



European Securities and
Markets Authority

Final Report

Regulatory technical standards on conditions under which additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorisation and conditions under which changes to the CCP's models and parameters are significant, and the procedures for consulting the college on whether or not those conditions are met (Articles 15(3) and 49(5) EMIR)





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ESMA REGULAR USE

31 March 2021
ESMA70-151-3373

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1 Legislative references, abbreviations and acronyms

Legislative references

<i>EMIR</i>	<i>European Market Infrastructures Regulation – Regulation (EU) No 648/2012 of the European Parliament and Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1)</i>
<i>EMIR 2.2</i>	<i>Regulation (EU) No 2019/2099 of the European Parliament and of the Council of 23 October 2019 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs (OJ L 322, 12.12.2019, p. 1)</i>
<i>ESMA Regulation</i>	<i>Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority) (OJ L 331, 15.12.2010, p. 84–119)</i>
<i>RTS on CCP requirements</i>	<i>Commission Delegated Regulation (EU) No 153/2013 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 requirements for central counterparties (OJ L 52, 23.2.2013, p. 41)</i>
<i>MiFIR</i>	<i>Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84)</i>
<i>RTS 2 of MiFIR</i>	<i>Commission Delegated Regulation (EU) 2017/583 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives (OJ L 87, 31.3.2017, p. 229)</i>
<i>RTS 23 of MiFIR</i>	<i>Commission Delegated Regulation (EU) 2017/585 of 14 July 2016 supplementing Regulation (EU) No 600/2014</i>

of the European Parliament and of the Council with regard to regulatory technical standards for the data standards and formats for financial instrument reference data and technical measures in relation to arrangements to be made by the European Securities and Markets Authority and competent authorities (OJ L 87, 31.3.2017, p. 368)

SFTR

Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012; OJ L 337, 23.12.2015, p. 1–34

ESMA Opinion

ESMA Opinion on Common indicators for new products and services under Article 15 and for significant changes under Article 49 of EMIR (ESMA/2016/1574, 15 November 2016)

Abbreviations and Acronyms

CCP	Central Counterparty
CP	Consultation Paper
CSD	Central Securities Depository
EBA	European Banking Authority
EC	European Commission
ESCB	European System of Central Banks
ESMA	European Securities and Markets Authority
MTF	Multilateral Trading Facility
NCA	National Competent Authority
OTC	Over-the-counter
OTF	Organised Trading Facility
RTS	Regulatory Technical Standards

2 Executive Summary

Reasons for publication

Regulation (EU) No 648/2012 (EMIR), as amended by Regulation (EU) 2019/2099 (EMIR 2.2), requires ESMA to develop:

1. in cooperation with the ESCB, regulatory technical standards specifying the conditions under which additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorisation and therefore require an extension of authorisation and also specifying the procedure for consulting the college established in accordance with Article 18 of EMIR on whether or not those conditions are met (Article 15(3) of EMIR); and
2. after consulting EBA, other relevant competent authorities and the members of the ESCB, regulatory technical standards specifying the conditions under which changes to the CCP's models and parameters are significant and therefore require validation by the national competent authority (NCA) and ESMA (Article 49(5) of EMIR).

ESMA published a Consultation Paper with its draft regulatory technical standards under Articles 15(3) and 49(5) of EMIR on 23 October 2020. The consultation ended on 16 November 2020. ESMA received 8 responses, out of which 1 was confidential.

This Final Report provides the final draft regulatory technical standards on conditions under which additional services and activities to which a CCP wishes to extend its business are not covered by the initial authorisation and therefore require an extension of authorisation, conditions under which changes to the CCP's models and parameters are significant and therefore require a validation, and the procedures for consulting the college on whether or not those conditions are met.

In accordance with Article 15(3) of EMIR, ESMA has cooperated with the European System of Central Banks (ESCB), and in accordance with Article 49(5), ESMA has consulted EBA, other relevant competent authorities and the members of the ESCB, in finalising these draft regulatory standards. ESMA also sought advice from the Securities and Markets Stakeholder Group.

The Final Report also takes into account the feedback provided by the respondents to the consultation.

Contents

Section 3 introduces the legal mandates and provides background to the subjects. Section 4 deals with the extension of services and activities by a CCP (Article 15 of EMIR) and covers both the overall approach as well as the actual conditions. Section 5 deals with

significant changes to the CCP's models and parameters (Article 49 of EMIR) and covers both the overall approach as well as the actual conditions.

The report presents the comments received from respondents to the consultation as well as the rationale for the decisions that have been made on whether and how to introduce some changes to the draft RTS that ESMA consulted on.

The Annexes contain the mandate for ESMA to develop these draft regulatory technical standards (Annex I), the cost-benefit analysis (Annex II) and the final draft regulatory technical standards (Annex III).

Next Steps

ESMA is submitting the Final Report, along with the final draft regulatory technical standards to the Commission. The Commission has three months to decide whether to endorse the regulatory technical standards (in the form of a Commission Delegated Regulation). Following the endorsement, the regulatory technical standards are then subject to non-objection by the European Parliament and the Council.

In addition, the ESMA Opinion on Common indicators for new products and services under Article 15 and for significant changes under Article 49 of EMIR (ESMA/2016/1574, 15 November 2016) as well as the CCP Question 6 of ESMA Q&A on the implementation of EMIR will be amended depending to the version of the regulatory technical standards upon entry into force.

3 Introduction and Background

1. Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019 (EMIR 2.2) amending Regulation (EU) No 648/2012 (EMIR) introduced several empowerments for ESMA to develop regulatory technical standards. In particular:
 - a. Article 15(3) of EMIR, as amended by EMIR 2.2, requires ESMA to develop, in cooperation with the ESCB, draft regulatory technical standards specifying the conditions under which additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorisation and therefore require an extension of authorisation in accordance with paragraph 1 of Article 15 and also specifying the procedure for consulting the college established in accordance with Article 18 on whether or not those conditions are met.
 - b. Article 49(5) of EMIR, as amended by EMIR 2.2, requires ESMA to develop, after consulting EBA, other relevant competent authorities and the members of the ESCB, draft regulatory technical standards specifying the conditions under which changes to the models and parameters referred to in paragraph 1 of Article 49 itself are significant.
2. The original EMIR (before EMIR 2.2 amendments) did not provide for a definition of what constitutes “additional services or activities not covered by the initial authorisation” or for definition of what constitutes “significant changes to the models and parameters”. Therefore, pursuant to Article 29(1)(a) of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority) (ESMA Regulation), for the purpose of building a common Union supervisory culture and consistent supervisory practices, as well as ensuring uniform procedures and consistent approaches throughout the Union, ESMA delivered the Opinion on Common indicators for new products and services under Article 15 and for significant changes under Article 49 of EMIR (ESMA/2016/1574, 15 November 2016; ESMA Opinion)¹.
3. On 23 October 2020, ESMA launched a public consultation on draft “regulatory technical standards on conditions under which additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorisation and conditions under which changes to the models and parameters are significant under EMIR²” with the deadline for consultation responses on 16 November 2020.
4. The proposals presented in the Consultation Paper (and the accompanying draft RTS) took into account and built upon the ESMA Opinion, as well as ESMA’s experience within EMIR colleges. ESMA proposed a pragmatic and flexible approach for identifying conditions under which additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorisation and therefore require an extension of

¹ https://www.esma.europa.eu/sites/default/files/library/2016-1574_-_opinion_on_significant_changes_for_ccps.pdf

² <https://www.esma.europa.eu/press-news/consultations/public-consultation-article-15-and-49-emir>

authorisation, and conditions under which changes to the models and parameters are significant and therefore require a validation. To this end it divided the conditions into criteria for an extension of authorisation and criteria for significant changes to the models and parameters on the one hand, and into indicators for an extension of authorisation and indicators for significant changes to the models and parameters on the other. As the criteria were objective, contained quantitative metrics and/or referred to core EMIR requirements, it was proposed that they be subject to a simplified college consultation procedure whereby when the CCP's NCA assesses that one or more of the criteria have been fulfilled by the CCP's proposed change, the college is simply consulted on whether it also considers that the criterion/criteria have been fulfilled. Since it was recognised that the indicators were less straightforward and covered a wider range of situations, it was proposed that they be subject to a more extensive college consultation procedure whereby when the CCP's NCA assesses that one or more of the indicators have been fulfilled by the CCP's proposed change, the NCA would carry out an initial analysis of whether an extension of authorisation for the purpose of Article 15 or a validation under Article 49(1a)-(1e) should be required; the college would then be consulted on whether it agrees with the NCA's initial analysis; however, while the NCA should take into account the views of the college, the final decision of whether an extension of authorisation/validation is required would remain with the NCA. The procedures for the consultation of the college were also specified in the CP (and the accompanying RTS).

5. The public consultation aimed at receiving stakeholders' feedback on a list of questions and on the draft regulatory technical standards. ESMA received 8 responses to the consultation, of which one was confidential. The vast majority of respondents were CCPs. This Final Report, and the accompanying final draft regulatory technical standards, take into account the feedback provided by the respondents to the public consultation.
6. In accordance with Article 15(3) of EMIR, ESMA has cooperated with the European System of Central Banks (ESCB), and in accordance with Article 49(5), ESMA has consulted EBA, other relevant competent authorities and the members of the ESCB, in finalising these draft regulatory standards. ESMA has also sought advice from the Securities and Markets Stakeholder Group.

4 Extension of activities and services by CCP (Article 15(3))

4.1 Introduction

7. Article 15(1) of EMIR provides that: "A CCP wishing to extend its business to additional services or activities not covered by the initial authorisation shall submit a request for extension to the CCP's competent authority. The offering of clearing services for which the CCP has not already been authorised shall be considered to be an extension of that authorisation. The extension of authorisation shall be made in accordance with the procedure set out under Article 17."

8. The original EMIR (before amendments introduced by EMIR 2.2) did not provide for a definition of what constitutes “additional services or activities not covered by the initial authorisation”. With the view that a common approach at Union level on the implementation of Articles 15 (and 49) of EMIR would foster coherence of supervisory practices regarding CCP colleges established under EMIR and foster consistent application of the relevant provisions of EMIR, ESMA delivered the ESMA Opinion. The ESMA Opinion set out circumstances in which services and activities should be considered additional and therefore a CCP would have to apply for an extension of its authorisation. It also provided for a non-exhaustive non-binding list of indicators that NCAs should consider when determining whether any activity or service is covered by the current authorisation for the purpose of Article 15 of EMIR. Additionally, the ESMA Opinion contained a procedure for consulting the college when any of the indicators are identified by the CCP’s competent authority.
9. In addition, ESMA published a Q&A (CCP Question 6(a) of the ESMA Q&A on the implementation of EMIR) which clarified that an extension of authorisation would be needed where the CCP intends to undertake additional activities or services which expose the CCP to new or increased risks, e.g. on classes of financial instruments with a different risk profile or that have material differences from the CCP’s existing product set.
10. EMIR 2.2 has amended Article 15 of EMIR and provided for a mandate to ESMA, in cooperation with the ESCB, to develop draft regulatory technical standards specifying the conditions under which additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorisation and therefore require an extension of authorisation and also specifying the procedure for consulting the college on whether or not those conditions are met.

4.2 Overall approach and college consultation

4.2.1 Consultation Paper (and accompanying draft RTS)

11. In the draft RTS presented in the CP, ESMA proposed to take into account the ESMA Opinion, ESMA’s experience within EMIR colleges, as well as the above mentioned Q&A. ESMA considered that as it would be difficult to provide for an exhaustive list of conditions that would cover every situation and, at the same time, prevent false positives, ESMA proposed to develop a pragmatic approach that would provide a degree of flexibility and discretion for competent authorities, and to divide the conditions into criteria and indicators.
12. As the presented criteria were deemed objective and clear-cut, it was proposed they be subject to a simplified college consultation on whether an extension of authorisation under Article 15 of EMIR should be required: it was proposed that when the CCP’s NCA assesses that one or more of the criteria have been fulfilled by the CCP’s proposed extension of its activities or services, the college would simply be consulted on whether it also considers that the criterion/criteria have been fulfilled.

13. On the other hand, as the indicators were considered less straightforward and covered a wider range of situations, it was proposed that they be subject to a more extensive college consultation on whether an extension of authorisation under Article 15 of EMIR should be required: it was proposed that when the CCP's NCA assesses that one or more of the indicators have been fulfilled by the CCP's proposed extension of its activities or services, the NCA would carry out an initial analysis of whether an extension of authorisation for the purpose of Article 15 should be required; the college would then be consulted on whether it agrees with the NCA's initial analysis; while the NCA would be required to take the views of the college into account when finalising its decision of whether an extension of authorisation in accordance with Article 15 should be required, the final decision (of whether an extension of authorisation is required) would remain with the NCA.
14. The CP (and the accompanying draft RTS) also clarified that if the NCA assesses that both a criterion/criteria and an indicator/indicators have been fulfilled by the CCP's proposed extension of its activities and services, only the college consultation in respect of the criteria would be conducted (i.e. there would not be two separate college consultations).

4.2.2 Summary of Consultation Responses

15. Three of the respondents generally agreed with the ESMA approach proposed in the CP to divide the conditions into criteria (which would be subject to a simplified college consultation procedure) and indicators (which would be subject to a more extensive college consultation procedure), subject to some modifications and clarifications of the actual criteria and indicators. These respondents also agreed with the notion of a college consultation (both for criteria and indicators), even though some questioned why a college consultation would be necessary if the NCA considers that a criterion is met.
16. Four of the respondents did not agree with the ESMA approach proposed in the CP to divide the conditions into criteria (which would be subject to a simplified college consultation procedure) and indicators (which would be subject to a more extensive college consultation procedure). Three of these respondents also disagreed with the notion of a college consultation (both for criteria and indicators).
 - a. These respondents generally argued that the approach proposed in the CP increases complexity and duration of the process, provides no certainty for CCPs, decreases possibilities for risk management, increases 'time-to-market' of new risk management products and services, could disincentivise innovation, and could create an unlevel playing field.
 - b. One of these respondents also suggested that the proposal transfers responsibilities from NCAs to ESMA (and respective colleges). In contrast to that, two of these respondents would prefer ESMA to take a more central role in the consultation process if a consultation was required.
 - c. The majority of these respondents instead proposed to have only one set of conditions, which would be clear, direct and objective, and should be defined in such a way that it is obvious for CCPs and NCAs whether a given situation

requires an extension of authorisation for the purposes of Article 15 of EMIR. Under such terms, they argue, there would be no need to consult the college.

- d. One of these respondents proposed two categories of conditions based on the urgency of the matter:
 - i. Category 1: where the CCP needs to react quickly to market events or it detects an error that needs to be corrected immediately, the CCP's NCA could decide to allow an immediate application of the modifications, before or without a college consultation envisaged in the draft RTS, but also, presumably before or without the actual authorisation procedure set out in the EMIR Level 1 text;
 - ii. Category 2: where the CCP is driven by its business consideration, the whole approval procedure can take place before the application of the modification.
- e. Some of these respondents proposed that only in unforeseen, exceptionally complicated and unusual circumstances which can give rise to some doubts on the part of the CCP or the NCA of whether an extension of authorisation is required, there should be a quick college consultation.

17. The majority of respondents (irrespective of whether they supported the notion of a college consultation) also highlighted that the proposed college consultation procedures do not contain any defined timelines of deadlines. They argued that (if a college consultation is included) the RTS should contain such timelines/deadlines and that they should be efficient and not lengthy.

18. Some of these respondents also argued that more detail should be provided regarding the whole process and the college consultation procedures, including the process for an NCA to be notified about the changes by the CCPs, what information/material the NCA's assessment and then the college's decision should be based on, what should be included in the NCA's application assessment, and how NCAs should consider the views expressed by the college members.

4.2.3 ESMA's Feedback

19. ESMA has considered, both for the CP (and the accompanying draft RTS) as well as this Final Report (and the accompanying final draft RTS), several approaches, including having only one list of conditions ('criteria') that would automatically trigger the extension of authorisation procedure (without a college consultation), having only one list of conditions ('indicators') that would require a college consultation but with NCAs retaining the final decision, having a non-exhaustive list of indicators vs. a closed list, and several combinations and permutations thereof.

20. ESMA fully appreciates the wish of stakeholders to have certainty over what qualifies as an extension of authorisation for the purposes of Article 15 of EMIR and to minimise lengthy

regulatory and approval processes. However, ESMA considers there are several shortcomings with having a single exhaustive list of conditions that would automatically trigger the extension of authorisation procedure (without a college consultation), as some of the respondents proposed.

21. First, ESMA believes that it would be extremely difficult to define an exhaustive list of automatic conditions that would cover every situation that should genuinely require an extension of authorisation. Therefore, ESMA would be faced with two options: i) define a narrow list of these conditions, which, however, ESMA believes, would result in many instances of where an extension of authorisation should be required but could not be; and ii) define a broader list of these conditions, which would inevitably lead to many false positives.
22. And while a single list of automatic conditions would provide absolute certainty and level playing field, ESMA considers it too rigid, impractical and potentially also risky, as if the first option (i.e. a narrow list of conditions) was chosen, it could reduce the view of regulators (both at the national and EU level) and potentially increase risks; and if the second option (i.e. a broad list of conditions) was chosen, it would increase rather than decrease the regulatory burden on CCPs, as well as regulators, which would be neither proportionate nor useful.
23. Second, ESMA is bound by the legal mandate provided in Article 15(3) of EMIR. This mandate clearly states that the RTS should not only specify the conditions under which additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorisation and therefore require an extension of authorisation in accordance with paragraph 1 of Article 15 of EMIR, but also specify the procedure for consulting the college established in accordance with Article 18 of EMIR on whether or not those conditions are met. Therefore, ESMA is of the view, that a college consultation is necessary in respect of all conditions and cannot be limited to e.g. indicators only or to some unforeseen or exceptional circumstances as suggested by some respondents.
24. ESMA also notes the proposal of one of the respondents to divide the conditions into two categories: i) urgent changes that could be approved by the NCA and could be applied by the CCP before the procedure proposed in the CP, as well as presumably before the actual authorisation procedure set out in Level 1 of EMIR, are completed; and ii) business driven changes in respect of which the whole approval process would take place before the application of the modification. ESMA would like to emphasise that the concept of the first category does not only contradict the legal mandate provided in Article 15(3) of EMIR, but it also appears to contradict the provisions regarding extension of authorisation set out EMIR Level 1. While in respect of significant changes to CCP's models and parameters, Article 49(1e) of EMIR provides for this possibility to a certain extent, where duly justified and subject to an agreement by ESMA and to an ex-post validation, Article 15 of EMIR or any other provisions in EMIR do not afford any such flexibility with regard to extension of authorisation.
25. Some respondents called for a more central role for ESMA in the consultation process, while, in contrast to that, one respondent believed that the proposal transfers

responsibilities from NCAs to ESMA (and respective colleges). As highlighted above, the legal mandate in Article 15(3) requires ESMA to specify the procedure for consulting the college on whether the conditions for an extension of authorisation are met. Therefore, while the ESMA proposal (presented in the CP) may indeed give some responsibilities to the college, this is due to the legal mandate, and in any case the level of responsibility does not deviate much from that currently provided for in the ESMA Opinion. In addition, as regards the indicators, the NCA still retains its discretion regarding the final decision following the college consultation (as is the case in the ESMA Opinion) and cannot be overruled by the college, so this responsibility is not transferred away from NCAs. Furthermore, ESMA does not share the view that the proposal transfers responsibilities to ESMA.

26. Consequently, ESMA maintains that while the approach presented in the CP may appear cumbersome to some stakeholders, it is the most pragmatic and practical approach, because it:
- a. fulfils the legal mandate provided in Article 15(3) of EMIR (by including a college consultation procedure for both criteria and indicators, while at the same time providing for a simplified procedure in respect of the criteria);
 - b. ensures convergence and level playing field while at the same time affording some level of flexibility and discretion (due to the 'semi-automatic' nature of the criteria and the more discretionary nature of the indicators subject to a more detailed college consultation procedure);
 - c. prevents false positives while at the same time ensuring that changes that should be subject to an extension of authorisation are really classified as such (by providing a list of semi-automatic criteria which ESMA believes are objective and clear-cut while subjecting the indicators, which are less straightforward, to a more rigorous analysis on whether an extension of authorisation should be required).
27. For these reasons, ESMA does not propose to change its overall approach in this Final Report (and the final draft RTS).
28. The vast majority of respondents pointed out that the college consultation procedures do not contain any timelines/deadlines. ESMA indeed considered including timelines/deadlines in the proposal presented in the CP, which would be along the lines of the timelines/deadlines specified in the ESMA Opinion. However, ESMA ultimately decided against it, as it was deemed more appropriate to specify such details via a different instrument, such as guidelines, which can be amended more quickly and easily if the circumstances so required.
29. However, given the overwhelming support, expressed in the responses to the public consultation, for including such timelines/deadlines in the RTS, ESMA has decided to specify the timelines/deadlines for the college consultation procedures in this Final Report (and the final draft RTS). The timelines/deadlines for the college consultation procedure in

respect of the indicators follow the timelines/deadlines for the college consultation procedure currently contained in the ESMA Opinion. Furthermore, the timelines/deadlines for the college consultation procedure in respect of the criteria are shorter due the less discretionary nature of the criteria. Therefore, CCPs should not be subject to lengthier procedures than they currently are under the ESMA Opinion.

30. Furthermore, ESMA wishes to point out that the timelines/deadlines for the actual extension of authorisation procedure are set out in EMIR (Level 1 text) and are not and cannot be dealt with in the RTS. However, these are maximum timelines/deadlines, and, therefore, where possible, the extension of authorisation procedure can be carried out within a shorter timeframe to keep time to market.
31. Regarding the point made by some respondents that the RTS should specify, for example, how the CCP should notify its NCA of its proposed changes or what material the NCA's assessment/analysis should be based on, ESMA has clarified in the final draft RTS (Article 4) that when a CCP intends to provide any additional activities or services, it needs to notify its NCA and provide all relevant information.

4.3 Criteria and Indicators for extension of authorisation

4.3.1 Consultation Paper (and accompanying draft RTS)

32. For the CP (and the accompanying draft RTS) when specifying the criteria and indicators, ESMA took into account the ESMA Opinion, the ESMA Q&A, as well as ESMA's experience in EMIR colleges.
33. The criteria were set out in Article 2 of the draft RTS (which accompanied the CP³). ESMA considered that the criteria were defined in a clear and objective manner and covered only new types of contracts, new types of trading platforms, new delivery and settlement mechanisms and new currencies.
34. The indicators were set out in Article 3 of the draft RTS (which accompanied the CP⁴). The indicators were more nuanced and covered a wider range of situations. They aimed to capture any new service or activity with a different risk profile or with material differences from the contracts already cleared by a CCP or which would expose the CCP to new or different risks.

4.3.2 Summary of Consultation Responses and ESMA's Feedback

35. Overall, the respondents expressed their support to the proposed list of criteria for an extension of authorisation, especially the criteria in Article 2(a) and 2(b) of the draft RTS,

³ https://www.esma.europa.eu/sites/default/files/library/esma70-151-3023_cp_article_15_and_49_emir_0.pdf

⁴ https://www.esma.europa.eu/sites/default/files/library/esma70-151-3023_cp_article_15_and_49_emir_0.pdf

while insisting on the importance to define them in a clear and objective manner, to ensure that the procedure triggering the application of Article 15 of EMIR is transparent.

36. A number of respondents specifically noted that adding a new contract to an existing market class should not constitute a service change under Article 15 of EMIR. ESMA shares this view but notes that the criterion under Article 2(a) of the draft RTS already meets this objective. In addition, some respondents argued that commodity derivatives should be excluded from this criterion, considering that they are of the same nature and do not constitute a change in the service offered. However, ESMA does not share the view that new commodity derivatives contracts are mere variants on existing contracts. For example, agricultural commodity derivatives, energy derivatives or metals derivatives would carry very different risks, linked to their specific features (e.g. with regards to the delivery process). Therefore, ESMA believes it is appropriate to distinguish between base products as defined under Table 2 of the Annex of MiFiR RTS 23 and has therefore maintained this criterion unchanged in the final draft RTS.
37. Some respondents considered that the criterion in Article 2(c) of the draft RTS should be removed, arguing that providing a new settlement or payment system would not systematically qualify as a material change of the services offered by the CCP. ESMA notes that in some cases such changes could warrant a detailed review under Article 15. In particular, establishing an account with a payment system or settlement bank which the CCP did not previously use (e.g. moving from central bank to commercial bank settlement) could materially impact the manner a service is offered by a CCP, both from an operational and risk management perspective. However, ESMA also notes that some other cases would generally be considered as less material, for example adding a new settlement bank where the CCP already relies on one or several settlement banks for the same purpose. Therefore, upon further reflection and after considering the feedback received in the public consultation, ESMA has decided to move this criterion to the list of indicators in the final draft RTS (Article 3(e) of the final draft RTS).
38. Regarding the criterion in Article 2(d) of the draft RTS on contracts referencing or involving a payment in a new currency, a few respondents were concerned that it may trigger a large number of Article 15 procedures, especially for CCPs clearing FX contracts. ESMA understands the concerns raised, and notes that the purpose of this criterion is mainly to capture cases where a payment in a new currency is introduced at the CCP level. Therefore, in order to accommodate the concerns expressed in the public consultation, this criterion has been restricted to the payment in a new currency (at the CCP level) aspect in the final draft RTS (Article 2(c) of the final draft RTS). The aspect regarding the introduction of contracts referencing a new currency (when the CCP was previously clearing the same contracts in a single currency) has been moved to the indicators list in the final draft RTS (Article 3(d)(iv) of the final draft RTS).
39. Those respondents who disagreed with the overall approach of dividing the conditions into criteria and indicators (and with the respective college consultations), also proposed to delete the vast majority of the indicators or suggested they may fall under Article 49 of EMIR instead. However, most respondents who agreed with the division into criteria and indicators were generally satisfied with the list of proposed indicators. As explained in detail

in the previous section, ESMA does not propose to change its overall approach and therefore maintains a list of indicators in the final draft RTS. However, ESMA has removed some of the indicators, as well as revised and clarified some of them, in order to accommodate the comments received, and to ensure that the indicators are not triggered excessively, as outlined below.

40. Regarding the indicator in Article 3(a) of the draft RTS on the adaptation of a CCP's risk management framework, several respondents indicated that such changes in key parameters of a risk model should probably fall under Article 49 instead. After assessing the comments received and considering the need to ensure a clear distinction between the two processes, ESMA has deleted this indicator in the final draft RTS.
41. The sub-point (iii) of the indicator in Article 3(b) of the draft RTS (now Article 3(a) of the final draft RTS), regarding the implementation of a new structure of margin accounts not already offered by another business line of the CCP, has also been deleted from the final draft RTS due to its potential overlap with the criteria/indicators for significant changes to CCP's models and parameters.
42. Similarly, some responses noted that the indicator in Article 3(d) of the draft RTS on the process for obtaining prices may be overlapping with the indicator in Article 8(d) of the draft RTS on the conditions for a significant change. In order to reduce the risk of confusion between the two processes, ESMA has decided to remove this indicator in the final draft RTS.
43. The indicator in Article 3(f)(ii) of the draft RTS (Article 3(d)(ii) of the final draft RTS) has been clarified and restricted to the aspect of contracts referencing underlyings that have issuers with a materially different credit worthiness in the final draft RTS, while the aspects relating to issuers in jurisdictions with different levels of legal certainty and currencies with different levels of transferability or different pegging regimes have been deleted in the final draft RTS, as they were considered not precise enough.
44. The indicator in Article 3(f)(iv) of the draft RTS regarding the introduction of contracts more significantly impacted by a given risk factor than the contracts already cleared has been deleted in final draft RTS as it was perceived by the respondents as too vague.
45. Several respondents also requested further clarifications on a series of indicators the description of which was perceived as too vague. Where relevant, ESMA has incorporated minor amendments in order to facilitate the interpretation of these indicators.
46. In addition, one respondent asked to clarify that the indicator in Article 3(f)(i) of the draft RTS (Article 3(d)(i) of the final draft RTS) on the introduction of derivatives referencing new indexes / benchmarks would not apply in the context of the IBOR reform, where similar benchmarks and fallback rates will be introduced. ESMA confirms that it was not the intention but does not find any reason to modify this indicator, considering that the indicator only targets a situation where a CCP would have been clearing only one single index or benchmark prior to the extension. It is therefore unlikely that the indicator would be

triggered in that scenario. It is also worth mentioning that this is only an indicator, i.e. that in any case no automatic procedure would be triggered.

5 Significant changes to CCP's models and parameters (Article 49(5))

5.1 Introduction

47. Article 49(1) of EMIR, as amended by EMIR 2.2, provides that: “A CCP shall regularly review the models and parameters adopted to calculate its margin requirements, default fund contributions, collateral requirements and other risk control mechanisms. It shall subject the models to rigorous and frequent stress tests to assess their resilience in extreme but plausible market conditions and shall perform back tests to assess the reliability of the methodology adopted. The CCP shall obtain independent validation, shall inform its competent authority and ESMA of the results of the tests performed and shall obtain their validation in accordance with paragraphs 1a, 1b, 1c, 1d and 1e before adopting any significant change to the models and parameters.”
48. The original version of EMIR did not provide for a definition of what constitutes “significant change to the models and parameters”. With the view that a common approach at Union level on the implementation of Articles 15 and 49 of EMIR would foster coherence of supervisory practices regarding CCP colleges established under EMIR and foster consistent application of the relevant provisions of EMIR, ESMA delivered the ESMA Opinion. The ESMA Opinion sets out a non-exhaustive non-binding list of indicators that NCAs should consider when determining whether any change to the models and parameters is considered significant for the purpose of Article 49 of EMIR. Additionally, the ESMA Opinion contains a procedure for consulting the college when any of the indicators are identified by the CCP's competent authority.
49. EMIR 2.2 has amended Article 49 of EMIR and provided for a mandate to ESMA, after consulting EBA, other relevant competent authorities and the members of the ESCB, to develop draft regulatory technical standards specifying the conditions under which changes to the models and parameters are significant and therefore require a validation by the NCA and ESMA.

5.2 Overall approach and college consultation

5.2.1 Consultation Paper (and accompanying draft RTS)

50. In the CP (and the accompanying draft RTS), ESMA proposed to take into account the ESMA Opinion and ESMA's experience within EMIR colleges. ESMA considered that as it would be difficult to provide for an exhaustive list of conditions that would cover every situation while at the same time preventing false positives, ESMA proposed to mirror the

approach suggested for Article 15 of EMIR and divide the conditions into criteria and indicators, as well as to replicate the college consultation procedures.

51. As the presented criteria were objective, contained quantitative metrics and referred to core EMIR parameters, it was proposed they be subject to a simplified college consultation on whether the validation under Article 49(1a)-(1e) of EMIR should be required: it was proposed that when the CCP's NCA assesses that one or more of the criteria have been fulfilled by the CCP's proposed change to its model and parameters, the college would simply be consulted on whether it also considers that the criterion/criteria have been fulfilled by the CCP's proposed change.
52. On the other hand, as the indicators were deemed less straightforward, covered a wider range of situations, and contained lower quantitative thresholds, it was proposed they be subject to a more extensive college consultation on whether the validation procedure under Article 49(1a)-(1e) of EMIR should be required: it was proposed that when the CCP's NCA assesses that one or more of the indicators have been fulfilled by the CCP's proposed change to its models and parameters, the NCA should carry out an initial analysis of whether the change is significant and a validation in accordance with Article 49(1a)-(1e) should be required; the college would then be consulted on whether it agrees with the NCA's initial analysis; while the NCA would be required to take the views of the college into account when finalising its decision of whether the change is indeed significant, the final decision of whether the change is significant (and a validation of that change in accordance with Article 49(1a)-(1e) is required) would remain with the NCA.
53. The CP also clarified that if the NCA assesses that both a criterion/criteria and an indicator/indicators have been fulfilled by the CCP's proposed change to its models and parameters, only the college consultation in respect of the criteria should be conducted (i.e. there would not be two separate college consultations).

5.2.2 Summary of Consultation Responses

54. The responses received in respect of Article 49 mirrored those in respect of Article 15.
55. Three of the respondents generally agreed with the ESMA approach proposed in the CP to divide the conditions into criteria (which would be subject to a simplified college consultation procedure) and indicators (which would be subject to a more extensive college consultation procedure), subject to some modifications/clarifications of the actual criteria and indicators. These respondents also agreed with the notion of a college consultation (both for criteria and indicators), even though some questioned why a college consultation would be necessary if the NCA considers that a criterion is met.
56. Four of the respondents did not agree with the ESMA approach proposed in the CP to divide the conditions into criteria (which would be subject to a simplified college consultation procedure) and indicators (which would be subject to a more extensive college consultation procedure). Three of these respondents also disagreed with the notion of a college consultation (both for criteria and indicators).

- a. These respondents generally argued that the approach proposed in the CP increases complexity and duration of the process, provides no certainty for CCPs, decreases possibilities for risk management, increases 'time-to-market' of new risk management products and services, could disincentivise innovation, and could create an unlevel playing field.
 - b. One of these respondents also suggested that the proposal transfers responsibilities from NCAs to ESMA (and respective colleges). In contrast to that, two of these respondents would prefer ESMA to take a more central role in the consultation process if a consultation was required.
 - c. The majority of these respondents instead proposed to have only one set of conditions, which would be clear, direct and objective, and should be defined in such a way that it is obvious for CCPs and NCAs whether a given situation requires a validation in accordance with Article 49 of EMIR. Under such terms, they argue, there would be no need to consult the college.
 - d. One of these respondents proposed two categories of conditions based on the urgency of the matter:
 - i. Category 1: where the CCP needs to react quickly to market events or it detects an error that needs to be corrected immediately, the CCP's NCA could decide to allow an immediate application of the modifications, before or without a college consultation envisaged in the draft RTS, but also, presumably before or without the actual validation procedure set out in the EMIR Level 1 text;
 - ii. Category 2: where the CCP is driven by its business consideration, the whole approval procedure can take place before the application of the modification.
 - e. Some of these respondents proposed that only in unforeseen, exceptionally complicated and unusual circumstances which can give rise to some doubts on the part of the CCP or the NCA of whether a validation is required, there should be a quick college consultation.
57. The majority of respondents also emphasised that particularly in the context of Article 49 of EMIR, it is vital for CCPs to be able to react quickly, and promptly adjust the relevant models and parameters, to ensure proper risk management and address any stability risks, especially in times of crisis, such as the COVID-19 pandemic.
58. The majority of respondents (irrespective of whether they supported the notion of a college consultation) also highlighted that the proposed college consultation procedures do not contain any defined timelines of deadlines. They argued that (if a college consultation is included) the RTS should contain such timelines/deadlines and that they should be efficient and not lengthy.

59. Some of these respondents also argued that more detail should be provided regarding the whole process and the college consultation procedures, including the process for an NCA to be notified about the changes by the CCPs, what information/material the NCA's assessment and then the college's decision should be based on, what should be included in the NCA's application assessment, and how NCAs should consider the views expressed by the college members.

5.2.3 ESMA's Feedback

60. ESMA has considered, both for the CP (and the accompanying draft RTS) as well as this Final Report (and the accompanying final draft RTS), several approaches, including having only one list of conditions ('criteria') that would automatically trigger the validation procedure (without a college consultation), having only one list of conditions ('indicators') that would require a college consultation but with NCAs retaining the final decision, having a non-exhaustive list of indicators vs. a closed list, and several combinations and permutations thereof.

61. ESMA fully appreciates the wish of stakeholders to have certainty over what changes are considered significant for the purposes of Article 49 of EMIR and to minimise lengthy regulatory and approval processes. However, ESMA considers there are several shortcomings with having a single exhaustive list of conditions that would automatically trigger the validation procedure (without a college consultation), as some of the respondents proposed.

62. First, ESMA believes that it would be extremely difficult to define an exhaustive list of automatic conditions that would cover every situation that should genuinely require a validation. Therefore, ESMA would be faced with two options: i) define a narrow list of these conditions, which, however, ESMA believes, would result in many instances of where a validation should be required but could not be; and ii) define a broader list of these conditions, which would inevitably lead to many false positives.

63. And while a single list of automatic conditions would provide absolute certainty and level playing field, ESMA considers it too rigid, impractical and potentially also risky, as if the first option (i.e. a narrow list of conditions) was chosen, it could reduce the view of regulators (both at the national and EU level) and potentially increase risks; and if the second option (i.e. a broad list of conditions) was chosen, it would increase rather than decrease the regulatory burden on CCPs, as well as regulators, which would be neither proportionate nor useful.

64. Second, while the mandate in Article 49(5) of EMIR does not explicitly provide for a college consultation, ESMA decided to replicate the approach used for Article 15 of EMIR also for Article 49 of EMIR, because i) as highlighted above, ESMA believes that it is not possible to specify an exhaustive list of automatic conditions that would cover every change that should be considered significant and at the same time avoid false positives; ii) in the absence of an exhaustive list of automatic conditions (for the reasons explained in the previous point), a certain degree of discretion is necessary to further assess the

less straight-forward situations (i.e. the indicators), which if exercised solely by competent authorities without a college consultation could lead to divergent supervisory practices and outcomes across the Union; and iii) ESMA believes it is important to ensure coherence between the provisions in respect of Article 15 of EMIR and Article 49 of EMIR. Indeed, ESMA considers that subjecting the criteria and indicators for significant changes to CCP's models and parameters to college consultations is a necessary procedural step in order to ensure a consistent and meaningful application of Article 49 of EMIR across the Union and to ensure a proper execution of the mandate in Article 49(5) of EMIR.

65. Some respondents called for a more central role for ESMA in the consultation process, while, in contrast to that, one respondent believed that the proposal transfers responsibilities from NCAs to ESMA (and respective colleges). While the ESMA proposal (presented in the CP) may indeed give some responsibilities to the college, the level of responsibility does not deviate much from that provided for in the ESMA Opinion: the level of involvement of the college in respect of the criteria is rather limited, and in addition, as regards the indicators, the NCA still retains its discretion regarding the final decision following the college consultation and cannot be overruled by the college (as is the case in the ESMA Opinion), so this responsibility is not transferred away from NCAs. Furthermore, ESMA does not share the view that the proposal transfers responsibilities to ESMA.
66. Consequently, ESMA maintains that while the approach presented in the CP may appear cumbersome to some stakeholders, it is the most pragmatic and practical approach, because it:
 - a. prevents false positives while at the same time ensuring that changes that should be considered significant are really classified as such (by providing a list of semi-automatic criteria which ESMA believes are objective and clear-cut while subjecting the indicators, which are less straightforward, to a more rigorous analysis on whether a validation should be required).
 - b. ensures convergence and level playing field while at the same time affording some level of flexibility and discretion (due to the 'semi-automatic' nature of the criteria and the more discretionary nature of the indicators subject to a more detailed college consultation procedure);
 - c. ensures consistency and coherence with the approach used for Article 15(3).
67. For these reasons, ESMA does not propose to change its overall approach in this Final Report (and the final draft RTS).
68. ESMA shares the view of the respondents that CCPs should be able to act without any undue delays in order to ensure proper risk management and address any stability risks, especially in times of crisis such as the COVID-19 pandemic. ESMA would like to point out that Article 49(1e) of EMIR indeed permits an NCA, in agreement with ESMA, to allow for a provisional adoption of a significant change of models and parameters prior to their validations where duly justified. ESMA is of the view that if an NCA considers that a criterion

or an indicator for significant changes to CCP's models and parameters is met by the CCP's proposed change, and at the same time the NCA considers that there is a need for an urgent adoption of that proposed change, the NCA should not be prevented from launching the procedure for a provisional adoption pursuant to Article 49(1e) of EMIR in parallel with conducting the appropriate college consultation procedure pursuant to the final draft RTS, including in cases where the NCA's initial analysis considers that a validation in respect of the CCP's proposed change does not have to be required. Therefore, ESMA has included a recital in the final draft RTS to reflect this.

69. The vast majority of respondents pointed out that the college consultation procedures do not contain any timelines/deadlines. ESMA indeed considered including timelines/deadlines in the proposal presented in the CP, which would be along the lines of the timelines/deadlines specified in the ESMA Opinion. However, ESMA ultimately decided against it, as it was deemed more appropriate to specify such details via a different instrument, such as guidelines, which can be amended more quickly and easily if the circumstances so required.
70. However, given the overwhelming support, expressed in the responses to the public consultation, for including such timelines/deadlines in the RTS, ESMA has decided to specify the timelines/deadlines for the college consultation procedures in this Final Report (and the final draft RTS). The timelines/deadlines for the college consultation procedure in respect of indicators follow the timelines/deadlines for the college consultation procedure currently contained in the ESMA Opinion. Furthermore, the timelines/deadlines for the college consultation procedure in respect of criteria are shorter due to the less discretionary nature of the criteria. Therefore, CCPs should not be subject to lengthier procedures than they currently are under the ESMA Opinion.
71. Regarding the point made by some respondents that the RTS should specify, for example, how the CCP should notify its NCA of its proposed changes or what material the NCA's assessment/analysis should be based on, ESMA has clarified in the final draft RTS (Article 10(1)) that when a CCP intends to adopt any change to its models and parameters, it needs to notify its NCA and provide all relevant information.

5.3 Criteria and Indicators for significant changes to CCP's models and parameters

5.3.1 Consultation Paper (and accompanying draft RTS)

72. For the CP (and the accompanying draft RTS) when specifying the criteria and indicators, ESMA took into account the ESMA Opinion as well as ESMA's experience in EMIR colleges.

73. The criteria were set out in Article 7 of the draft RTS (which accompanied the CP⁵). ESMA considered that the criteria were defined in a clear and objective manner as they included robust quantitative thresholds or other qualifications to assess the impact of the change or related to the core elements of models and parameters and to the requirements contained in the RTS on CCP requirements. The indicators were set out in Article 8 of the draft RTS (which accompanied the CP⁶). The indicators were more nuanced and covered a wider range of situations, they therefore included less onerous thresholds or qualifications.
74. In order to avoid any circumvention and ensure meaningful assessment, ESMA suggested assessing the impact of each change using the maximum impact observed over a lookback period of at least six months, with calculations to be run at CCP, CM or margin account level where relevant, and based on actual historical production portfolios.

5.3.2 Summary of Consultation Responses and ESMA's Feedback

75. As a general comment, several respondents asked to clarify that only changes linked to a modification of a model or a methodology should be subject to the Article 49. In particular, changes of parameters which result from routine calibration updates performed daily, periodically or on an ad hoc basis based on market price changes or changes in CCPs' exposure to individual participants should not trigger the Article 49 procedure. ESMA has therefore clarified this issue in the final draft RTS (Article 10(2)).
76. Regarding the assessment of the impact of each change (both for criteria and indicators), one respondent suggested that instead of using a six months lookback period, CCPs should be asked to use at least three data points in different dates of the past year. ESMA disagrees with this approach, which would leave too much discretion when assessing the impact of the changes and may allow some form of window-dressing. The final draft RTS has therefore been left unchanged in this regard.
77. Some respondents generally agreed with the list of criteria for significant changes to the models and parameters. Several respondents however noted that since the criteria are semi-automatic (i.e. subject to a simplified college consultation procedure only), it should be made sure that the list is narrow and sufficiently clear.
78. In addition, several respondents argued that the thresholds defined for some of the criteria (e.g. Article 7(a), 7(c), 7(g) of the draft RTS) may be too restrictive, or too low, with a risk of triggering multiple procedures. On one hand, ESMA notes that several of these quantitative thresholds were already considered in the ESMA Opinion, and that it did not generate an excessive number of Article 49 procedures. On the other hand, ESMA acknowledges that the Opinion thresholds concerned indicators which are subject to further analysis and more discretion, while the criteria of the draft RTS are 'semi-automatic'. Considering all the above, ESMA has reviewed the thresholds levels and increased the thresholds in Article 8(a) (relating to total pre-funded financial resources), Article 8(c)

⁵ https://www.esma.europa.eu/sites/default/files/library/esma70-151-3023_cp_article_15_and_49_emir_0.pdf

⁶ https://www.esma.europa.eu/sites/default/files/library/esma70-151-3023_cp_article_15_and_49_emir_0.pdf

(relating to margin module), Article 8(g) (relating to stress test scenarios for the purpose of determining default fund exposures) in the final draft RTS.

79. Some respondents argued that the criterion in Article 7(d) of the draft RTS (Article 8(d) of the final draft RTS) on EMIR core margin parameters should be removed from the list, considering that it may prevent CCPs to readily update their parameters, e.g. to adapt to market conditions. ESMA does not share this view. Given their impact on a CCP's risk model, regular updates of the calibration of such core parameters should be avoided, and in any case should be reviewed carefully. It is therefore suggested not to update this criterion in the final draft RTS.
80. Some respondents argued that the criterion in Article 7(e) of the draft RTS (Article 8(e) of the final draft RTS) on portfolio offsets between instruments should be evaluated on the level of asset class instead of clearing member level, in order to avoid triggering an excessive number of Article 49 procedures. Considering the semi-automatic nature of the criteria, ESMA has re-drafted this criterion, so that the impact may be evaluated on a more comprehensive basis, on the basis of the total margin requirements at asset class level.
81. Regarding the criterion in Article 7(h) of the draft RTS (Article 8(h) of the final draft RTS) on liquidity risk, some respondents suggested that the impact should be assessed on a total liquidity needs only and not at currency levels. Respondents argued that most CCPs would have high liquidity needs in their home currencies, and smaller needs in other currencies. ESMA disagrees with this approach, as CCPs need to ensure that their liquidity framework is robust in any of the currencies cleared, independently of the relative amounts cleared. However, in order to balance both dimensions, the threshold on individual currencies has been increased in the final draft RTS.
82. Some respondents further argued that the criterion in Article 7(i) of the draft RTS on the list of eligible collateral should be further clarified or narrowed. ESMA notes that the purpose of this criterion is to capture the introduction of new type collateral with a materially different risk profile. However, it was found particularly complex to further specify the conditions under which the new collateral would bring additional risks to the CCP. In order to avoid triggering too many significant changes, ESMA has therefore moved sub-points (i) and (ii) of this criterion to the list of indicators (Article 9(g) of the final draft RTS), while deleting sub-point (iii) of this criterion completely.
83. Finally, the criterion under Article 7(j) of the draft RTS (Article 8(i) of the final draft RTS) has been modified to remove sub-point (ii) relating to single instruments haircuts, as it was considered by some respondents that it could potentially trigger multiple procedures for non-material changes.
84. Those respondents who disagreed with the overall approach of dividing the conditions into criteria and indicators (and with the respective college consultations), also proposed to delete the vast majority of the indicators. As explained in detail in the previous section, ESMA does not propose to change its overall approach and therefore maintains a list of indicators in the final draft RTS. However, ESMA has modified some of them, including by

increasing some thresholds, in order to accommodate the comments received, and to ensure that the indicators are not triggered excessively.

85. As with the criteria, many responses challenged the materiality of the thresholds defined for indicators, arguing that they may trigger multiple Article 49 procedures. For consistency with the thresholds in respect of the criteria under Article 8 of the final draft RTS, and to ensure that the indicators are not triggered excessively, ESMA has reviewed the indicators thresholds levels and increased them for the indicators in Article 9(a)(i) and 9(a)(iv) of the final draft RTS.
86. In addition, the indicator in Article 8(c) of the draft RTS (Article 9(c) of the final draft RTS) on liquidity needs has also been modified in the final draft RTS, by increasing the threshold regarding liquidity needs in any currency, for consistency with the criterion under Article 8(h) of the final draft RTS.
87. Furthermore, some responses suggested to include a quantitative threshold on the indicator in Article 8(d) of the draft RTS (Article 9(d) of the final draft RTS), as the indicator was perceived as too broad and potentially capturing non-material changes. ESMA has therefore included in the final draft RTS a quantitative threshold for this indicator on margin requirements for the classes of financial instruments affected by the change.
88. Finally, one respondent asked to clarify that the scope of the indicator in Article 8(f) of the draft RTS (Article 9(f) of the final draft RTS) is limited to access model for clearing members, to avoid confusion with open access provisions (between CCPs and trading venues) under Articles 7 and 8 of EMIR and Articles 35 and 36 of MiFIR or CSD access under Article 53 of CSDR. The indicator in the final draft RTS has therefore been amended accordingly.
89. Several respondents also requested further clarifications on a series of criteria and indicators the description of which was perceived as too vague or not precise enough. Where relevant, ESMA has incorporated minor amendments in order to facilitate the interpretation of these criteria and indicators.

6 Annexes

6.1 Annex I

Legislative mandate to develop technical standards

Article 15(3) of EMIR 2.2 states:

“In order to ensure consistent application of this Article, ESMA shall, in cooperation with the ESCB, develop draft regulatory technical standards specifying the conditions under which additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorisation and therefore require an extension of authorisation in accordance with paragraph 1 of this Article and also specifying the procedure for consulting the college established in accordance with Article 18 on whether or not those conditions are met.

ESMA shall submit those draft regulatory technical standards to the Commission by 2 January 2021.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.”

Article 49(5) of EMIR 2.2 provides:

“To ensure uniform conditions of application of this Article, ESMA shall, after consulting EBA, other relevant competent authorities and the members of the ESCB, develop draft regulatory technical standards specifying the conditions under which changes to the models and parameters referred to in paragraph 1 are significant.

ESMA shall submit those draft regulatory technical standards to the Commission by 2 January 2021.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.”

6.2 Annex II

Cost-benefit analysis

1. Introduction

Pursuant to Article 10(1) of the ESMA Regulation, ESMA is empowered to develop draft regulatory technical standards where the European Parliament and the Council delegate power to the Commission to adopt regulatory technical standards (RTS) by means of delegated acts under Article 290 TFEU in order to ensure consistent harmonisation in the areas specifically set out in the legislative acts within the scope of action of ESMA. The same article obliges ESMA to conduct open public consultations on draft RTS and to analyse the related potential costs and benefits, where appropriate. Such consultations and analyses shall be proportionate in relation to the scope, nature and impact of the draft RTS.

Regulation (EU) No 648/2012 (EMIR), as amended by Regulation (EU) 2019/2099 (EMIR 2.2), requires ESMA to develop:

1. In cooperation with the ESCB, regulatory technical standards specifying the conditions under which additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorisation and therefore require an extension of authorisation and also specifying the procedure for consulting the college established in accordance with Article 18 of EMIR on whether or not those conditions are met (Article 15(3) of EMIR); and
2. after consulting EBA, other relevant competent authorities and the members of the ESCB, regulatory technical standards specifying the conditions under which changes to the CCP's models and parameters are significant and therefore require validation by the national competent authority (NCA) and ESMA (Article 49(5) of EMIR).

In carrying out a cost benefit analysis on the final draft RTS under Article 15(3) and 49(5) of EMIR it should be noted that the main policy decisions have already been taken under EMIR and the impact of such policy decisions have already been analysed and published by the Commission and that ESMA does not have the power to deviate from the legal mandates set out in EMIR (Articles 15(3) and 49(5)).

It should be also noted that the 'original' EMIR (before EMIR 2.2 amendments) did not provide for a definition of what constitutes "additional services or activities not covered by the initial authorisation" or for definition of what constitutes "significant changes to the models and parameters". Therefore, pursuant to Article 29(1)(a) of the ESMA Regulation, for the purpose of building a common Union supervisory culture and consistent supervisory practices, as well as ensuring uniform procedures and consistent approaches throughout the Union, ESMA delivered the ESMA Opinion (on Common indicators for new products and services under Article 15 and for significant changes under Article 49 of EMIR). The final draft RTS (presented in the Final Report) takes into account and builds upon the ESMA Opinion, as well as ESMA's experience within EMIR colleges.

The analysis that follows also takes into account the responses received to the consultation paper.

2. Article 15(3) EMIR

The objective of the mandate in Article 15(3) of EMIR is to ensure consistent application of Article 15 of EMIR and to further promote convergence on supervisory decisions, by specifying the conditions under which additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorisation and therefore require an extension of authorisation and also specifying the procedure for consulting the college established in accordance with Article 18 of EMIR on whether or not those conditions are met.

ESMA has considered several approaches of how to most efficiently specify the conditions for extension of authorisation in order to fulfil the legal mandate and to ensure convergence, including having a single list of conditions ('criteria') that would automatically trigger the extension of authorisation procedure (without a college consultation), having a non-exhaustive list of conditions ('indicators') that would require a college consultation but with NCAs retaining discretion over the final decision, and several combinations and permutations thereof.

Option 1: closed list of automatic criteria with no college consultation

Half of the respondents to the public consultation would prefer only one list of conditions ('criteria') that would be defined in a very narrow manner and that would automatically trigger the extension of authorisation procedure pursuant to Article 15 of EMIR without any consultation with the college. While a single binding (automatic) list of criteria would certainly ensure convergence, there is a danger that if it was defined narrowly, as proposed by these respondents, it would not capture all services and activities that ESMA believes should be subject to the extension of authorisation procedure for the purpose of Article 15 of EMIR. In contrast, if such a list of automatic conditions was defined too broadly, it could result in many false positives and increase regulatory burden on CCPs. Furthermore, and most importantly, the mandate in Article 15(3) also stipulates that ESMA should also specify the procedure for consulting the college established in accordance with Article 18 of EMIR on whether or not the conditions are met. Therefore, ESMA considers that this option does not fulfil the legal mandate of Article 15(3) of EMIR and could therefore not be used.

Option 2: non-exhaustive list of indicators with a college consultation and NCA discretion over final decision

None of the respondents expressed any support for a single list of non-exhaustive indicators that would require a college consultation on whether an extension of authorisation for the purpose of Article 15 of EMIR should be required. Under this option, while the NCA would have to take into account the views expressed by the college during the consultation process, the NCA would nevertheless retain a discretion over the final decision of whether the extension of authorisation procedure for the purpose of Article 15 should be required. In addition, having a non-exhaustive list of indicators would mean that the NCA would also have a discretion to launch the college consultation procedure in other situations than those specified in the list of indicators. It is to be noted that the list of indicators contained in the ESMA Opinion is indeed

non-exhaustive. ESMA is of the view that this option would not fulfil the mandate provided in Article 15(3) of EMIR, because it would not ensure convergence and consistent supervisory practices due to the very discretionary nature of this option. Furthermore, it would increase uncertainty for CCPs due to the level of discretion this approach would afford.

Option 3: combination of a list of (semi)automatic criteria and a list of indicators with a college consultation

This was the option chosen by ESMA in the CP (and the accompanying draft RTS). Three respondents expressed their support for this approach. Under this option, the conditions would be divided into criteria and indicators.

The criteria would be defined in an objective and clear-cut manner; they could be automatic (i.e. automatically triggering the extension of authorisation procedure for the purpose of Article 15 of EMIR without a college consultation) or 'semi-automatic', i.e. requiring a simplified college consultation (on whether the extension of authorisation procedure for the purpose of Article 15 of EMIR should be triggered). However, due to the mandate in Article 15(3), ESMA opted for 'semi-automatic' criteria (i.e. the criteria would require a simplified college consultation) in the CP (and the accompanying draft RTS).

The indicators would be more nuanced and cover a wider range of situations. Therefore, for the indicators, a more extensive college consultation (on whether an extension of authorisation for the purpose of Article 15 of EMIR should be required), along the lines of the college consultation procedure specified in the ESMA Opinion, as well as a more detailed analysis, would be required, but the NCA would retain a discretion over the final decision (of whether an extension of authorisation for the purpose of Article 15 of EMIR should be required). The list of indicators could be either closed or non-exhaustive. The list of indicators contained in the ESMA Opinion is non-exhaustive. However, ESMA considers that a non-exhaustive list of indicators would provide too much uncertainty to CCPs and more discretion than necessary. Therefore, ESMA opted for a closed list of indicators in the CP (and the accompanying draft RTS).

ESMA maintains that while this approach may appear cumbersome to some stakeholders, it is the most efficient, pragmatic and practical approach, because it: i) fulfils the legal mandate provided in Article 15(3) of EMIR; ii) ensures convergence and level playing field while at the same time affording some level of flexibility and discretion; iii) prevents false positives while at the same time ensuring that activities and services that should be subject to an extension of authorisation are really classified as such.

While there may be some additional costs associated with this option, ESMA is of the view that the positives, as highlighted above, outweigh these costs. In addition, a similar approach is already in place at the moment under the ESMA Opinion. Therefore, ESMA has maintained this approach in the Final Report (and the accompanying final draft RTS).

3. Article 49(5) EMIR

The objective of the mandate in Article 49(5) of EMIR is to ensure consistent application of Article 49 and further promote convergence on supervisory decisions, by specifying the conditions under which changes to the CCP's models and parameters are significant and therefore require a validation by the NCA and ESMA.

ESMA has considered several approaches of how to most efficiently specify the conditions for significant changes to CCP's models and parameters in order to fulfil the legal mandate and to ensure convergence, including having a single list of conditions ('criteria') that would automatically trigger the validation procedure pursuant to Article 49(1a)-(1e) of EMIR (without a college consultation), having a non-exhaustive list of conditions ('indicators') that would require a college consultation but with NCAs retaining discretion over the final decision, and several combinations and permutations thereof.

Option 1: closed list of automatic criteria with no college consultation

Half of the respondents would prefer only one list of conditions ('criteria') that would be defined in a very narrow manner that would automatically trigger the validation procedure pursuant to Article 49(1a)-(1e) of EMIR without any consultation with the college. While a single binding (automatic) list of criteria would certainly ensure absolute convergence and level playing field, ESMA considers that this option has several shortcomings. ESMA believes that it would be extremely difficult to define an exhaustive list of automatic criteria that would cover every situation that should genuinely require a validation and at the same time ensure that false positives are avoided. Therefore, ESMA would be faced with two sub-options: i) define a narrow list of these criteria, which, however, ESMA believes, would result in many instances of where a validation should be required but could not be; and ii) define a broader list of these criteria, which would inevitably lead to many false positives. If the first sub-option (i.e. a narrow list) was chosen, it could reduce the view of regulators (both at the national and EU level) and potentially increase risks; and if the second option (i.e. a broad list) was chosen, it would increase rather than decrease the costs and regulatory burden on CCPs, as well as regulators, which would be neither proportionate nor useful. Therefore, ESMA considers this option too rigid, impractical and potentially also risky.

Option 2: non-exhaustive list of indicators with a college consultation and NCA discretion over final decision

None of the respondents expressed any support for a single list of non-exhaustive indicators that would require a college consultation on whether the validation procedure pursuant to Article 49(1a)-(1e) of EMIR should be required. Under this option, while the NCA would have to take into account the views expressed by the college during the consultation procedure, the NCA would nevertheless retain a discretion over the final decision of whether the validation procedure pursuant to Article 49(1a)-(1e) should be required. In addition, a non-exhaustive list of indicators would mean that the NCA would also have a discretion to launch the college consultation procedure in other situations than those specified in the list of indicators. It is to be noted that the list of indicators contained in the ESMA Opinion is indeed non-exhaustive. ESMA is of the view that this option would not fulfil the mandate provided in Article 49(5) of EMIR, because it would not ensure convergence and consistent supervisory practices due to

the very discretionary nature of this option. Furthermore, it would increase uncertainty for CCPs due to the level of discretion this approach would afford.

Option 3: combination of a list of (semi)automatic criteria and a list of indicators with a college consultation

This was the option chosen by ESMA in the CP (and the accompanying draft RTS). Three respondents expressed their support for this option. Under this option, the conditions would be divided into criteria and indicators.

The criteria would be defined in an objective manner; they could be automatic (i.e. automatically triggering the validation procedure pursuant to Article 49(1a)-(1e) of EMIR without a college consultation) or 'semi-automatic', i.e. requiring a simplified college consultation (on whether the validation procedure pursuant to Article 49(1a)-(1e) of EMIR should be required). In order to ensure coherence and consistency between the provisions in respect of Articles 15 and 49 of EMIR, ESMA opted for 'semi-automatic' criteria (i.e. the criteria would require a simplified college consultation) in the CP (and the accompanying draft RTS).

The indicators would be more nuanced and cover a wider range of situations. Therefore, for the indicators, a more extensive college consultation (on whether the validation procedure pursuant to Article 49(1a)-(1e) of EMIR should be required), along the lines of the college consultation procedure specified in the ESMA Opinion, would be required, but the NCA would retain a discretion over the final decision (of whether the validation procedure pursuant to Article 49(1a)-(1e) of EMIR should be required). The list of indicators could be either closed or non-exhaustive. The list of indicators contained in the ESMA Opinion is non-exhaustive. However, ESMA considers that having a non-exhaustive list of indicators would provide too much uncertainty to CCPs and more discretion than necessary. Therefore, ESMA opted for a closed list of indicators in the CP (and the accompanying draft RTS).

ESMA maintains that while this approach may appear cumbersome to some stakeholders, it is the most efficient, pragmatic and practical approach, because it: i) ensures convergence and level playing field while at the same time affording some level of flexibility and discretion; ii) prevents false positives while at the same time ensuring that changes to CCP's models and parameters that are significant are really classified as such; iii) ensures consistency and coherence between the provisions in respect of Article 49 and provisions in respect of Article 15.

While there may be some additional costs associated with this option. ESMA is of the view that the positives, as highlighted above, outweigh these costs. In addition, a similar approach is already in place at the moment under the ESMA Opinion. Therefore, ESMA has maintained this approach in the Final Report (and the accompanying final draft RTS).

6.3 Annex III

Final draft RTS on the conditions under which additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorisation, conditions under which changes to the CCP's models and parameters are significant, and the procedures for consulting the college on whether or not those conditions are met (Articles 15(3) and 49(5) EMIR)

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supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards specifying the conditions under which additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorisation, conditions under which changes to the CCP's models and parameters are significant, and the procedures for consulting the college on whether or not those conditions are met

of []

(text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, and in particular Articles 15(3) and 49(5) thereof,

Whereas:

- (1) The conditions under which additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorisation and therefore require an extension of authorisation should be divided into criteria and into indicators, with each category requiring a different college consultation procedure. Such an approach should ensure that cases where an extension of authorisation should be required are captured and at the same time false positives are avoided.
- (2) While both the criteria and indicators for the extension of authorisation need to be subject to a college consultation on whether the conditions, under which additional services or activities to which a CCP wishes to extend its business require an extension of authorisation in accordance with Article 15 of Regulation (EU) No

648/2012, are met, the criteria, due to their less discretionary nature, should be subject only to a simplified college consultation procedure. The indicators, on the other hand, as they require a more detailed assessment, should be subject to a more extensive college consultation procedure.

- (3) The criteria for the extension of authorisation should only cover situations which always require an extension of authorisation, due to the nature of the risks attached. They encompass a CCP intending to offer a service or perform an activity for new types of contracts; for contracts traded on a trading venue, where the CCP was previously providing a service or performing an activity for these contracts traded on a bilateral basis only or vice-versa; and for contracts involving a payment in a new currency at the CCP level. In contrast, the indicators for the extension of authorisation, are designed to capture a wider range of less straightforward situations, which require further assessment to establish if an extension of authorisation is really warranted. For example, the indicators should capture cases when a CCP introduces derivatives of a similar profile but referencing a new index or benchmark when it previously cleared derivatives all referencing just one index or benchmark; or when a CCP which cleared contracts referencing just one currency introduces the same contracts in a second currency. ; This recognises the additional complexity of adapting the CCP's operational and risk framework for this first addition, whereas, any further similar introduction would not necessarily require an extension of authorisation due to the less complex nature of such a change.
- (4) An exhaustive list of conditions which would automatically trigger the validation procedure under Article 49 of Regulation (EU) No 648/2012 may, if drafted too narrowly, omit cases in respect of which a validation should be required, or, if drafted too broadly, result in many false positives which would place undue regulatory burden on CCPs. Consequently, the conditions under which CCP's changes to its models and parameters are significant should be divided into criteria, which should cover changes that are clearly significant, and into indicators, which should cover less straightforward situations that would require further assessment to establish whether the change is significant.
- (5) In addition, in order to ensure a level playing field and that discretion does not lead to inconsistent application of Article 49 of Regulation (EU) No 648/2012 across the Union, and in order to ensure consistency with the processes for an extension of authorisation, both the criteria and indicators for significant changes to CCP's models and parameters should also be subject to a college consultation on whether the CCP's changes to its models and parameters are significant. However, the criteria, due to their less discretionary nature, should be subject only to a simplified college consultation procedure, while the indicators, as they require a more detailed assessment, should be subject to a more extensive college consultation procedure. Therefore, subjecting the criteria and indicators for significant changes to CCP's models and parameters to college consultations is a necessary, adequate and proportionate procedural step to enhance the achievement of the objectives in substance pursued by the provisions adopted on the basis of Article 49(5) of Regulation (EU) No 648/2012, as explained in this Recital and in Recital (4).
- (6) The criteria for significant changes to the models and parameters should only cover situations which always require a validation. They should therefore contain robust quantitative thresholds or other qualifications. In contrast, the indicators for significant changes to the models and parameters are designed to capture a wider range of less straightforward situations, which require further assessment to

establish if a change to CCP's models and parameters is indeed significant. While the indicators may capture similar situations as the criteria, such as an increase or decrease to CCP's total pre-funded financial resources, the thresholds for the indicators are set at a less conservative level considering their discretionary nature.

- (7) The thresholds for individual criteria and indicators should be calibrated to ensure that only changes with a material impact trigger the respective college consultation procedure on whether the changes are significant. Consequently, the threshold levels may vary depending on whether they refer to the CCP's overall pre-funded resources or to specific risk parameters and individual contributions.
- (8) For the avoidance of doubt, total pre-funded financial resources should not be understood as including other risk mitigating techniques, which are different from the margins and default fund contributions as described and required by Regulation (EU) No 648/2012, such as spot market pre-trade trading limit possibilities, that involve collecting funds in order to fully cover the risk of trades ahead of accepting the novation applied and operated by the CCP.
- (9) The initial assessment to determine whether any of the criteria or indicators are met by the CCPs' proposed additional services or activities or by the CCPs' proposed changes to their models and parameters should be carried out by the national competent authority to whom the relevant information should be addressed by the CCPs.
- (10) Where a competent authority considers that a criterion or an indicator for significant changes to CCP's models and parameters is met by the CCP's proposed change, and at the same time the competent authority considers that there is a justified reason for which the CCP's proposed change should be adopted provisionally, the competent authority should not be prevented from launching the procedure for a provisional adoption pursuant to Article 49(1e) of Regulation (EU) No 648/2012 in parallel with conducting the appropriate college consultation procedure pursuant to this Regulation, including in cases where the competent authority's initial analysis considers that a validation in respect of the CCP's proposed change does not have to be required.
- (11) In order to ensure coherence between the provisions in respect of Article 15 and the provisions in respect of Article 49 of Regulation (EU) No 648/2012, which should enter into force at the same time, and in order to facilitate a comprehensive view and efficient access to information for CCP colleges, it is appropriate to include these regulatory technical standards in a single Regulation.
- (12) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.
- (13) In accordance with Regulation (EU) No 648/2012, ESMA has developed the draft technical standards on which this Regulation is based, where relevant, in cooperation with European System of Central Banks (ESCB) or after consulting the European Banking Authority (EBA), other relevant competent authorities and the members of the European System of Central Banks (ESCB). ESMA has conducted open public consultations on such draft regulatory technical standards, analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010,

HAS ADOPTED THIS REGULATION:

Article 1

Conditions for extension of CCP's authorisation

For the purpose of Article 15 of Regulation (EU) No 648/2012, additional services or activities to which a CCP wishes to extend its business shall require an extension of authorisation where the CCP has been informed by its competent authority that:

- (a) the additional activities or services proposed by the CCP meet one or more of the criteria specified in Article 2(1), which the competent authority has concluded after taking into consideration the outcome of the consultation with the college in accordance with Article 5; or
- (b) the additional activities or services proposed by the CCP meet one or more of the indicators specified in Article 3 and require an extension of authorisation, which the competent authority has concluded after taking into consideration the outcome of the consultation with the college in accordance with Article 6.

Article 2

Criteria for extension of CCP's authorisation

1. The criteria for extension of CCP's authorisation shall be as follows:
 - (a) the CCP intends to offer a service or perform an activity relating to a new category of financial instruments or a new type of products or a new type of transactions, all collectively referred to as "contracts";
 - (b) the CCP intends to offer a service or perform an activity for contracts traded on a trading venue, where the CCP was previously providing a service or performing an activity for these contracts traded on a bilateral basis only; or the CCP intends to offer a service or perform an activity for contracts traded on a bilateral basis, where the CCP was previously providing a service or performing an activity for these contracts traded on a trading venue only;
 - (c) the CCP intends to offer a service or perform an activity for contracts involving a payment in a new currency.
2. For the purpose of this Regulation, categories of financial instruments shall be understood as:
 - i. Equities
 - ii. Debt securities
 - iii. Interest rate derivatives
 - iv. Equity derivatives

- v. FX derivatives
- vi. Credit derivatives
- vii. For commodity derivatives, as the Base products as per Table 2 of the Annex of Commission Delegated Regulation (EU) 2017/585 except for Energy and Environmental derivatives, for which sub products as per Table 2 of the Annex of that Delegated Regulation shall apply
- viii. Emission allowances;

For the purpose of this Regulation, types of products shall be understood as any non-financial instruments for which the CCP provides a service or performs an activity;

For the purpose of this Regulation, types of transactions shall be understood as securities financing transactions as defined in Article 3(11) of Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015.

Article 3

Indicators for extension of CCP's authorisation

The indicators for extension of CCP's authorisation shall be as follows:

- (a) the CCP's proposed additional activity or service will result in the CCP needing to adapt significantly its operational structure, at any point in the contract cycle, including:
 - i. the extension of any service or activity to different time zones outside the Union;
 - ii. the material extension of clearing service working hours;
- (b) the CCP's proposed additional activity or service includes offering contracts which cannot be liquidated in the same manner (e.g. direct offer or auction) or together with the other existing contracts cleared by the CCP;
- (c) the CCP's proposed additional activity or service will result in the CCP needing to take into account new contract specifications, including:
 - i. the significant extension of the range of maturities;
 - ii. the introduction of new option exercise styles within a category of contracts, as described in field 33 of Table 3 of Annex of Commission Delegated Regulation (EU) 2017/585;
- (d) the CCP's proposed additional activity or service will result in the introduction of new risks, linked to the different characteristics of the assets referenced, including:
 - i. the introduction of derivatives of a similar profile but referencing a new index or benchmark when the CCP previously only cleared derivatives all referencing a single index or benchmark; or the introduction of derivatives referencing the single names components where the CCP only cleared the index or the introduction of derivatives referencing the

- index where the CCP only cleared derivatives referencing the single names components;
- ii. the introduction of contracts referencing underlyings that have issuers with a materially different credit worthiness;
 - iii. the introduction of contracts referencing securities with different seniority or secured or unsecured characteristics, including covered, collateralised, secured or unsecured;
 - iv. the introduction of contracts referencing a new currency when the CCP was previously clearing the same contracts in a single currency;
- (e) the CCP's proposed additional activity or service includes offering a new settlement or delivery mechanism or service which involves establishing link with a different securities settlement system, CSD or payment system which the CCP did not previously use.

Article 4

Initial assessment by competent authority

Where a CCP intends to provide any additional activities or services, it shall notify its competent authority and provide all relevant information. The CCP's competent authority shall assess whether any of the criteria set out in Article 2(1) or indicators set out in Article 3 are met by the additional activities or services proposed by the CCP.

Article 5

College consultation on criteria for extension of CCP's authorisation

1. Where, following the initial assessment by the CCP's competent authority in accordance with Article 4, the CCP's competent authority considers that one or more of the criteria set out in Article 2(1) are met by the additional activities or services proposed by the CCP, the CCP's competent authority shall, within five working days of the initial assessment, inform the college and provide the college with a detailed description of the additional activities or services and with the CCP's competent authority's initial assessment.
2. The CCP's competent authority shall give the members of the college five working days from the receipt of the information referred to in paragraph 1 to express their views.
3. Where the majority of the members of the college disagrees that one or more of the criteria set out in Article 2(1) are met by the additional activities or services proposed by the CCP, any member of the college may request that a college discussion is organised.
4. The CCP's competent authority shall consider the position of the college when finalising its assessment of whether one or more of the criteria set out in Article 2(1) are met by the additional activities or services proposed by the CCP.
5. The CCP's competent authority shall immediately inform the CCP and the college of the outcome of the final assessment.

Article 6

College consultation on indicators for extension of CCP's authorisation

1. Where, following the initial assessment by the CCP's competent authority in accordance with Article 4, the CCP's competent authority considers that one or more of the indicators set out in Article 3 are met by the additional activities or services proposed by the CCP and at the same time the CCP's competent authority considers that none of the criteria set out in Article 2(1) are met, the CCP's competent authority shall, within five working days of the initial assessment, inform the college and provide the college with a detailed description of the additional activities or services and with the CCP's competent authority's initial assessment. In addition, the CCP's competent authority shall, within 20 working days of the initial assessment, provide the college with its initial analysis of whether an extension of authorisation in respect of such activities or services has to be required.
2. The CCP's competent authority shall give the members of the college five working days from the receipt of the initial analysis referred to in paragraph 1 to express their views.
3. Where one or more members of the college disagree with the CCP's competent authority's initial analysis, any member of the college may request that a college discussion is organised.
4. The CCP's competent authority shall consider the position of the college when finalising its analysis of whether an extension of authorisation has to be required for the additional activities or services proposed by the CCP.
5. The CCP's competent authority shall immediately inform the CCP and the college of the outcome of the final analysis.

Article 7

Conditions for significant changes to CCP's models and parameters

For the purpose of Article 49 of Regulation (EU) No 648/2012, proposed changes to CCP's models and parameters shall be considered significant where the CCP has been informed by its competent authority that:

- (a) The CCP's proposed change to its models and parameters meets one or more of the criteria specified in Article 8, which the competent authority has concluded after taking into consideration the outcome of the consultation with the college in accordance with Article 11; or
- (b) the CCP's proposed change to its models and parameters meets one or more of the indicators specified in Article 9 and requires a validation, which the competent authority has concluded after taking into consideration the outcome of the consultation with the college in accordance with Article 12.

Article 8

Criteria for significant changes to CCP's models and parameters

The criteria for significant changes to CCP's models and parameters shall be as follows:

- (a) the change leads to a decrease or increase of the total pre-funded financial resources, including margin requirements, default fund and skin-in-the-game, greater than 15%;
- (b) the structure or structural elements of the margin model are changed, such as moving from a SPAN to a VaR model or vice-versa;
- (c) a margin module, such as an add-on, is introduced, removed, or amended in a manner which leads to a decrease or increase of this margin module greater than 15% at the CCP level;
- (d) any change in the calibration of one of the core EMIR margin parameters, as set out in Articles 24 to 26 of the Commission Delegated Regulation (EU) No 153/2013:
 - i. the confidence level (percentage) of the margin model;
 - ii. the look-back period of the model;
 - iii. the number of days used for the margin period of risk;
- (e) the methodology used to compute portfolio offsets is changed, such as by introducing new offsets between instruments, or removing the 80% cap between different instruments, leading to a decrease or increase of the total margin requirements for these financial instruments greater than 10%;
- (f) a different option to satisfy the anti-procyclicality requirement, out of the three options set out in Article 28 the Commission Delegated Regulation (EU) No 153/2013, is applied by the CCP;
- (g) the methodology for defining and calibrating stress test scenarios for the purpose of determining default fund exposures, as set out in Article 30 of the Commission Delegated Regulation (EU) No 153/2013, is changed, leading to a decrease or increase greater than 20% of a default fund, or greater than 50% of any individual default fund contribution;
- (h) the methodology applied to assess liquidity risk and monitor concentration risk, as set out in Articles 32 to 34 of the Commission Delegated Regulation (EU) No 153/2013, is changed, leading to a decrease or increase of the estimated liquidity needs in any currency greater than 20% or the total liquidity needs greater than 10%;
- (i) the methodology applied to value collateral, calibrate collateral haircut or set concentration limits, as set out in Articles 40 to 42 of the Commission Delegated Regulation (EU) No 153/2013, is changed, such that the total value of non-cash collateral decreases or increases by more than 10%;

provided that the CCP's proposed change does not fulfil any criteria for the extension of CCP's authorisation specified in Article 2(1).

Article 9

Indicators for significant changes to CCP's models and parameters

The indicators for significant changes to CCP's models and parameters shall be as follows:

- (a) the CCP's proposed change leads to an adjustment of the pre-funded financial resources in one or more of the following manners:
 - i. a decrease or increase of the total pre-funded financial resources, including margin requirements, default fund and skin-in-the-game, greater than 10%;
 - ii. a decrease or increase of a default fund greater than 5%;
 - iii. a decrease or increase of the margin requirements or stress test exposures on an individual underlying greater than 10%;
 - iv. a decrease or increase of the margin requirements or stress test exposures of any clearing member greater than 20%;
- (b) the CCP's proposed change leads to a decrease or increase of the haircut due to a change in the methodology, on one or more securities accepted as collateral, greater than 5 percentage points;
- (c) the CCP's proposed change leads to a decrease or increase of the estimated liquidity needs in any currency greater than 10%, or of the total liquidity needs, greater than 5%;
- (d) the CCP's proposed change leads to the introduction or modification of one or more of the following elements, leading to a decrease or increase of the margin requirements for the classes of financial instruments affected by the change greater than 10%:
 - i. the method used to calibrate the parameters, the set of risk factors, or other assumptions of the risk model;
 - ii. the pricing model;
 - iii. the pricing histories or the methodology to address missing or incomplete time series;
 - iv. the procedures detecting pricing uncertainties or ensuring reliable settlement prices;
 - v. the data used as input to risk models, operational or organizational developments linked to the change;
- (e) the CCP's proposed change implies the development of new stress scenarios, including either historical or hypothetical scenarios or both, or the modification of the calibration or definition of the existing scenarios, or the removal of the existing scenarios, for the purpose of determining default fund exposures, collateral haircut or liquidity risk;
- (f) the CCP intends to offer a new clearing member access model, or to offer clearing services to a new type of clearing members with different risk profile and characteristics than the current ones;

- (g) the list of eligible collateral is extended to accept collateral with a different risk profile:
 - i. new asset class;
 - ii. new category of issuer, such as corporate or sovereign, or level of credit risk.

Article 10

Initial assessment by competent authority

1. Where a CCP intends to adopt any change to its models and parameters, it shall notify its competent authority and provide all relevant information. The CCP's competent authority shall assess whether any of the criteria set out in Article 8 or indicators set out in Article 9 are met by the CCP's proposed change. The CCP's competent authority shall assess the impact of each change using the maximum impact observed over a look-back period of at least six months. The calculations should be run at the CCP, clearing member or margin account level, as relevant, and based on actual historical production portfolios.
2. For the purpose of the CCP's competent authority's assessment, referred to in paragraph 1, changes in parameters that result from the application of existing methodologies as part of a regular review or calibration exercise shall not be considered significant changes to models and parameters for the purpose of Article 49 of Regulation (EU) 648/2012.

Article 11

College consultation on criteria for significant changes to CCP's models and parameters

1. Where, following the initial assessment by the CCP's competent authority in accordance with Article 10, the CCP's competent authority considers that one or more of the criteria set out in Article 8 are met by the CCP's proposed change, the CCP's competent authority shall, within five working days of the initial assessment, inform the college and provide the college with a detailed description of the CCP's proposed change and the CCP's competent authority's initial assessment.
2. The CCP's competent authority shall give the members of the college five working days from the receipt of the information referred to in paragraph 1 to express their views.
3. Where the majority of the members of the college disagrees that one or more of the criteria set out in Article 8 are met by the CCP's proposed change, any member of the college may request that a college discussion is organised.
4. The CCP's competent authority shall consider the position of the college when finalising its assessment of whether one or more of the criteria set out in Article 8 are met by the CCP's proposed change.

5. The CCP's competent authority shall immediately inform the CCP and the college of the outcome of the final assessment.

Article 12

College consultation on indicators for significant changes to CCP's models and parameters

1. Where, following the initial assessment by the CCP's competent authority in accordance with Article 10, the CCP's competent authority considers that one or more of the indicators set out in Article 9 are met by the CCP's proposed change and at the same time the CCP's competent authority considers that none of the criteria set out in Article 8 are met, the CCP's competent authority shall, within five working days of the initial assessment, inform the college and provide the college with a detailed description of the CCP's proposed change. In addition, the CCP's competent authority shall, within 20 working days of the initial assessment, provide the college with its initial analysis of whether a validation in respect of the CCP's proposed change has to be required.
2. The CCP's competent authority shall give the members of the college five working days from the receipt of the initial analysis referred to in paragraph 1 to express their views.
3. Where one or more members of the college disagree with the CCP's competent authority's initial analysis, any member of the college may request that a college discussion is organised.
4. The CCP's competent authority shall consider the position of the college when finalising its analysis of whether a validation in respect of the CCP's proposed change has to be required.
5. The CCP's competent authority shall immediately inform the CCP and the college of the outcome of the final analysis.

Article 13

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.

Done at Brussels,

For the Commission

The President