegated Regulation (EU) No 152/2013<sup>3</sup> and Commission Delegated Regulation (EU) No 153/2013<sup>4</sup> (the Delegated Regulations) before an authorisation is granted and at any time after the granting of an authorisation;

(5) In accordance with Article 18(1) of EMIR, the NCA established, manages and chairs the ATHEXClear College and ESMA is a member of this college;

(6) Article 18(4)(c) of EMIR requires a CCP college to ensure that there is an agreement in case of voluntarily entrustment of tasks among the CCP college members (which should be without prejudice to the responsibilities of the competent authorities under EMIR); Moreover, Article 6 of Commission Delegated Regulation (EU) No 876/2013<sup>5</sup> refers to the possibility of delegation arrangements resulting in the delegation of a member's main supervisory tasks, which shall not purport to result in a change in the allocation of the decision-making power of the CCP's NCA;

(7) On 13 July 2016, the NCA and ESMA signed a first Service Level Agreement for the delegation of certain supervisory tasks for which the NCA was responsible in accordance with Article 22 EMIR. The agreement expired on 31 December 2016.

(8) On 24 June 2017, the NCA and ESMA signed a second Service Level Agreement for the delegation of certain supervisory tasks for which the NCA was responsible in accordance with Article 22 EMIR. The agreement expired on 31 December 2017.

(9) Following the satisfactory experience with the previous delegations in 2016 and 2017, it is the Parties' intention to have the NCA delegate to ESMA the tasks specified in this Agreement;

(10) Such delegation of tasks aims to foster cooperation, operational efficiency and supervisory convergence within the ATHEXClear college, to exploit synergies between the NCA's activities and ESMA's activities as member of the ATHEXClear college, and to achieve higher quality results of the delegated supervisory tasks compared to alternative outsourcing arrangements;

(11) In practice, this delegation of tasks will imply that the deliverables resulting from the execution of the delegated tasks by ESMA will be taken into account by the NCA when finalising its assessment reports in connection with its duties and supervisory

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<sup>3</sup> OJ L 52, 23.2.2013, p. 37.

<sup>4</sup> OJ L 52, 23.2.2013, p. 41.

<sup>5</sup> OJ L 244, 13.09.2013, p. 19.

responsibilities with respect to the compliance of ATHEXClear with EMIR prudential requirements.

have agreed as follows:

## **Article 1**

### **Purpose**

1. The purpose of this Agreement is to define the tasks entrusted to ESMA in the framework of the duration of this delegation arrangement, to lay down the terms and conditions for the Delegation and to set out the relations between ESMA and the NCA in this respect.
2. ESMA is entrusted with the Delegated Tasks as defined in Article 2.

## **Article 2**

### **Definitions**

**CCP:** ATHEX Exchange Clearing House (ATHEXClear)

**Delegation:** the delegation of tasks under this Agreement.

**Delegated Tasks:** the tasks described in Section A of Annex 1.

**Economy:** the principle of economy requires that the resources used for the execution of the Delegated Tasks shall be made available in due time, in appropriate quantity and quality and at the best price.

**Effectiveness:** the principle of effectiveness concerns the attainment of the specific objectives set and the achievement of the intended results.

**Efficiency:** the principle of efficiency concerns the best relationship between resources employed and results achieved.

**Force Majeure:** any situation or event beyond the Parties' control which is inexorable and inevitable to the point of making impossible for the Party concerned to comply with any of its obligations under the Agreement, which may not be attributed to error or negligence on

either part (or the part of their agents or staff), and which could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making them available, labour disputes, strikes or financial problems cannot be invoked as force majeure by the defaulting Party.

**Infringement:** any infringement of a provision of this Agreement resulting from an act or an omission by either Party which causes or might cause a loss to the other Party.

**Prudential Requirements:** For the purpose of this Agreement, prudential requirements consist of the requirements established in Articles 16, 40 to 47, and 49 of EMIR, as complemented by Commission Delegated Regulation (EU) No 152/2013 and Articles 24 to 57, and 59 to 60 of Commission Delegated Regulation (EU) No 153/2013.

**Sound Financial Management:** principle overarching the execution of the Delegated Tasks, namely Economy, Effectiveness and Efficiency.

### Article 3

#### NCA discretion

1. The NCA can decide on the extent to which it will take into account the results of the execution of the Delegated Tasks. In this context, the NCA can:

- a) ask ESMA to detail its reasoning, when not already specified in its deliverables;
- b) ask ESMA to review the results of the execution of the Delegated Tasks (including assessments, conclusions, recommendations, proposals) in the light of additional information or considerations;
- c) ask ESMA to require the CCP to provide additional information.

2. Where Parties consider that a request under points (b) or (c) entails a significant re-assessment of a specific matter, such request shall be regarded as a request for a re-execution of the Delegated Task with all consequences thereof, including a new financial contribution in accordance with Article 7, without prejudice to the NCA's obligations under Greek public procurement law.

## **Article 4**

### **Obligations of ESMA**

1. ESMA shall carry out the Delegated Tasks in accordance with the terms and conditions set out in this Agreement.
2. ESMA shall be fully responsible towards the NCA for the execution of the Delegated Tasks and for ensuring compliance with the provisions of this Agreement.
3. ESMA shall without undue delay take all appropriate measures to resolve problems encountered during the execution of the Delegated Tasks.
4. ESMA shall carry out the Delegated Tasks in accordance with the provisions of the ESMA Regulation, EMIR and the Delegated Regulations. In addition, ESMA shall apply any relevant supervisory guidance emerging from ESMA guidelines and recommendations, ESMA Q&As on EMIR, or any other policy statements, procedures and/or practices commonly agreed by the ESMA Board of Supervisors or its CCP Supervisory Committee (CCPSC) or its CCP Policy Committee (CCPPC).
5. In carrying out the Delegated Tasks assigned to it under this Agreement, ESMA will be subject to Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union<sup>6</sup>.
6. ESMA shall carry out the Delegated Tasks in accordance with the principle of Sound Financial Management, transparency and non-discrimination.

## **Article 5**

### **Obligations of the NCA**

1. The NCA shall provide ESMA with any instructions, guidance or specifications relevant to the execution of the Delegated Tasks. The NCA shall further specify the conditions to be applied or the factors to be taken into account by ESMA when executing the Delegated Tasks.

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<sup>6</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1, ELI: <http://data.europa.eu/eli/reg/2018/1046/oj>).

2. The NCA shall inform ESMA if it considers any changes to the scope and/or the content of the Delegated Tasks. The NCA shall inform ESMA when a Delegated Task has to be performed.
3. The NCA shall provide ESMA with any assistance with respect to the execution of the Delegated Tasks, as may be requested by ESMA.
4. In so far as relevant, in order to ensure a proper and efficient execution of the Delegated Tasks, the NCA shall promptly inform the CCP of the Delegation, including any relevant amendment thereof, and instruct it accordingly in advance, so as to enable it to comply with its obligations under the EMIR, the Delegated Regulations and other applicable EU or national legislation, and to provide promptly ESMA with any relevant information that ESMA may request in order to clarify specific matters relevant for the execution of a Delegated Task. This is without prejudice to any additional request of information that the NCA may deem appropriate.

## **Article 6**

### **Other obligations**

1. ESMA can enter into direct interactions with the CCP as necessary to clarify specific matters relevant for the execution of the Delegated Tasks, provided that, unless differently instructed by the NCA, it copies the NCA in any relevant written communication (including e-mails) and it invites the NCA to attend any conference call with the CCP.
2. The Parties shall agree on the measures to be taken for the exchange of information relevant for the execution of a Delegated Task, including any information to be provided directly by the CCP to ESMA in accordance to Article 5(4).

## **Article 7**

### **Financing the Delegation and eligible costs**

1. The NCA undertakes to provide for the execution of the Delegated Task the financial contribution corresponding to the amount set out in Annex 2.
2. ESMA shall call the financial contribution in accordance with Article 18.

## **Article 8**

### **Obligations regarding information and reporting**

1. ESMA shall provide the NCA with full information on all aspects of the execution of the Delegated Tasks in accordance with Section B of Annex 1 or upon request from the NCA.
2. In any case, ESMA shall notify the NCA without undue delay of any circumstance likely to affect the Delegated Tasks, such as an identified delay in the execution of the Delegated Tasks.

## **Article 9**

### **Liability**

1. Liability of the NCA towards third parties shall not be affected by this Agreement, including liability for damage or injury of any kind sustained by third parties in respect of or arising out of any supervisory measure based on the deliverables resulting from the execution of the Delegated Tasks.
2. The Parties shall be liable towards one another for a breach of their respective obligations under this Agreement which is due to negligence or intent on their part and compensate the other Party for any loss. In the case of ESMA the compensation for negligence is to be limited to an amount equivalent to the financial contribution to be provided by the NCA for the Delegated Task in accordance with Article 7.

## **Article 10**

### **Confidentiality**

1. The NCA and ESMA shall, subject to national rules regarding access to information applicable to the NCA and in compliance with EU law, preserve the confidentiality of any document, information or other material directly related to the execution of the Delegated Tasks in accordance with the provisions of Article 70 of ESMA Regulation and the provisions of EU law and/or national law on professional secrecy applicable to the NCA.
2. Without prejudice to the confidentiality requirements referred to in paragraph 1, the Parties shall obtain each other's prior written consent before disclosing any document, information or other material directly related to the Agreement and the Delegated Tasks



to a third party or the public, unless the disclosure of such information is required by EU law or national law, (provided that such national law complies with EU law) in which case the disclosing Party shall notify the other Party of the disclosure.

## **Article 11**

### **Data Protection**

ESMA shall ensure the protection of personal data through its own rules and procedures in accordance with the provisions of Regulation (EU) 2018/1725<sup>7</sup> and Article 8 of the Charter of Fundamental Rights of the European Union.

## **Article 12**

### **Transparency**

1. According to Article 28(4) of ESMA Regulation, this Agreement shall be published.

## **Article 13**

### **Ownership of deliverables**

All deliverables developed by ESMA pursuant to the Delegation and referred to in Section B of Annex 1 shall be owned by the NCA.

## **Article 14**

### **Amendment to the Agreement**

1. Any amendment to this Agreement shall be set out in writing in a document signed by both Parties.

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<sup>7</sup> OJ L 295, 21.11.2018, p. 39.

2. The requesting Party shall submit in writing to the other Party any request for amendment to this Agreement to the extent possible at least 30 calendar days before the amendment is intended to enter into force.

3. Paragraphs 1 and 2 are without prejudice to the right of the NCA to modify the content and the scope of the Delegated Tasks. In case, where ESMA does not agree with such modifications of the content or the scope of the Delegated Tasks, ESMA has the right to terminate this Agreement in accordance with Article 21.

## **Article 15**

### **Extension of time limit for execution of the Delegated Tasks, Suspension, Force Majeure**

1. In exceptional and duly substantiated cases, and without prejudice to any regulatory time limits under EMIR, ESMA may request to extend the time limit for execution of any of the Delegated Tasks. ESMA shall submit any such request to the NCA, together with the reasons therefor, sufficiently in advance before the end of the relevant time limit. The NCA may refuse the request if its acceptance will prevent the NCA from complying with any applicable legal obligations.

2. ESMA may suspend the execution of one or all of the Delegated Tasks, whatever relevant, in case of Force Majeure or in case of refusal by the CCP or the NCA to provide requested assistance where the refusal of assistance would prevent ESMA from the proper execution of the Delegated Tasks. In such case, ESMA shall inform the NCA immediately, and to the extent possible in advance, and provide all the necessary details and the foreseeable effect and date of resumption.

3. Neither of the Parties shall be held liable for an Infringement if it is prevented from fulfilling its obligations under the Agreement by Force Majeure or by the other Party or the CCP (in the case of ESMA), provided it takes all possible measures to minimise possible damage.

4. The Parties shall each make their best efforts, within their own respective remit under this Agreement, to minimise the duration of the suspension and ESMA shall, unless the Agreement is terminated, resume the execution of the Delegated Tasks once the conditions allow doing so. The time limit for execution of the Delegated Tasks is automatically extended by an amount of time equivalent to the duration of a suspension unless otherwise agreed between the Parties.

## **Article 16**

### **Suspension of payments**

If there is a suspension of the execution of one or all of the Delegated Tasks, whatever relevant, in case of Force Majeure, the NCA may in turn suspend the payment of the following financial contribution to be called in accordance with Article 18, for one or all of the Delegated Tasks, whatever relevant, for the duration of the suspension of the execution of the Delegated Tasks.

## **Article 17**

### **Acceptance of deliverables**

1. The deliverables resulting from the execution of the Delegated Tasks shall be submitted by ESMA to the NCA according to the deadlines of the relevant legislation in force and no later than one month before the end of the agreement (i.e. 31/05/2025), unless otherwise agreed in accordance with Annex 1 for acceptance of their content. The content of deliverables shall be deemed to have been accepted if it is not refused by the NCA within 15 calendar days from the submission. By accepting the content of the relevant deliverable, the NCA confirms that the execution of the relevant Delegated Task complies with the terms and conditions under this Agreement.
2. The NCA may refuse to accept the content of a deliverable resulting from the execution of the Delegated Tasks if the NCA demonstrates that there has been non-compliance with ESMA's obligations under Article 4(4) or with the instructions, guidance or specifications as referred to in Article 5(1).
3. If the NCA refuses to accept the content of any of the deliverables resulting from the execution of the Delegated Tasks, the NCA shall formally notify ESMA of its intention to reduce its financial contribution in line with the execution of the Delegated Tasks. The NCA shall specify the amount to be reduced and the reasons for reduction.

## **Article 18**

### **Payments**

1. ESMA shall issue a debit note after the completion of the Delegated Task described in Annex I for the respective financial contribution of the NCA referred to in Article 7.

2. The NCA shall make payments in Euro into the following bank account with 30 calendar days from the receipt of debit note:

IBAN: BE97 3751 1375 8649

BIC: BBRUBEBB

Bank name and address: ING BELGIUM SA/NV, AVENUE MARNIX 24, 1000 BRUSSELS

2. ESMA's financial regulation (ESMA63-313-548) applies to all aspects related to the management of the NCA's financial contribution.

## **Article 19**

### **Late payment interest**

In case of late payment default interest set out in Article 99 of the of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council applies. The interest shall be payable for the period elapsing from the day following expiry of the time limit for payment up to the day of payment. Any partial payment shall first cover the interest.

## **Article 20**

### **Accounts and records**

1. ESMA shall keep accurate and regular records and accounts of the execution of the Delegated Tasks.

2. The accounting regulations and rules of ESMA shall apply.

## **Article 21**

### **Termination of the Agreement**

1. Either Party may terminate this Agreement for one or all of the Delegated Tasks, whatever relevant, by serving 30 calendar days written notice.

2. In any case where a Party has served a notice for termination, the NCA shall instruct ESMA whether or not to complete the pending Delegated Tasks. ESMA shall be entitled

to the payment of the full financial contribution for the Delegated Tasks which have been completed, otherwise, ESMA shall be entitled to the payment of the financial contribution corresponding to the costs incurred up until the termination.

4. Without prejudice to any other provision of this Agreement, the NCA may terminate the Agreement in relation to the Delegation for one or all of the Delegated Tasks, whatever relevant:

- a) If ESMA undergoes legal, financial, technical or organisational changes likely to substantially affect in a negative way the execution of the Delegated Tasks;
- b) If ESMA has intentionally or by negligence committed a substantial Infringement in performing the Agreement;
- c) If the duration of a suspension of the execution of the Delegated Tasks in accordance with Article 15 exceeds 6 months or exceeds any regulatory time limits.

5. Without prejudice to any other provision of this Agreement, ESMA may terminate the Agreement in relation to the Delegation for one or all of the Delegated Tasks, whatever relevant:

- a) If the NCA undergoes legal, financial, technical or organisational changes likely to substantially affect in a negative way the execution of the Delegated Tasks;
- b) If the NCA has intentionally or by negligence committed a substantial Infringement in performing the Agreement.

6. In the circumstances mentioned in paragraphs 4 and 5, the Parties shall enter into discussions with each other. Failing agreement on a solution between the Parties, the relevant Party may terminate the Agreement by serving 30 calendar days written notice.

7. In the case of a termination of this Agreement under the circumstances mentioned in paragraphs 4 and 5, ESMA shall be entitled to payment of the financial contribution corresponding to the costs incurred up until the termination.

## **Article 22**

### **Applicable law and settlement of disputes**

1. This Agreement, according to Article 28(3) of ESMA Regulation is governed by EU law and the general principles common to the legal systems of the Member States.

2. The Parties shall endeavour to settle amicably any dispute or complaint relating to the interpretation, application or fulfilment of the Agreement, including its existence, validity or termination.

3. In case of dispute relating to the interpretation, application or fulfilment of the Agreement, any Party shall start an amicable settlement procedure by sending a written 'invitation to negotiate' to the other Party. Such procedure shall consist in the Parties' attempt to resolve the dispute in good faith through agreed mediation.

4. In default of successful amicable settlement, within 90 calendar days -either by failure of the Parties to settle or by failure of the requested Party to agree to initiate the amicable settlement procedure- any Party may refer the matter to the General Court of the EU and, in the event of appeal, to the Court of Justice of the EU, in accordance with Article 272 TFEU.

## **Article 23**

### **Communication language and contacts**

1. All communications between the Parties in connection with the Agreement shall be in English. All deliverables resulting from the execution of the Delegated Tasks shall be in English.

2. Any communication relating to the Agreement shall be in electronic format, shall state the reference number of the Agreement, and shall use the addresses set out in this Article. Electronic communication must be confirmed by paper communication when requested by any of the Parties.

3. Communication related to all administrative issues shall be sent to the following e-mail addresses:

For ESMA:

Mr Klaus Löber  
Chair of CCP Supervisory Committee  
CCP Directorate  
201-203 Rue de Bercy  
75012 Paris - France  
Tel: +33 1 5836 5195  
e-mail: [Klaus.loeber@esma.europa.eu](mailto:Klaus.loeber@esma.europa.eu)

For the NCA:

Mr. Apostolos Vlachos  
Head of Procurement Department  
Financial Services Directorate  
Hellenic Capital Market Commission  
3-5, Ippokratous str., 106 79 Athens, GREECE  
Tel. +30 210 3377185 / Fax +30 210 3377173  
E-mail: [a.vlachos@cmc.gov.gr](mailto:a.vlachos@cmc.gov.gr)

ESMA shall send debit notes to HCMC and any payment related information (information about late payment, bank account) exclusively by electronic means. For ESMA, the unique dispatching and recipient email address shall be [invoices@esma.europa.eu](mailto:invoices@esma.europa.eu). Any communication by using different email addresses shall not be considered valid.

5. The Parties shall confirm their receipt of any communication received by electronic means, such as an email, and shall confirm that they have access to any attachment to such communication.

## **Article 24**

### **Entry into force and duration**

The Agreement shall enter into force on 30/9/2024 upon signature by the Parties and be effective until 30/06/2025.

## **Article 25**

### **Annexes**

1. The following documents are annexed to this Agreement and form an integral part of the Agreement:

Annex 1: Delegation

Annex 2: Fees for the delegated tasks

2. In the event of a conflict between this Agreement and any Annex thereto, the provisions of this Agreement shall take precedence.

Done in Paris in two originals in the English language, one for the relevant NCA and one for ESMA

For ESMA

Name: Natasha Cazenave

Position: Executive Director

Signature [signed]

Date 12.11.2024

For the HCMC

Name: Anastasia Stamou

Position: Vice President

Signature [signed]

Date 04.11.2024



## Annexes

### Annex I

#### Delegation

##### Section A

#### Delegated Tasks 2024

In the context of its supervisory activities related to the assessment of the compliance of the CCP with Prudential Requirements, the NCA delegates to ESMA the following planned supervisory task:

Preparatory assessment of one validation of significant changes to risk models and parameters under Article 49 of EMIR, with respect to the establishment by ATHEXClear of a new credit risk policy. These changes, as communicated by the CCP, are as follows:

##### Credit Rating System

Introduction of an Internal Credit Rating System to assess creditworthiness of clearing members and enhancement of Regular Due Diligence Controls (incl. for setting non-prefunded order risk limit)

##### Margin

- New Intraday real-time Margin Calculation engine, Limits and Escalation Process
- New Liquidity (concentration) margin add-on
- New Credit risk margin add-on
- Limit positive Mark to Market recognition to avoid wrong way risk
- Intraday margin release upon completion of settlement

##### Collateral

- Minimum cash ratio for collateral depending on member credit rating
- Ability to pledge and value for margin coverage purposes intraday non-cash collateral
- Start accepting Government Bonds as eligible collateral (included already in the initial recognition of the CCP), including new haircut model calibration and limits

- New margin model calibration for bonds
- Enrich (add new) Stress Test Scenarios for Government Bonds

#### Default Fund

Default Fund surcharges for credit and concentration risk

#### Stress and Back Test

Change of exposures considered in the stress and back tests from 3-day to 2-day

## Section B

### Execution

ESMA will execute the delegated task as follows:

#### Phase 1 – assessing the completeness of the application

Description: ESMA will assess the completeness of the application for the establishment of a new credit risk policy, with respect to documentation relevant for the assessment of compliance with prudential requirements and the legislation in force.

Form of the deliverable: Notification by ESMA to the NCA whether the application could be deemed complete (completeness report)

Time limits: Within 10 business days from the receipt of the application, that can be extended in case of need to request additional information from the CCP, subject to applicable regulatory restrictions.

Conditions/Instructions: ESMA will identify any missing or incomplete documentation necessary for the assessment of the changes against the prudential requirements.

#### Process:

The NCA will assess and confirm significance of the planned model changes, with respect to the legislation in force, without the involvement of ESMA.

The NCA will promptly inform ESMA of the application received by the CCP and share submitted documentation, possibly on the same day.

Within ten business days of receiving the application, ESMA will identify if there is any missing

or incomplete documentation and either send its completeness report to the NCA or ask the NCA to request the CCP to provide further information specifying a deadline.

After receipt of any complementary documentation from the CCP, or if the CCP has not delivered the requested information within the specified deadline, ESMA will revise its draft completeness report. The NCA can use ESMA report to take a decision on the completeness of the application and inform ESMA accordingly.

#### Phase 2 – Draft validation report

Description: ESMA, according to the legislation in force, will conduct a risk assessment of the proposed changes against prudential requirements, submit to the NCA a draft validation report on the risk assessment of the application with regards to prudential requirements and provide any required assistance in respect of the presentation of any preliminary or final conclusions. ESMA will provide an update of the draft report to integrate any amendments implemented by the CCP to achieve a satisfactory assessment against the prudential requirements.

Form of the deliverable: Draft validation report

Time limits: Within 40 business days after completeness of the application or an alternative longer deadline otherwise agreed by the parties, subject to applicable regulatory restrictions.

Conditions/Instructions: The validation by the NCA and the validation by ESMA will remain two distinct and independent processes and measures will be taken by ESMA to avoid conflict of interests.

The draft validation report prepared by ESMA shall include the elements identified in article 47(3) of EMIR RTS and shall assess compliance of the changed risk model and parameters with the relevant prudential requirements. In performing this assessment, ESMA shall take into account common supervisory practices and approaches agreed by the ESMA Board of Supervisors or its CCPSC and any relevant best practices emerging from peer reviews of similar activities by competent authorities for CCPs.

During this period, ESMA staff may submit, through the NCA, questions and request supplementary information to be provided by the CCP within a specified deadline.

ESMA's own validation under Article 49 of EMIR will be approved by ESMA in accordance with the decision of the Board of Supervisors of 23 April 2015 (ESMA/BS/29rev) and will be kept separate from the work that is conducted under this agreement to support the NCA validation process.

#### Process:

Depending on the complexity of the change proposal, within 5 business days from the NCA's completeness decision, ESMA will propose a timeline and deadlines for its review, consistently with the legislation in force and its current workload. Within the following 2 business days, the final deadline for the submission of the draft report shall be agreed by the Parties.

The NCA can use the ESMA draft report to finalise its comprehensive risk assessment report. The NCA validation will be approved by the NCA governance.

ESMA will assist the NCA in presenting any findings and preliminary or final conclusions of the risk assessment report with regards to prudential requirements to the CCP. Such assistance may include the preparation of focused presentation material such as power point slides summarising the relevant findings and conclusions to be discussed with the CCP. Upon request by the NCA, ESMA staff will remotely join such discussion and present the pre-approved slides.

ESMA will also assist the NCA in presenting (or will present remotely) the conclusions of its model validation report with regards to prudential requirements to the CCP college.

ESMA will provide the NCA with presentation material, including power point slides summarising the report findings and conclusions.

ESMA will provide training to NCA officers on how to monitor and assess on-going compliance of the CCP with respect to the model changes. ESMA will prepare and submit slides to the NCA and present the slides at a (virtual) one-day meeting to be held after the approval of the model changes by the NCA. The implementation of the ongoing-monitoring mechanism is not included in the agreement.

## Section C

### Exclusion of scope

For the avoidance of doubt, on-site inspection, confirmation/assessment of implementation of the new models and follow-up of the implementation of recommendations that may be issued as a result of findings are not expected to form part of the deliverables and are not delegated to ESMA.

## Annex II

### Reimbursement for the delegated task

Task description	Fee amount <sup>(1)</sup>
Validation of a significant CCP model change under Article 49 of EMIR <sup>(2)</sup>	29,305
<b>Total Fee</b>	<b>29,305</b>

<sup>(1)</sup> The fee amount is calculated by multiplying the estimated daily cost of an FTE staff unit (quantified as 862 EUR per day) by the expected FTE days required to perform each task. The FTE annual fee is calculated using the average annual cost of a Temporary Agent (TA) and includes 'habillage costs' which are meant to cover operating expenditures.

<sup>(2)</sup> As member of a CCP College, ESMA performs its own review of CCP initiatives with respect to the introduction of changes to its risk models and parameters for the purpose of Article 49 of EMIR. Desk-based report on the significance of changes to risk models and parameters for the purpose of Article 49 of EMIR will thus require no incremental FTE resources compared those already allocated to ESMA participation in the CCP College; therefore no fee will be applied for this task.