COMMODITY FUTURES TRADING COMMISSION

SUPPLEMENT S-1 to FORM FBOT

CLEARING ORGANIZATION SUPPLEMENT TO

FOREIGN BOARD OF TRADE APPLICATION FOR REGISTRATION

Name of applicant as specified in organizational document

Address of principal executive office

Name of the foreign board of trade on associated Form FBOT

☐ If this Supplement S-1 is accompanying a new application for registration, please complete in full and check here.

☑ If this Supplement S-1 is an amendment to a pending application for registration, or to a final application that resulted in the issuance of an Order of Registration, please list all items that are amended or otherwise updated and check here.

When appropriate, please attach additional page(s) containing a list and explanatory statement of amendment(s) or update(s).

For ease of reference, this application has been completely updated from the one originally sent to the Commission on August 20, 2012. A blacklined version of the relevant documents is available upon request.

REGISTERED DERIVATIVES CLEARING ORGANIZATIONS

If the clearing organization is registered with the Commission in good standing as a derivatives clearing organization (DCO), please indicate by checking here:

☐ CFTC-registered DCO.

If the clearing organization is registered with the Commission in good standing as a DCO, the clearing organization need not complete the remainder of the Supplement S-1.

GENERAL INFORMATION

1. Name under which the business of the clearing organization will be conducted, if different than name specified above:

2. List of principal office(s) where clearing organization activities are/will be conducted (please use multiple entries, when applicable):

Office (name and/or location): Stockholm

Address: Tullvaktsvägen 15

105 78 Stockholm

Phone Number: +46 8 405 6000

Fax Number: +46 8 405 6001

Website Address : http://business.nasdaq.com/trade/clearing/nasdaq-clearing/

3. Contact Information.

3a. Primary Contact for Supplement S-1 (i.e., the person authorized to receive Commission correspondence in connection with this Supplement S-1 and to whom questions regarding the submission should be directed):

Name: [redacted]

Title: VP - Deputy General Counsel

Email Address: [redacted]

Mailing Address: Tullvaktsvägen 15
Stockholm
SWE

Phone Number: 0046 8 405 6830

Fax Number:

3b. If different than above, primary contact at the clearing organization that is authorized to receive all forms of Commission correspondence:

Name:

Title:

Email Address:

Mailing Address:

Phone Number:

Fax Number:

BUSINESS ORGANIZATION

Describe organization history, including date and, if applicable, location of filing of original organizational documentation, and describe all substantial amendments or changes thereto. For example:

Nasdaq Clearing AB is a private limited liability company incorporated and having its principal place of business in Stockholm, Sweden. It is authorized as a central counterparty and licensed to conduct clearing operations by the Swedish FSA pursuant to the European Market Infrastructure Regulation. The Swedish FSA has also approved and designated Nasdaq Clearing as a system for settlement and notified this to the European Securities and Markets Authority.

SIGNATURES

By signing and submitting this Supplement S-1, the clearing organization agrees to and consents that the notice of any proceeding before the Commission in connection with the associated foreign board of trade's application for registration or registration with the Commission may be given by sending such notice by certified mail or similar secured correspondence to the persons specified in sections 3a and 3b above.

Nasdaq Clearing AB has duly caused this Supplement S-1 to be signed on its behalf by the undersigned, hereunto duly authorized, the 28 of February, 2017.

Nasdaq Clearing AB and the undersigned represent that all information and representations contained in this Supplement S-1 (and exhibits) are true, current, and complete. It is understood that all information, documentation, and exhibits are considered integral parts of this Supplement S-1. The submission of any amendment to a Supplement S-1 represents that all items and exhibits not so amended remain true, current, and complete as previously filed.

Signature of Chief Executive Officer (or functional equivalent), on behalf of the Clearing Organization

President Nasdaq Clearing [redacted]

Title President [redacted]

Nasdaq Clearing AB

Name of Clearing Organization

Exhibit A-1 to Supplement S-1 to Form FBOT

A description of location, history, size, ownership and corporate structure, governance and committee structure, current or anticipated presence of offices or staff in the United States.

Nasdaq Clearing AB ("**Nasdaq Clearing**") (organization number: 556383-9058) is a private limited liability company incorporated and having its principal place of business in Stockholm, Sweden.

Nasdaq Clearing is authorized as a central counterparty ("**CCP**" or "**Clearinghouse**") and is licensed to conduct clearing operations by the Swedish FSA (Finansinspektionen, **"FI"** or "**SFSA**") pursuant to EMIR. The European Market Infrastructure Regulation (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) ("**EMIR**") came into force on August 16, 2012. The operations of Nasdaq Clearing are also governed by the Swedish Securities Market Act. The Swedish FSA has also approved and designated Nasdaq Clearing as a system for settlement and notified this to the European Securities and Markets Authority ("**ESMA**") pursuant to the Swedish Act (1999:1309) concerning Systems for the Settlement of Obligations on the Financial Market (Sw: lagen (1999:1309) om system för avveckling av förpliktelser på finansmarknaden) (the Swedish Act implementing the Settlement Finality Directive (98/26/EC)).

Nasdaq Clearing's competent authority is the Swedish FSA under EMIR. Nasdaq Clearing is overseen by college of European regulators, which includes Riksbanken, the Central Bank in Sweden, which also has financial stability responsibilities for Nasdaq Clearing.

Clearing of commodities and commodity derivatives is primarily operated through the Norwegian branch of Nasdaq Clearing, Nasdaq Clearing Oslo NUF. The branch is registered in the Norwegian company register, but is not a separate legal entity.

Nasdaq Clearing is authorized and supervised as a central counterparty by the Swedish FSA, and is also authorized to conduct clearing operations via its Norwegian branch ("**Nasdaq Clearing Oslo**") by the Norwegian Ministry of Finance. The commodity clearing operations are jointly supervised by Finansinspektionen and Finanstilsynet, the Norwegian Supervisory Authority, with Finansinspektionen being appointed as the principal supervisor pursuant to a memorandum of understanding between the two supervisors. Similarly, the Norwegian FSA has approved and registered Nasdaq Clearing Oslo as a designated settlement system in accordance with Norwegian Payment System Act 17 December 1999 No 95.

1. Location and history

NASDAQ OMX Stockholm (former name of Nasdaq Clearing before de-merger with the Exchange, with organization number 556383-9058) started in 1986 when the options market OM (*Sw. Optionsmarknaden*) established its clearing operations and assumed the counterparty risk of its members. Over the years the Clearinghouse expanded into new products and asset classes through business development and through mergers.

Derivatives trading in Finland started when the Finnish Securities and Derivatives Exchange/Clearinghouse ("**SOM**") was established in 1987 and served as an integrated exchange and clearinghouse for the trading and clearing of standardized derivative instruments. In 1997, the Helsinki Stock Exchange Ltd and SOM merged to form Helsinki Exchange Ltd ("**HEX**"). In 2003, OM and HEX, including the Tallinn and Riga exchanges, merged and established OMX ("**OMX**"). The acquisition of the Vilnius Stock Exchange took place in 2004. All trading and clearing of Finnish derivatives conducted at HEX was migrated to NASDAQ OMX Stockholm.

Trading of standardized derivatives, including listed options, in Denmark started in 1988 when the Guarantee Fund for Danish Options and Futures began its operations as a clearinghouse. All derivatives instruments were traded on the Copenhagen Stock Exchange ("**CSE**"). The Guarantee Fund for Danish Options and Futures was founded in 1997 and merged with CSE to form the FUTOP Clearing Center. In 2005, OMX and CSE merged. All trading and clearing of Danish derivatives conducted at CSE and FUTOP Clearing Center was migrated to NASDAQ OMX Stockholm.

In 2006, OMX and Iceland Stock Exchange merged, and Icelandic derivatives were introduced on NASDAQ OMX Stockholm to the market in May 2007, but in 2008 NASDAQ OMX Stockholm stopped offering trading and clearing of Icelandic derivatives.

In October 2008, NASDAQ OMX Stockholm acquired Nord Pool Clearing ASA, a licensed clearing house in Norway. [redacted]

In 2012, the Nasdaq Group acquired NOS Clearing ASA ("**NOS**"), which primarily cleared freight derivative contracts. NOS has been integrated into Nasdaq Clearing.

As a result of EMIR, clearing operations had to be separated from other operations. Planning of the separation of all of the company's non-clearing-related operations into a separate unit, Nasdaq Stockholm AB, was initiated during 2012. In September 2013, the planned demerger was implemented, and the CCP company was renamed Nasdaq Clearing (organization number: 556383-9058).

2. Ownership and corporate structure

Nasdaq Clearing is wholly owned by Nasdaq Nordic Ltd., a limited liability company incorporated in Finland. Nasdaq Nordic Ltd. is an indirect [redacted] subsidiary of Nasdaq, Inc. [redacted]

3. Governance and committee structure

General

The board of directors of Nasdaq, Inc. has the ultimate accountability for major strategic and commercial decisions within the Group, while each subsidiary within the group has primary legal and regulatory responsibility for its own actions.

The corporate bodies of Nasdaq Clearing comprise of: (1) the general meeting of shareholders; (2) the board; (3) the president; and (4) the auditors. In legal terms, the decisions relating to the operations of Nasdaq Clearing are the responsibility of the board of directors of Nasdaq Clearing (the "**Clearing Board**"). Nasdaq Clearing is fully owned by Nasdaq Nordic Ltd., [redacted] Thus, the Clearing Board shall adhere to the common policies and guidelines within the Nasdaq Group, [redacted] In doing so, the Clearing Board has an obligation to assess that they are appropriate for the purpose of Nasdaq Clearing. The

Clearing Board is also responsible for Nasdaq Clearing's adherence to the regulatory standards for the Swedish market and the Clearinghouse's compliance with all regulatory requirements. The articles of association of Nasdaq Clearing establish the requirement that it shall adhere to such regulatory standards. In addition, the Clearing Board has issued internal polices and guidelines in order to ensure sufficiency of Nasdaq Clearings' operations and compliance with the regulatory requirements imposed on the Clearinghouse by SFSA and applicable legislation.

The Clearing Board and the President

Nasdaq Clearing is headed by the Clearing Board which leads and controls the company. The Clearing Board is made up of six board members, three external board members and three executives from the Nasdaq Group. All board members must pass test of fit and proper, which focuses on three areas: (a) personal conduct; (b) competence; and (c) conflicts of interest. Please see Exhibit C to Supplement S-1 to Form FBOT for further details on FI's requirements in relation to the fit and proper test. The Clearing Board appoints the President of Nasdaq Clearing.

The duties and areas of responsibility of the Clearing Board are outlined and governed by EMIR and the Swedish Companies Act, the Securities Market Act, relevant enactments issued by FI and the articles of association adopted for Nasdaq Clearing. [redacted]

For the common polices and guidelines issued within the Nasdaq Group, in particular by the board of directors of Nasdaq, Inc. and by the board of directors of Nasdaq Nordic Ltd, the Clearing Board has autonomy with respect to operating the Clearinghouse. The Clearing Board has direct legal responsibility for major and significant decisions related to Nasdaq Clearing, as well as for the legal and regulatory compliance of Nasdaq Clearing. The President of Nasdaq Clearing has direct responsibility for day-to-day management and decisions related to Nasdaq Clearing, with reporting obligation to and being supervised by the Clearing Board. All major decisions of legal or regulatory concern relating to Nasdaq Clearing need to be taken by the Clearing Board or in accordance with the appropriate delegation under any existing Power of Attorney.

The Clearing Board shall ensure that Nasdaq Clearing complies with its obligations under EMIR and other relevant EU regulations and directives, Swedish and Norwegian law and regulatory framework issued by relevant supervisory authorities, including the obligations of Nasdaq Clearing as an FI authorized body. The Clearing Board reviews policies and reports on operational and clearing risk management, internal control, regulatory capital, compliance and security, as well an internal audit policy. Further, the Clearing Board adopts an internal audit plan. The Clearing Board has the power to appoint the members of committees to assist in the governance of Nasdaq Clearing, including the disciplinary and risk committees. The day-to-day management of Nasdaq Clearing is as stated above, the responsibility of the President.

The Clearing Board shall also adopt a Regulatory Capital Policy and a Clearing Risk Policy. Also, the Clearing Board shall adopt Instructions for Clearing Risk Committee and Clearing Default Committee, to which material issues relating to Nasdaq Clearing's risk management procedures have been delegated. Clearing risk related issues are reported to the Clearing Board regularly. Further, operational incidents, claims and litigation issues and compliance issues as well as capital adequacy assessments are reported regularly to the Clearing Board. Governance arrangements such as the Rules of Procedure, Instructions for the President and other applicable policies are updated on a yearly basis or when needed.

Furthermore, and as described above, the Clearing Board has delegated certain powers to the President by way of issuing Instructions for the President. The President shall among other things make decisions regarding amendments to the Clearing Rules, provided that the amendments are not of principle significance or major importance (in such case the decision to incorporate such significant changes, it shall be made by the Clearing Board in accordance with applicable law). It shall be noted that due to practical reasons, the President may delegate decisions on *inter alia* changes to the Clearing Rules (provided however not being of major importance and/or principle significance) to senior management within the Nasdaq Clearing organization.

Compliance organization

The board of directors of Nasdaq Nordic Ltd. (currently, the parent company of Nasdaq Clearing), continuously steers each Nasdaq Nordic subsidiary in order to develop a common view and common practices with respect to rules, regulations and market practices. In addition, the board of Nasdaq Nordic Ltd. has a supervisory role to ensure that Nasdaq Clearing is acting in compliance with the relevant financial market regulations in its clearing functions. The board of Nasdaq Nordic Ltd. is currently comprised of 10 members, the majority of which are independent members. However, as mentioned above, it is the Clearing Board which has the ultimate responsibility to ensure that Nasdaq Clearing complies with all regulatory requirements and regulations.

The compliance organization of Nasdaq Nordic Ltd. covers all subsidiaries with a license to operate regulated markets or clearing and settlement functions, including Nasdaq Clearing. The compliance organization, as part of the Office of General Counsel department ("**OGC**"), is currently comprised of the Head of OGC in Nordic/Baltic and compliance liaison officers in each licensed Nasdaq Nordic subsidiary, including Nasdaq Clearing. Generally, the compliance organization undertakes to oversee compliance by Nasdaq Clearing with applicable laws and regulations, as well as internal guidelines and obligations related to the compliance policy. At each regular meeting the board of Nasdaq Nordic Ltd., as well as the Clearing Board, are provided with specific risk reports covering financial position, disputes and litigations, operational incidents, compliance issues and clearing operations.

On a day-to-day basis, Nasdaq Clearing has a dedicated Chief Compliance Officer and dedicated legal advisors at OGC in the Stockholm and Oslo office as responsible for ensuring compliance with requirements under applicable legislation. The Nasdaq European Legal department [redacted] It features a dedicated Nordic/Baltic legal and compliance team [redacted] which responsibility includes compliance for Nasdaq's authorised entities in the Nordic and Baltic area. The legal and compliance department supports the operative management on a daily basis in ensuring compliance with Nasdaq Clearing's requirements in particular with respect to EMIR and governance issues.

Furthermore, Nasdaq Clearing has a dedicated Chief Technology Officer and Chief Risk Officer, that together with the role of Chief Compliance Officer are defined in EMIR. These people are exclusive to Nasdaq Clearing and have clear reporting lines to the Board and/or senior management as appropriate. These roles are also subject to the fit and proper testing process at the Swedish FSA. [redacted]

[redacted]

Internal Audit

Internal audit is the responsibility of the Nasdaq Group's internal audit department. [redacted]

4. Current or anticipated presence of offices or staff in the United States

Nasdaq Clearing as such does not have any offices in the United States, yet there are several entities and offices within the Nasdaq Group located in the United States. [redacted]

Exhibit A-2 to Supplement S-1 to Form FBOT

Articles of association, constitution, or other similar organizational documents.

Note: This English language translation of the Swedish language articles of association is an unofficial translation made solely for information purposes, and does not form a part of the articles of association.

ARTICLES OF ASSOCIATION

(556383-9058)

1 §

The company name is Nasdaq Clearing Aktiebolag.

2 §

The company's board of directors shall be located in Stockholm.

3 §

The aim of the company's business operations is to engage in clearing operations in accordance with the laws of Sweden, as well as to engage in other related operations.

4 §

The company's minimum share capital is one hundred and fifty million (150,000,000) Swedish kronor and the maximum share capital is six hundred million (600,000,000) Swedish kronor.

5 §

The minimum number of shares is 1,500,000 and the maximum number of shares is 6,000,000.

6 §

The company's board of directors shall comprise a minimum of five and a maximum of twelve members.

The members of the board of directors are elected annually by the annual general meeting for a term that expires at the closure of the first annual general meeting following the election.

7 §

One or two auditors shall be elected by the annual general meeting.

8 §

The financial year of the company is the calendar year.

9 §

The general meetings shall be held in Stockholm.

10 §

The annual general meeting shall deal with the following matters:

1. election of a chairman for the annual general meeting;
2. preparation and adoption of a register of votes;
3. adoption of an agenda for the meeting;
4. election of one or two persons to check the minutes;
5. confirmation that the meeting has been properly convened;
6. presentation of the annual report and the auditors' report and, where applicable, the consolidated annual report and consolidated auditors' report;
7. resolutions on
   a) the approval of the income statement and balance sheet and, where applicable, the consolidated income statement and consolidated balance sheet,
   b) discharge of the members of the board of directors and the managing director from liability.
   c) the use of the profit or loss of the company shown in the approved balance sheet;
8. on the number of board members and, if applicable, the number of auditors and deputy auditors to be elected by the meeting;
9. on the remuneration payable to the members of the board of directors and, when necessary, the auditors' fees;
10. election of the members of the board of directors and, where applicable, an auditor or auditors and deputy auditors, if any;

11. other issues that the annual general meeting shall deal with in accordance with the Swedish Companies Act or the articles of association.

11 §

In matters of significant financial importance, matters that concern important principles or that are otherwise significant to the company's operations, the board of directors shall refer the matter to a general meeting for approval. When an investment or other disposal of the assets or means of the clearing operations exceeds ten million (10,000,000) Swedish kronor, an approval by a general meeting is mandatory.

12 §

In addition to the restrictions set, in general, by the applicable laws, regulations or other statutes, the company may only make or decide on a value transfer in accordance with chapter 17 section 1 of the Swedish Companies Act, if the remaining share capital of the company after the value transfer corresponds to the valid requirements on the company's share capital set by the applicable laws, regulations or other statutes.

13 §

The notice of the general meeting shall be sent by mail to all shareholders entered in the share register no earlier than four weeks and no later than two weeks prior to the general meeting.

Exhibit A-3 to Supplement S-1 to Form FBOT

(1) Membership and trading participant agreements.

(2) Clearing agreements.

Copies of the membership and trading participant agreements (the "**Trading Agreements**") and the clearing agreements (the "**Clearing Agreements**") are attached hereto as follows:

Trading Agreements:

- Trading Agreement A – Exchange Membership Agreement: Document 2
- Trading Agreement B – Non-Clearing Membership Agreement: Document 3
- Trading Agreement C - Block Broker Membership Agreement: Document 3a

Clearing Agreements:

- Clearing Agreement A – General Clearing Membership Agreement: Document 4
- Clearing Agreement B – Clearing Membership Agreement: Document 5
- Clearing Agreement C – Clearing Client Agreement: Document 6
- Collateral Custody Account Agreement – Document 7
- General Terms for Collateral Custody Account– Document 8
- Default Fund Custody Account Agreement – Document 9
- General Terms for Default Fund Custody Accounts– Document 10
- Loss Sharing Custody Account Agreement– Document 11
- General Terms for Loss Sharing Custody Account – Document 12
- Clearing Agreement F – Broker Agreement – Document 14

Exhibit A-4 to Supplement S-1 to Form FBOT

A description of the national statutes, laws and regulations governing the activities of the clearing organization and its members.

1. General comments

As mentioned above, Nasdaq Clearing has been authorized by and is under supervision by the SFSA to conduct clearing operations under EMIR. All operations of Nasdaq Clearing are subject to the supervision of the SFSA and the central clearing party operations are also overseen by the Swedish Central Bank ("Riksbanken").

Nasdaq Clearing submitted its application for an EMIR clearing license to the SFSA on 16 April, 2013, and was approved by the same authority as a clearing house under EMIR on 18 March 2014. In addition, Nasdaq Clearing is licensed by the Norwegian Ministry of Finance to carry out clearing activities in Norway. The commodity clearing operations are supervised by SFSA and Finanstilsynet jointly, with SFSA being appointed as the principal supervisor pursuant to a memorandum of understanding between the two supervisors.

Nasdaq Clearing's competent authority is the SFSA under EMIR. Nasdaq Clearing is also overseen by college of European regulators, which includes Riksbanken, the central bank in Sweden, which also has financial stability responsibilities for Nasdaq Clearing. The Swedish securities and derivatives markets, including clearing organizations, are regulated by laws and regulations (including EU regulations and directives), governmental ordinances and guidelines. EU regulations and directives are becoming increasingly important with many new regulations such as EMIR being directly applicable to Nasdaq Clearing.

The Swedish regulatory system is also based on general parliamentary and subordinate legislation supported by more detailed self-regulation, together with active supervision by SFSA. Self-regulation based on the legal framework consists mainly of rules and regulations regarding exchanges, clearinghouse and central securities depositories which are established by the exchanges, the clearinghouse and the central securities depositories themselves, as well as the recommendations of industry organizations.

2. National statutes, laws and regulations governing the activities of the clearing organization

As mentioned above, Nasdaq Clearing is authorized as a central counterparty and is licensed to conduct clearing operations by the SFSA pursuant to EMIR. The operations of Nasdaq Clearing are also governed by the Swedish Securities Market Act (*Sw. Lag (2007:528) om värdepappersmarknaden*). Nasdaq Clearing submitted its application for an EMIR clearing license to the SFSA on 16 April, 2013, and was approved by the same authority as a clearing house under EMIR on 18 March 2014.

The SFSA has also approved and designated Nasdaq Clearing as a system for settlement and notified this to the European Securities and Markets Authority (ESMA) pursuant to the Swedish Act (1999:1309) concerning Systems for the Settlement of Obligations on the Financial Market (*Sw. Lag (1999:1309) om system för avveckling av förpliktelser på finansmarknaden*) (the Swedish Act implementing the Settlement Finality Directive (98/26/EC)). Similarly, the Norwegian FSA has approved and registered Nasdaq Clearing Oslo Branch as a designated settlement system in accordance with the Norwegian Payment System Act 17 December 1999 No 95. In Sweden, trading and clearing are primarily governed by the following acts and regulations:

- EMIR
- Securities Market Act (2007:528)
- Systems for the Settlement of Obligations on the Financial Market Act (1999:1309)
- Financial Instruments Trading Act (1991:980)
- Rights of Priority Act (1970:979)
- Swedish Bankruptcy Act (1987:672)
- Financial Instruments Accounts Act (1998:1479)

The Swedish Financial Instruments Trading Act (*Sw. Lag (1991:980) om handel med finansiella instrument*) stipulates that the settlement of obligations between two or more participants in a notified settlement system applies to bankrupt parties and their creditors if settlement has been made in accordance with the rules of the system. This provision also applies to the settlements that take place during the clearing process in Nasdaq Clearing's system.

Moreover, provisions exist in Swedish law concerning the pledging of collateral and liquidation of securities in a bankruptcy. The Swedish Rights of Priority Act (*Sw. Förmånsrättslagen (1970:979)*) stipulates that a pledgee, in this case Nasdaq Clearing, has a "special right of priority" to pledged assets in cases of bankruptcy. This entitlement means that where payment of a pledge is involved, Nasdaq Clearing does not necessarily rank behind any other creditor. The Swedish Bankruptcy Act (*Sw. Konkurslagen (1987:672)*) enables Nasdaq Clearing to sell without delay any financial instruments it holds as collateral, as long as this is done in accordance with reasonable commercial principles.

In addition to the laws and regulations mentioned above, Nasdaq Clearing's activities are governed by other EU directives (as implemented in local law) and regulations, including the Directive 2002/47/EC on Financial Collateral Arrangements.

Nasdaq Clearing has also issued rules and regulations applicable to its clearing activities. The rules and regulations together with the membership agreements constitute the contractual framework governing the relationship between Nasdaq Clearing and its participants. The rules and regulations become binding for participants through the execution of the membership agreement. The contractual relationships between Nasdaq Clearing and the respective participants are governed by Swedish law (for Nasdaq Financial) and Norwegian law (for Nasdaq Commodities).Supervision of FI and Riksbanken

As previously mentioned Nasdaq Clearing is subject to the supervision of FI. As a consequence of such supervision Nasdaq Clearing is at all times obligated to furnish FI with such information as FI may require about matters related to its business and activities. FI may also, on its own initiative and without notification, undertake on-site inspections. FI also periodically performs reviews of Nasdaq Clearing to ensure that Nasdaq Clearing meets the legal requirements under its license and applicable laws and regulations.

More details of the supervision activities are described in Supplement 1 -Exhibit E The regulatory regime covering the clearing organization in its home country or countries.

3. National statues, laws and regulations governing the clearing organization's members

Please see Exhibit A-5, Section 3, to the Form FBOT for details on national statutes, laws and regulations governing the Clearinghouse's members.

Exhibit A-5 to Supplement S-1 to Form FBOT

The current rules, regulations, guidelines and bylaws of the clearing organization.

NASDAQ COM has adopted internal rulebooks that further regulate the obligations and rights of the market participants in trading (the "**Trading Rules**") and clearing and settlement processes (the "**Clearing Rules**") to assure compliance with the external government regulations (jointly the "**NASDAQ COM Rules**").

The current NASDAQ COM Rules are attached hereto as follows:

Trading Rules:

- General Terms – Trading Rules: Document 18
- Trading Appendix 1 – Definitions (joint with the Clearing Rules): Document 19
- Trading Appendix 2 – Contract Specifications (joint with the Clearing Rules): Document 20
- Trading Appendix 3 – Trading and Clearing Schedule (joint with the Clearing Rules): Document 21
- Trading Appendix 4 – Trading procedures: Document 22
- Trading Appendix 5 – ETS User Terms: Document 23
- Trading Appendix 6 – Market Conduct Rules (joint with the Clearing Rules): Document 24
- Trading Appendix 7 – Fee List (joint with the Clearing Rules): Document 25
- Trading Appendix 8 - Block Trade Facility Procedure: Document 22a

Clearing Rules:

- General Terms – Clearing Rules: Document 26
- Clearing Appendix 1 – Definitions (joint with the Trading Rules): see Document 19
- Clearing Appendix 2 – Contract Specifications (joint with Trading Rules): see Document 20
- Clearing Appendix 3 – Trading and Clearing Schedule (joint with the Trading Rules): see Document 21
- Clearing Appendix 4 – Non Exchange Clearing Procedure: Document 27
- Clearing Appendix 5 – Clearing System User Term: Document 28

- Clearing Appendix 6 – Market Conduct Rules (joint with the Trading Rules): see Document 24
- Clearing Appendix 7 – Fee List (joint with the Trading Rules): see Document 25
- Clearing Appendix 8 – Membership Requirements: Document 29
- Clearing Appendix 9 – Default Fund Rules: Document 30
- Clearing Appendix 10 -Collateral List Document 30a
- Clearing Appendix 11- List of Approved Settlement Banks Document 30b
- Clearing Appendix 12 - Supplemental default rules - Client Clearing Accounts Document 30c
- Clearing Appendix 13 - Supplemental default rules - Clearing Clients Document 30d
- Clearing Appendix 14 - Block Trade, EFP and EFS Clearing Procedures Document 30e
- Clearing Appendix 15 – Third Party Exchange Transaction Clearing Procedures Document 30f

Exhibit A-6 to Supplement S-1 to Form FBOT

Evidence of the authorization, licensure or registration of the clearing organization pursuant to the regulatory regime in its home country jurisdiction(s) and a representation by its regulator(s) that it is in good regulatory standing in the capacity in which it is authorized, licensed or registered.

Evidence of the authorization of Nasdaq Clearing as a regulated clearing organization is attached hereto as Document S-2. Please also find enclosed as Document S-3 a representation from FI that the Clearinghouse is in good regulatory standing,

Exhibit A-7 to Supplement S-1 to Form FBOT

A summary of any disciplinary or enforcement actions or proceedings that have been brought against the clearing organization, or any of the senior officers thereof, in the past five years and the resolution of those actions or proceedings.

The Clearinghouse confirms that there neither are nor have been any disciplinary or enforcement actions or proceedings brought against the Clearinghouse or any of the senior officers thereof in the past five years. Please also see enclosed as Document S-3 a confirmation from FI with respect to this.

Exhibit A-8 to Supplement S-1 to Form FBOT

An undertaking by the chief executive officer(s) (or functional equivalent[s]) of the clearing organization to notify Commission staff promptly if any of the representations made in connection with this supplement cease to be true or correct, or become incomplete or misleading.

I hereby, in my capacity as President of Nasdaq Clearing, undertake to notify the Commission staff promptly if any of the representations made in connection with or related to this supplement to Nasdaq Oslo's application for registration as a Foreign Board of Trade cease to be true or correct, or become incomplete or misleading.

Stockholm, _____ 2017

_____

[redacted]
President

Exhibit B to Supplement S-1 to Form FBOT

(1) A description of the categories of membership and participation in the clearing organization and the access and clearing privileges provided to each by the clearing organization.

We refer to the information provided in Exhibit B to Form FBOT.

(2) A description of all requirements for each category of membership and participation and the manner in which members and other participants are required to demonstrate their compliance with these requirements. The description should include, but not be limited to, the following:

(i) Professional Qualification. A description of the specific professional requirements, qualifications, and/or competencies required of members or other participants and/or their staff and a description of the process by which the clearing organization confirms compliance with such requirements.

(ii) Authorization, Licensure and Registration. A description of any regulatory or self-regulatory authorization, licensure or registration requirements that the clearing organization imposes upon, or enforces against, its members and other participants including, but not limited to any authorization, licensure or registration requirements imposed by the regulatory regime/authority in the home country jurisdiction(s) of the clearing organization, and a description of the process by which the clearing organization confirms compliance with such requirements.

(iii) Financial Integrity. A description of the following:

(A) The financial resource requirements, standards, guides or thresholds required of members and other participants.

(B) The manner in which the clearing organization evaluates the financial resources/holdings of its members or other participants.

(C) The process by which applicants for clearing membership or participation demonstrate compliance with financial requirements including:

(1) Working capital and collateral requirements, and

(2) Risk management mechanisms.

(iv) Fit and Proper Standards. A description of any other ways in which the clearing organization ensures that potential members/other participants meet fit and proper standards.

We refer to the information provided in Exhibit B to Form FBOT.

Exhibit C to Supplement S-1 to Form FBOT

(1) A description of the requirements applicable to membership on the governing board and significant committees of the clearing organization.

Nasdaq Clearing is headed by the Clearing Board which leads and controls the company. Formally, the Clearing Board is appointed by its general meeting. Currently, the Clearing Board consists of three executives from the Nasdaq Group and three external board members. Two external board members fulfil the independence requirement as defined in EMIR article 2(28). The president is appointed by the Clearing Board. All board members and the President need to pass FI's test of fit and proper, under the Securities Markets Act, Chapter 19, Section 3, sub-Section 4. Chapter 19 of the Securities Market Act requires that members of the board of directors and senior management of a Clearinghouse shall be deemed fit and proper. Each individual in this role has to supply its curriculum vitae to FI. Furthermore, FI checks data from the national police authority, the national tax authority and information on bankruptcy regarding the management.

FI's Regulation FFFS 2016:23 and FI's General Guidelines also set out provisions regarding FI's management assessment. FI's examination includes competence, duties or ownership interests and conflicts of Interest. In order to facilitate FI's assessment of whether the operations of the undertaking may be deemed to fulfill the requirements of sound business operations, information regarding the managing director, members of the board of directors and other senior executives in the undertaking should be provided with respect to whether they have duties or ownership interests in other undertakings within the financial sector. Information regarding ownership interests need, however, be provided only with respect to undertakings in which the holdings amount to ten per cent or more of the total share capital or voting capital. In addition, information shall be provided in respect of such persons' previous employment and experience in clearing operations, consulting and board appointments and expertise in general. In addition, the other board appointments and important positions of the members of the board of directors during at least the most recent five years shall be stated.

It is the Clearing Board who has the power to appoint the members of committees to assist in the governance of Nasdaq Clearing.

(2) A description of how the clearing organization ensures that potential governing board and committee members meet these standards.

The choice of board members to the Clearing Board is always carried out with great care. Sufficient experience from the financial market is a requirement. Consequently, the Clearing Board should be composed of a mix of experts and knowledge of different parts of clearing house businesses. A new board member is also by law subject to a fit and proper test by FI as presented above.

As mentioned above, it is the Clearing Board who appoints the members of the committees of Nasdaq Clearing. The Clearing Board has issued instructions for the different committees which define the composition of the committees. On the basis thereof and on the basis of the requirements described in paragraph (1) above, the choice of members of the committees is carried with due care by the Clearing Board and in line with EMIR requirements [for example independent board members in the Risk Committee, EMIR article 28 (1)] .

(3) A description of the clearing organization's provisions to minimize and resolve conflicts of interest with respect to membership on the governing board and significant committees of the clearing organization.

The Clearing Board has autonomy with respect to operating the Clearinghouse.

Nasdaq Clearing complies with EMIR requirements article 33 [redacted] Depending on the nature of a conflict, it should be reported in accordance with the policies. In addition, as stated in EMIR certain functions needs to be independent from the business line with a direct reporting line to the Board; this includes the Chief Compliance Officer, the Chief Risk Officer and Internal Audit.

Furthermore, the Chief Compliance Officer has a compliance policy defining the tasks of the compliance function, including the reporting procedure, as well as the general requirements set forth in respect of the compliance organization: independence, responsibility, relationship to the management and relationship to the closely related functions (i.e. risk management and internal audit).

(4) A description of the clearing organization's rules with respect to the disclosure of material non-public information obtained as a result of a member's performance on the governing board or on a significant committee.

Employees of Nasdaq Clearing are by law prohibited to disclose information that they have obtained during their employment. According to Chapter 1, Section 11 of the Securities Market Act, employees of a clearing organization may not disclose or utilize any information or otherwise utilize what he or she has learned during the employment. In addition, each employee of Nasdaq Clearing is prohibited through its employment agreement to disclose any information obtained as a result of its employment [redacted]

Exhibit D-1 to Supplement S-1 to Form FBOT

A description of the clearing and settlement systems, including, but not limited to, the manner in which such systems interface with the foreign board of trade's trading system and its members and other participants.

The Clearinghouse uses Genium INET Clearing™ system ("**Genium INET Clearing**"), a full-featured automated CCP clearing system for financial and commodities markets supporting the clearing of equities, fixed-income, commodities and over-the-counter instruments. Genium INET Clearing is fully integrated with its counterpart on the trading side, Genium INET Trading. This enables instant communication and information flow between the two systems, using common APIs and secure redundant solution architecture.

[redacted]

Exhibit D-3 to Supplement S-1 to Form FBOT

A detailed description of the manner in which the clearing organization observes each of the RCCPs or successor standards and documentation supporting the representations made, including any relevant rules or written policies or procedures of the clearing organization. Each RCCP should be addressed separately within the exhibit.

For a detailed description of the manner in which Nasdaq Clearing observes each of the Principles for Financial Infrastructure ("**PFMIs**") published in February 2012 and developed jointly by the Committee on Payments and Market Infrastructures ("**CPMI**") and the Technical Committee of the International Organization of Securities Commissions ("**IOSCO**") please see Nasdaq Clearing's Disclosure Framework attached hereto as Document S-4.

Exhibit E to Supplement S-1 to Form FBOT

With respect to each relevant regulatory regime or authority governing the clearing organization, attach:

(1) A description of the regulatory regime/authority's structure, resources, staff and scope of authority.

1. Finansinspektionen[1]

As mentioned in Exhibit A-1 to Supplement S-1 Form FBOT, the commodity clearing operations are supervised by FI and Finanstilsynet jointly, with FI being appointed as the principal supervisor in accordance with the requirements under the European Market Infrastructure Regulation ("**EMIR**") and pursuant to a memorandum of understanding between the two supervisors. For a thoroughly description of Finanstilsynet's structure, resources, staff and scope of authority, please see Exhibit F to Form FBOT.

FI is a central administrative authority with more than 400 employees. These include lawyers, economists, statisticians, analysts and actuaries. FI's board of directors, which has nine members including the Director General, is appointed by the Swedish Government.

FI implements and expands upon laws and decisions emanating from the Swedish parliament (*Sw. Riksdagen*), the government and the Swedish ministry of finance and is also guided by EU regulation and international standards for financial supervision and regulation.

FI is headed by a board of directors which is responsible for the operations of the authority. The board decides on questions of principal and those of greater importance, such as new regulations, sanctions and the planning of FI's operations. The Director General is responsible for and heads the operating activities in accordance with the board's directives and guidelines.

The board members are appointed by the Government for a three-year period. They should have experience from the industry or financial market, but are not allowed to work simultaneously for a company under FI's supervision. [redacted]

[redacted]

[1] All information provided in this Section is based on information provided by FI. For further information about FI please see www.fi.se.

FI's operations are governed by the government's Letter of Appropriation. In this document, the government outlines the general objective of the operations and assignments of FI.

FI's operations are also governed by an ordinance which details the authority's specific objectives, assignments and responsibilities and by an operational ordinance that describes the joint assignments and responsibilities applicable to all authorities.

2. Riksbanken[2][3]

Sveriges Riksbank is Sweden's central bank and a public authority under the Swedish Parliament (*Sw. Riksdagen*). Riksbanken is responsible for monetary policy with the objective to maintain price stability. The bank has also been given the task to promote a safe and efficient payment system. Riksbanken's operations are governed by the Instrument of Government, the Sveriges Riksbank Act (*Sw. lag (1988:1385) om Sveriges riksbank*) attached hereto as Document S-5, the Rules of Procedure and Instructions and Riksbanken's statute book. In these documents, the Government and Riksbanken itself outline the general objective of the operations and assignments of Riksbanken.

Representatives from the Swedish parliament are members of Riksbanken's General Council and they appoint the Executive Board members who lead the bank.

Riksbanken consists of seven departments:

- The Corporate Services Department
- The Financial Stability Department
- The Markets Department
- The Monetary Policy Department
- The Cash and Payment Systems Department
- The Internal Audit Department
- The General Secretariat

All heads of department and the communications manager participate in Riksbanken's management group. The management group coordinates Riksbanken's activities and is led by the head of the General Secretariat.

One of Riksbanken's core functions is to promote a safe and efficient payment system. The payment system is important for all economic activities and is a central component of the financial system. For that reason Riksbanken regularly analyses the risks and threats to the stability of the Swedish financial system.

In the oversight of the financial infrastructure, Riksbanken proceeds from the requirements for security and efficiency set in accordance with international standards. For infrastructure companies, there are the Principles for Financial Market Infrastructures ("**PFMI**") issued by the Committee on Payment and Settlement Systems ("**CPSS**") and the International Organization of Securities Commissions ("**IOSCO**"). The principles are minimum requirements, and the specific characteristics of the Swedish market may mean that Riksbanken needs to place higher requirements than those placed by the principles.

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[2] Please note that this Section covers also certain areas of paragraph (2) and (3) of this Exhibit E as regards Riksbanken's oversight of the Clearinghouse.

[3] All information provided in this Section is based on information provided by Riksbanken. For further information about Riksbanken please see www.riksbanken.se.

The principles also include requirements aimed at central banks and other authorities overseeing or supervising the financial infrastructure. Riksbanken therefore also applies the international principles to its own oversight work.

Riksbanken has chosen to apply six criteria for identifying the systems that are to come under its oversight. The assessment is based on: (i) the number and value of the transactions handled by the system; (ii) the system's market shares; (iii) the markets on which the system is active; (iv) the available alternatives that could be used at short notice; (v) the presence of links with other systems and other financial institutions; and (vi) the system's significance for the implementation of monetary policy.

As mentioned above,

when overseeing the different systems in the financial infrastructure, including the Clearinghouse, Riksbanken applies the international principles for stability and efficiency drawn-up by CPSS and. However, these principles are minimum requirements, and specific features of the Swedish market may mean that Riksbanken has to set more stringent requirements. This could be because, for instance, activity on the Swedish market is concentrated to a small number of participants. When Riksbanken adapts the requirements to Swedish conditions, this is justified in the analysis and assessment of each individual system. If the system complies with the international principles but not Riksbanken's more stringent requirements, Riksbanken provides notification of this in its assessment of the system. Riksbanken also takes into account, in addition to the international principles, current laws and sometimes also market practices. In these cases, too, Riksbanken's assessment contains information on which laws or other factors are entailed and why they are used in the analysis.

In addition to the assessment performed by Riksbanken, the systems assess themselves when Riksbanken considers this to be necessary, but at least once every three years. Riksbanken uses these self-assessments as a base for its own assessment of the systems. As a complement to the systems' self-assessments, Riksbanken makes an in-depth analysis of specific risks in the systems. The in-depth analysis results in Riksbanken making an assessment of whether there are any potential sources of systemic risks or efficiency losses.

Riksbanken's regular oversight can be divided into three stages:

a) Collecting both qualitative and quantitative information on the systems covered by the oversight. Riksbanken has a statutory right to acquire information from the systems that Riksbanken considers necessary to oversee the stability of the payment systems.[4] The systems are expected to inform Riksbanken of planned changes in the systems and of other important matters that affect the systems in some way. Such information could consist of existing documentation, which can be handed over in connection with meetings with the systems. Consequently, Riksbanken meets the system operators on a quarterly basis and monitors statistics and information circulated between meetings and can also acquire information on the systems by collecting the views of their participants.

b) Analyzing the information collected and identifying potential sources of systemic risks and efficiency losses. The analysis in the oversight work can be divided into analysis and assessment of the systems' self-assessments and in-depth analysis of specific risks in the system. The latter is based on the risks that are given priority in and between the Swedish systems on the basis of Riksbanken's risk-based working method. The analysis is based on the international principles drawn-up by the CPSS and IOSCO.

[4] Sveriges Riksbank Act, Chapter 6, Article 9.

c) Encouraging the system to rectify any shortcomings in safety or efficiency.

In addition to these three stages, the oversight function also covers facilitating and promoting market initiatives which may develop and make the financial infrastructure more efficient. In this regard, Riksbanken can provide advice and facilitate cooperation between both private players and authorities acting within the financial infrastructure.

In the cases where Riksbanken's analysis points to shortcomings in safety or efficiency, Riksbanken encourages the system to rectify these. However, Riksbanken is unable to issue regulations or introduce sanctions in order to demand that the systems take measures if shortcomings are discovered. Instead, Riksbanken uses what is known as "moral suasion" [5], which means that Riksbanken communicates its view publicly and directly to the systems, gives reasons for this, and expects the system to adapt to it. This work includes public statements, speeches and publications, as well as dialogue and meetings with the systems. Riksbanken can also issue recommendations in its Financial Stability Report aimed at the system and/or its participants if a shortcoming has been identified and needs to be remedied. Such a recommendation is decided by the Executive Board of Riksbanken. A further means of communicating an identified shortcoming in a system is to bring it up for further discussion in the temporary council for cooperation on macro-prudential policy.

There are parts of the financial infrastructure that are included in both Riksbanken's and FI's oversight and supervision, which means that the two authorities' areas of responsibility in some cases and to some extent overlap. In these cases, the two authorities endeavour to develop efficient forms for contacts and cooperation.[6]

The stability of the financial infrastructure in Sweden may partially be dependent upon the safety and efficiency of foreign systems. Riksbanken therefore participates in oversight cooperation concerning these overseas systems. The oversight work is headed up by the domestic country's responsible authority (or authorities) and follows the guidelines for cooperation in the international principles drawn up by the CPSS and the IOSCO.

Riksbanken also participate in international working groups within the Bank for International Settlements ("**BIS**") and the European System of Central Banks ("**ESCB**"), which aim to reinforce the financial infrastructure in various ways.

[redacted]

[6] In May 2009, Riksbanken, FI, the Swedish Ministry of Finance and the Swedish National Debt Office entered into an agreement covering cooperation in issues of financial stability.

With respect to each relevant regulatory regime or authority governing the clearing organization, attach:

(2) The regulatory regime/authority's authorizing statutes, including the source of its authority to supervise the clearing organization.

In its role as a clearinghouse, Nasdaq Clearing is authorized and supervised as a multi-asset clearinghouse by FI (and the College), and is also authorized to conduct clearing operations via its Norwegian branch by the Norwegian Ministry of Finance (please see paragraph 3(i) below for further information on this). As mentioned above, the commodity clearing operations are supervised by FI and Finanstillsynet jointly, with FI being appointed as the principal supervisor pursuant to a memorandum of understanding between the two supervisors.FI's authority to supervise the Clearinghouse is manifested in EMIR, which came into force on 16 August 2012. Nasdaq Clearing was granted its EMIR license in 2014. As EMIR is an EU regulation, it has direct effect in all member states, including Sweden. One of the objectives of EMIR is to reinforce the role of CCP's in mitigating certain aspects of market and counterparty risk with the aim to protect the stability of the financial system. Accordingly, EMIR sets out a number of rules and requirements relating to CCPs, including in relation to the following areas:

Riksbanken's authority to supervise the Swedish financial infrastructure, and hence also the Clearinghouse, is manifested in the Sveriges Riksbank Act. Please see an English translation of the act attached hereto as Document S-5. According

Margin and Default Fund

Under EMIR, a CCP is required to collect margin to limit the credit exposure it has to its members. The CCP has to collect sufficient margin to cover its potential exposure until liquidation of the relevant positions and 99% of the exposure movement over an appropriate time horizon. Such margin must be collateralized on a daily basis. The CCP's models and parameters relating to margin requirements must be validated by Finansinspektionen.

EMIR also requires CCPs to establish a pre-funded default fund to cover losses that exceed the losses to be covered by margin requirements arising from the default of a clearing member. Such default fund must not be allowed to fall below a certain level (determined by the CCP). The CCP establishes the minimum size of, and the criteria for calculating, contributions to such fund (which must be proportional to the exposures of a clearing member). The default fund is intended to be of a sufficient size to allow the CCP to withstand, under "extreme but plausible market conditions", the default of either (i) the largest clearing member, or (ii) the second and third largest clearing members.

Governance Arrangements

EMIR sets out certain governance requirements for CCPs, which are further supplemented by Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012 supplementing EMIR ("**Delegated Regulation 153**"). Delegated Regulation 153 requires CCPs to have adequate staff, clear, consistent and well-documented lines of responsibility, with different individuals fulfilling the roles of chief risk officer, chief compliance officer and chief technology officer, and risk management policies, procedures, systems and controls which are part of a coherent and consistent governance framework that is reviewed and updated regularly.

Delegated Regulation 153 also sets out requirements in relation to a CCP's risk management system and internal control mechanism, including requirements to have documented policies, procedures and systems to identify, measure, monitor and manage risks, and take an integrated and comprehensive view of all relevant risks. The board of the CCP must have final responsibility and accountability for managing the CCP's risks.

This Delegated Regulation 153 also set out the rules in respect of compliance policy, procedures and function, including requirements to have adequate policies and procedures designed to detect any risk of failure by the CCP and its employees to comply with EMIR, and to keep the rules, procedures and contractual arrangements of the CCP accurate, up-to-date and readily available to the competent authority, clearing members and, where appropriate, clients. The CCP must have a permanent and effective compliance function which is independent of the other functions of the CCP and fully resourced. The role of the CCO is also set out in this Delegated Regulation.

Delegated Regulation 153 requires the CCP to define the composition, role and responsibilities of the board, senior management and any board committees, and to have at least an audit committee and a remuneration committee. The board must have the following responsibilities:

- The establishment of clear objectives and strategies for the CCP;
- The effective monitoring of senior management;
- The establishment of appropriate remuneration policies;
- The establishment and oversight of the risk management function;
- The oversight of the compliance function and internal control function;
- The oversight of outsourcing arrangements;
- The oversight of compliance with EMIR and all other regulatory and supervisory requirements; and
- The provision of accountability to the shareholders or owners and employees, clearing members and their customers and other relevant stakeholders.

Senior management must have the following responsibilities:

- ensure consistency of the CCP's activities with the objectives and strategy of the CCP as determined by the board;
- design and establish compliance and internal control procedures that promote the CCP's objectives;
- subject the internal control procedures to regular review and testing;
- ensure that sufficient resources are devoted to risk management and compliance;
- be actively involved in the risk control process; and
- ensure that risks posed to the CCP by its clearing and activities linked to clearing are duly addressed.

There must be clear and direct reporting lines between the CCP's board and senior management.

Further, EMIR requires CCPs to have a member risk committee made up of representatives of its clearing members, independent board members and representatives of its clients, to advise the board on any arrangement that may impact the risk management of the CCP. Such member risk committee must have a

clearly determined mandate and governance arrangements to ensure its independence. For further details of Nasdaq Clearing's member risk committee, as well as the other new board committees, please see Exhibit C to Supplement S-1 to Form FBOT.

A CCP is also required to have effective written organizational and administrative arrangements to identify and manage any potential conflicts of interest between itself and its clearing members or their clients known to the CCP.

Under EMIR, a CCP must have an adequate business continuity policy and disaster recovery plan. These should aim at ensuring that its functions are preserved, its operations can be recovered, and its obligations fulfilled, in a timely manner. The CCP should also have a procedure for the settlement or transfer of positions and assets in the event of its authorization being withdrawn.

Delegated Regulation 153 also sets out requirements in relation to the remuneration policy, information technology systems, disclosure, internal audit, record keeping, margins, the default fund, liquidity risk controls, the default waterfall, collateral, the investment policy, model review, stress testing and back testing.

Segregation and Porting

EMIR sets out a number of requirements to allow members to ensure client positions are sufficiently segregated, and the procedures to allow for clients to move their positions from one clearing member to another in the event of a default by their original member. In particular:

- a CCP must keep separate records and accounts to allow it to distinguish the assets and positions of different clearing members.
- a CCP must offer to keep separate records and accounts to allow each clearing member to distinguish its own assets and positions from such member's clients' assets and positions ("omnibus client segregation").
- a CCP must offer to keep separate records and accounts to allow each clearing member to distinguish assets and positions of one client from those of another client ("individual client segregation").

In the event of a default by a clearing member, EMIR requires the CCP to have in place procedures to transfer any assets and positions held by such clearing member for underlying clients to the equivalent client accounts of another clearing member (so called 'porting' of assets and positions); i.e. where assets and positions are held in an omnibus client account, they should be moved to an omnibus client account in another clearing member's name, and where assets and positions are held in an individual client account, they should be moved to an individual client account in another clearing member. The new clearing member is only obliged to accept these assets and positions where it has previously entered into a contractual relationship with the clients to do so. If the assets and positions cannot be ported (as no new clearing member is willing to accept them) within a predefined transfer period, the CCP may take steps to actively manage its risk in relation to such assets and positions, including their liquidation.

With respect to each relevant regulatory regime or authority governing the clearing organization, attach:

(3) A description of and, where applicable, copies of the laws, rules, regulations and policies applicable to:

(i) The authorization, licensure or registration of the clearing organization.

(ii) The financial resource requirements applicable to the authorization, licensure or registration of the clearing organization and the continued operations thereof.

(iii) The regulatory regime/authority's program for the ongoing supervision and oversight of the clearing organization and the enforcement of its clearing rules.

(iv) The extent to which the current RCCPs are used or applied by the regulatory regime/authority in its supervision and oversight of the clearing organization or are incorporated into its rules and regulations and the extent to which the regulatory regime/authority reviews the clearing systems for compliance therewith.

(v) The extent to which the regulatory regime/authority reviews and/or approves the rules of the clearing organization prior to their implementation.

(vi) The regulatory regime/authority's inspection, investigation and surveillance powers; and the program pursuant to which the regulatory regime/authority uses those powers to inspect, investigate, sanction, and enforce rules applicable to the clearing organization.

(vii) The financial protection afforded customer funds.

(i) The authorization, licensure or registration of the clearing organization.

As mentioned above, the Clearinghouse is authorized as a clearing organization by FI pursuant to EMIR and by the Norwegian Ministry of Finance pursuant to the STA 2007, Chapter 13-1, Section 5. Please see attached a copy of EMIR and an English translation of the STA 2007 as Document S-1 and Document 16, respectively.

According to Chapter 13-1, Section 5 of the STA 2007, the Norwegian Ministry of Finance may give a foreign clearing house that has been authorized to conduct clearing operations and is subject to satisfactory supervision in its home state authorization to conduct clearing operations in Norway. It is on this ground Nasdaq Clearing has been authorized to conduct clearing operations in Norway through its Norwegian branch.

(ii) The financial resource requirements applicable to the authorization, licensure or registration of the clearing organization and the continued operations thereof.

When assessing whether a company fulfills all necessary requirements to be authorized as a clearing organization FI will, in addition to the conditions described above, also assess the clearing organization financial resources. EMIR requires CCPs to have capital of at least EUR 7.5 million. EMIR also establishes prudential requirements for CCPs to ensure that they are safe and sound and comply at all

times with the capital requirements, to cover credit risks, counterparty risks, market risks, operational risks and legal and business risks. The capital required to cover each of these risks must be calculated in accordance with the Commission Delegated Regulation (EU) No 152/2013 supplementing EMIR. If the CCP's capital falls below 110% of these capital requirements or EUR 7.5 million, the CCP must notify Finansinspektionen.

(iii) The regulatory regime/authority's program for the ongoing supervision and oversight of the clearing organization and the enforcement of its clearing rules.

[redacted]

(iv) The extent to which the current RCCPs are used or applied by the regulatory regime/authority in its supervision and oversight of the clearing organization or are incorporated into its rules and regulations and the extent to which the regulatory regime/authority reviews the clearing systems for compliance therewith.

Primarily the Clearinghouse is authorized in accordance with EMIR with the oversight the Swedish FSA and the EMIR College. In addition, the Clearinghouse observes the CPMI IOSCO principles with the oversight of Riksbanken. All public disclosures performed by the Clearinghouse in regards to CPMI IOSCO are published on the website; http://business.nasdaq.com/trade/clearing/nasdaq-clearing/about-nasdaq-clearing/#tcm:5044-28255

[redacted]

(v) The extent to which the regulatory regime/authority reviews and/or approves the rules of the clearing organization prior to their implementation.

[redacted] The review of the supervisory authorities safeguards that the amendments do not violate applicable law, including that the amendments comply with the requirements for neutrality between the members.

(vi) The regulatory regime/authority's inspection, investigation and surveillance powers; and the program pursuant to which the regulatory regime/authority uses those powers to inspect, investigate, sanction, and enforce rules applicable to the clearing organization.

In order to enable monitoring of compliance with the provisions of EMIR and other relevant laws and regulations, FI may request that the Clearinghouse provides relevant information, documents or other material about the clearing organization. If the Clearinghouse fails to comply with a request from FI regarding the above, FI may order the Clearinghouse to make rectification.

FI may also conduct site inspections in order to investigate the Clearinghouse compliance with applicable laws and regulations.

(vii) The financial protection afforded customer funds.

Nasdaq Clearing has a Collateral Management Service ("**CMS**") with prompt access and direct control of the collateral. Below follows a description of the system.

The CMS is the service managing collateral and payments for clearing on Nasdaq Financial and Commodities derivatives markets. [redacted]

The provisions of the collateral are governed by the clearing rules and the Custody Account Agreement with the supporting General Terms for Collateral Custody Accounts (the "**General Terms for Collateral**"). The General Terms for Collateral are attached hereto as Document 8 – General Terms for collateral custody accounts.

[redacted]

Securities collateral

A Securities Account is an account with a Central Securities Depository ("**CSD**") opened in the name of Nasdaq Clearing in its capacity as nominee, alternatively opened in the name of Nasdaq Clearing on behalf of clients with a CSD or with any sub-custodians appointed by Nasdaq Stockholm (see definition of "Securities Account" in Section 2.1 of the General Terms for Collateral).

[redacted]

Cash collateral

Cash Amounts (as defined in the General Terms for Collateral) forming cash collateral are required to be deposited to a Bank Account. A Bank Account is an account opened in the name of Nasdaq Clearing at a credit institution. [redacted]

[redacted]

Requirements imposed on participating banks

Nasdaq Clearing has entered into agreements with the appointed banks which participate in the CMS. According to these agreements the banks shall comply with the technical requirements (SWIFT, lead times etc.), the support requirements, and the operational requirements related to the respective currency in which the cash collateral can be posted. [redacted] The appointed banks are also under the governance of the Treasury Department's Finance Policy.

[redacted]

Exhibit F-1 to Supplement S-1 to Form FBOT

A description of the clearing organization's regulatory or compliance department, including its size, experience level, competencies, duties and responsibilities of staff.

The board of directors of Nasdaq Nordic Ltd. (the parent company of Nasdaq Clearing), continuously steers each Nasdaq Nordic subsidiary in order to develop a common view and common practices with respect to rules, regulations and market practices. In addition, the board of Nasdaq Nordic Ltd. has a supervisory role to ensure that Nasdaq Clearing is acting in compliance with the relevant financial market regulations in its clearing functions. However, it is the Clearing Board who has the ultimate responsibility for the Clearinghouse's compliance with regulatory standards and applicable laws and regulations.

The compliance organization of Nasdaq Nordic Ltd. covers all subsidiaries with a license to operate regulated markets or clearing and settlement functions, including Nasdaq Clearing. The compliance organization, as part of the Office of General Counsel department ("**OGC**"), is currently comprised of the Head of OGC in Nordic/Baltic and compliance liaison officers in each licensed Nasdaq Nordic subsidiary, including Nasdaq Clearing. Generally, the compliance organization undertakes to oversee compliance by Nasdaq Clearing with applicable laws and regulations, as well as internal guidelines and obligations related to the compliance policy. At each regular meeting the board of Nasdaq Nordic Ltd., as well as the board of Nasdaq Clearing, are provided with specific risk reports covering financial position, disputes and litigations, operational incidents, compliance issues and clearing operations.

On a day-to-day basis, Nasdaq Clearing has a dedicated Chief Compliance Officer and dedicated legal advisors at OGC in the Stockholm and Oslo office as responsible for ensuring compliance with requirements under applicable legislation. The Nasdaq European legal department is headed by [redacted] It features a dedicated Nordic/Baltic legal team headed by [redacted], which responsibility includes compliance for Nasdaq's authorised entities in the Nordic and Baltic area. The legal and compliance department supports the operative management on a daily basis in ensuring compliance with Nasdaq Clearing's requirements in particular with respect to EMIR and governance issues.

Each employee of the legal department holds a LLM and has several years of experience of Swedish and Norwegian securities market legislation.

Exhibit F-2 to Supplement S-1 to Form FBOT

A description of the clearing organization's rules and how they are enforced, with reference to any rules provided as part of Exhibit A-5 that require the clearing organization to comply with one or more of the RCCPs.

NASDAQ COM have adopted internal rulebooks that further regulate the obligations and rights of the market participants in clearing and settlement processes and assure compliance with the external government regulations.

The current NASDAQ COM Rules are attached hereto as follows:

Trading Rules:

- General Terms – Trading Rules: Document 18
- Trading Appendix 1 – Definitions (joint with the Clearing Rules): Document 19
- Trading Appendix 2 – Contract Specifications (joint with the Clearing Rules): Document 20
- Trading Appendix 3 – Trading and Clearing Schedule (joint with the Clearing Rules): Document 21
- Trading Appendix 4 – Trading procedures: Document 22
- Trading Appendix 5 – ETS User Terms: Document 23
- Trading Appendix 6 – Market Conduct Rules (joint with the Clearing Rules): Document 24
- Trading Appendix 7 – Fee List (joint with the Clearing Rules): Document 25
- Trading Appendix 8 – Block Trade Facility Procedure: Document 22a

Clearing Rules:

- General Terms – Clearing Rules: Document 26
- Clearing Appendix 1 – Definitions (joint with the Trading Rules): Document 19
- Clearing Appendix 2 – Contract Specifications (joint with Trading Rules): Document 20
- Clearing Appendix 3 – Trading and Clearing Schedule (joint with the Trading Rules): Document 21
- Clearing Appendix 4 – Non Exchange Clearing Procedure: Document 27
- Clearing Appendix 5 – Clearing System User Term: Document 28

- Clearing Appendix 6 – Market Conduct Rules (joint with the Trading Rules): Document 24
- Clearing Appendix 7 – Fee List (joint with the Trading Rules): Document 25
- Clearing Appendix 8 – Membership Requirements: Document 29
- Clearing Appendix 9 – Default Fund Rules: Document 30
- Clearing Appendix10 Collateral List: Document 30a
- Clearing Appendix 11. List of Approved Settlement Banks: Document 30b
- Clearing Appendix 12. Supplemental default rules - Client Clearing Accounts: Document 30c
- Clearing Appendix 13. Supplemental default rules - Clearing Clients: Document 30d
- Clearing Appendix 14. Block Trade, EFP and EFS Clearing Procedures: Document 30e
- Clearing Appendix 15. Third Party Exchange Transaction Clearing Procedures: Document 30f

All participants are required to comply with its respective membership agreement and the COM Rules. Should any participant be in breach of either the membership agreement or the COM Rules the participant will be deemed to be in default For a detailed description of the manner in which Nasdaq Clearing observes each of the Principles for Financial Infrastructure ("**PFMIs**") published in February 2012 and developed jointly by the Committee on Payments and Market Infrastructures ("**CPMI**") and the Technical Committee of the International Organization of Securities Commissions ("**IOSCO**") RCCPs please see Nasdaq Clearings Disclosure Framework assessment attached hereto as Document S-4.

Exhibit F-3 to Supplement S-1 to Form FBOT

A description of the clearing organization's disciplinary rules, including but not limited to rules that address the following:

(1) Disciplinary authority and procedures that empower staff to recommend and prosecute disciplinary actions for suspected rule violations and that provide the authority to fine, suspend, or expel any clearing participant pursuant to fair and clear standards.

(2) The issuance of warning letters and/or summary fines for specified rule violations.

(3) The review of investigation reports by a disciplinary panel or other authority for issuance of charges or instructions to investigate further, or findings that an insufficient basis exists to issue charges.

(4) Disciplinary committees of the clearing organization that take disciplinary action via formal disciplinary processes.

(5) Whether and how the clearing organization articulates its rationale for disciplinary decisions.

(6) The sanctions for particular violations and a discussion of the adequacy of sanctions with respect to the violations committed and their effectiveness as deterrents to future violations.

All clearing participants are under a contractual obligation to comply with the Market Conduct Rules (joint rules for both the Exchange and the Clearinghouse) as to their trading and reporting practices. The Market Surveillance continuously monitors the market conduct of both trading and clearing participants, and investigates possible breaches of the Trading and Clearing Rules or applicable laws. If the Market Surveillance suspects a breach of the Market Conduct Rules and its investigation supports this suspicion, then the Market Surveillance may recommend disciplinary sanctions against the member. Any recommendation for disciplinary sanctions shall be in writing and be filed with the Disciplinary Committee with copies to the relevant member(s), and to the Board as further described in Exhibit G.

Furthermore, if a Clearing Member does not fulfill its obligations in relation to settlement or margins or otherwise will be deemed to be in default according to the Clearing Rules, the Clearinghouse may suspend such member until the default event has been remedied or otherwise ceased. During suspension, clearing of new transaction will only be accepted if they are preapproved by the Clearinghouse. If a material default event has occurred the Clearinghouse may take any one or more of the following steps:

- declare any or all claims of or against the defaulting account holder due on that date;
- enter into hedge transactions in other series in order to reduce the market risk in open positions registered on the clearing accounts of the account holder;
- take such action as it considers necessary or expedient to close-out open interest by entering into close-out transactions for the account holder's account and risk or otherwise discharge and/or net the rights, obligations and positions of the account holder;
- withhold any cash settlement amount owed to the account holder;

- enforce, appropriate, realize and otherwise apply its rights in relation to any collateral posted by or on behalf of the account holder;

- retain and sell any assets held on behalf of the account holder and take possession of any assets delivered to or deposited with the Clearinghouse in relation to the account holder;

- set off or otherwise apply any open positions related to a clearing account against any other claims from the Clearinghouse related to the other clearing accounts of the account holder

- set off or otherwise apply all profits, pending settlements and other claims owed by the account holder to the Clearinghouse and by the Clearinghouse to the account holder so as to produce a single net sum payable by or to the account holder, irrespective of whether such claims are in different currencies and regardless of their origin or character; and/or

- terminate the membership agreement and exclude the account holder from clearing with fifteen (15) days' written notice, provided that non-repeated material default events that do not clearly indicate that the account holder is unfit for membership shall normally not be grounds for termination.

The following constitute material default of events under the Clearing Rules:

a) The account holder no longer meets the membership criteria for its applicable membership category.

b) The account holder fails to meet a collateral call within the applicable time limit as set out in the Clearing Rules.

c) (i) The account holder fails to meet any of its settlement obligations under the Clearing Rules; (ii) the account holder, its collateral provider, its Settlement Bank or its parent company is subject to an insolvency event; (iii) the account holder is in breach of, or omits to observe, any other obligations towards the Clearinghouse or the Exchange under the Clearing Rules or applicable law; (iv) the account holder causes or is subject to any event with respect to it, which in the reasonable opinion of the Clearinghouse has an analogous effect to any of the events specified in (a), (b) and (c)(i)-(iii) above; and (v) the account holder takes any action in furtherance of, or indicating its consent to approval of, or acquiescence in, any of the events referred to in (a), (b) and (c)(i)-(iv) above; provided that the default event, in the reasonable opinion of the Clearinghouse, seriously affects the account holder's ability to fulfill its current or future obligations under the Clearing Rules, or clearly indicates that the account holder is unfit for further clearing.

d) The account holder is in breach of any of its representations or warranties set out in the Clearing Rules, provided that the breach of the representation or warranty is material in the reasonable opinion of the Clearinghouse and has not been remedied within fifteen (15) calendar days following written notice from the Clearinghouse, or the breach clearly indicates that the account holder is unfit for further clearing.

No court order or filing or any other legal act shall be required for any of the actions stated above.

Please see Document 26 (Clearing Rules – General Terms) for further information in relation to this.

Exhibit F-4 to Supplement S-1 to Form FBOT

A demonstration that the clearing organization is authorized by rule or contractual agreement to obtain, from members and other participants, any information and cooperation necessary to conduct investigations, to effectively enforce its rules, and to ensure compliance with the conditions of registration.

Members and their board of directors and employees are, upon written request by the Clearinghouse, under an obligation to as soon as possible provide the Clearinghouse with all information the Clearinghouse considers relevant in respect of the Clearinghouse's role in surveillance of the Market Conduct Rules and other applicable laws and regulations. The duty to provide such information applies regardless of any confidentiality undertakings and other duties of silence the Exchange Members may be placed under. For further details, please see Section 7 of the Market Conduct Rules.

Exhibit G to Supplement S-1 to Form FBOT

(1) A description of the arrangements among the Commission, the foreign board of trade, the clearing organization, and the relevant foreign regulatory authorities that govern the sharing of information regarding the transactions that will be executed pursuant to the foreign board of trade's registration with the Commission and the clearing and settlement of those transactions. This description should address or identify whether and how the foreign board of trade, clearing organization, and the regulatory authorities governing the activities of the foreign board of trade and clearing organization agree to provide directly to the Commission information and documentation requested by Commission staff that Commission staff determines is needed:

(i) To evaluate the continued eligibility of the foreign board of trade for registration.

(ii) To enforce compliance with the specified conditions of the registration.

(iii) To enable the CFTC to carry out its duties under the Act and Commission regulations and to provide adequate protection to the public or registered entities.

(iv) To respond to potential market abuse associated with trading by direct access on the registered foreign board of trade.

(v) To enable Commission staff to effectively accomplish its surveillance responsibilities with respect to a registered entity where Commission staff, in its discretion, determines that a contract traded on a registered foreign board of trade may affect such ability.

In its supervisory operations, FI co-operates and exchanges information with other competent authorities to the extent required and as set out under various EU regulations and directives. [redacted]

With respect to the possibility to share information between the Commission and FI and Finanstilsynet, respectively, we would also like to mention that both FI and Finanstilsynet are signatories to the International Organization of Securities Commissions Multilateral Memorandum of Understanding, which works as a multilateral mechanism for sharing information on a bilateral basis between signatories

[1] Act on the Supervision of Credit Institutions, Insurance Companies and Securities Trading etc. (Financial Supervision Act), Section 7.

to the Memorandum of Understanding. [redacted]

In relation to the Exchange and the Clearinghouse, both entities agree within the framework of applicable law to cooperate and to the extent necessary share and provide information and documentation with the Commission for the above mentioned purposes. [redacted]

(2) A statement as to whether the regulatory authorities governing the activities of the foreign board of trade and clearing organization are signatories to the International Organization of Securities Commissions Multilateral Memorandum of Understanding. If not, describe any substitute information-sharing arrangements that are in place.

Both Finanstilsynet (primarily supervising the Exchange) and FI (primarily supervising the Clearinghouse) are signatories to the International Organization of Securities Commissions Multilateral Memorandum of Understanding.

(3) A statement as to whether the regulatory authorities governing the activities of the foreign board of trade and clearing organization are signatories to the Declaration on Cooperation and Supervision of International Futures Exchanges and Clearing Organizations. If not, a statement as to whether and how they have committed to share the types of information contemplated by the International Information Sharing Memorandum of Understanding and Agreement with the Commission, whether pursuant to an existing memorandum of understanding or some other arrangement.

FI (primarily supervising the Clearinghouse) is a signatory to the Declaration on Cooperation and Supervision of International Futures Exchanges and Clearing Organizations. To our knowledge Finanstilsynet is not a signatory to this declaration. Finanstilsynet is however a signatory to other information sharing agreements (see above) and has welcomed a close cooperation with the Commission regarding the business which is covered by this registration.

I

(Legislative acts)

REGULATIONS

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank [1],

Having regard to the opinion of the European Economic and Social Committee [2],

Acting in accordance with the ordinary legislative procedure [3],

Whereas:

(1) At the request of the Commission, a report was published on 25 February 2009 by a High-Level Group chaired by Jacques de Larosière and concluded that the supervisory framework of the financial sector of the Union needed to be strengthened to reduce the risk and severity of future financial crises and recommended far-reaching reforms to the structure of supervision of that sector, including the creation of a European System of Financial Supervisors, comprising three European supervisory authorities, one each for the banking, the insurance and occupational pensions and the securities and markets sectors, and the creation of a European Systemic Risk Council.

(2) The Commission Communication of 4 March 2009, entitled 'Driving European Recovery', proposed to strengthen the Union's regulatory framework for financial services. In its Communication of 3 July 2009 entitled 'Ensuring efficient, safe and sound derivatives markets', the Commission assessed the role of derivatives in the financial crisis, and in its Communication of 20 October 2009 entitled 'Ensuring efficient, safe and sound derivative markets: Future policy actions', the Commission outlined the actions it intends to take to reduce the risks associated with derivatives.

(3) On 23 September 2009, the Commission adopted proposals for three regulations establishing the European System of Financial Supervision, including the creation of three European Supervisory Authorities (ESAs) to contribute to a consistent application of Union legislation and to the establishment of high-quality common regulatory and supervisory standards and practices. The ESAs comprise the European Supervisory Authority (European Banking Authority) (EBA) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council [4], the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (EIOPA) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council [5], and the European Supervisory Authority (European Securities and Markets Authority) (ESMA) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council [6]. The ESAs have a crucial role to play in safeguarding the stability of the financial sector. It is therefore essential to ensure continuously that the development of their work is a matter of high political priority and that they are adequately resourced.

[1] OJ C 57, 23.2.2011, p. 1.
[2] OJ C 54, 19.2.2011, p. 44.
[3] Position of the European Parliament of 29 March 2012 (not yet published in the Official Journal) and decision of the Council of 4 July 2012.

[4] OJ L 331, 15.12.2010, p. 12.
[5] OJ L 331, 15.12.2010, p. 48.
[6] OJ L 331, 15.12.2010, p. 84.

(4) Over-the-counter derivatives ('OTC derivative contracts') lack transparency as they are privately negotiated contracts and any information concerning them is usually only available to the contracting parties. They create a complex web of interdependence which can make it difficult to identify the nature and level of risks involved. The financial crisis has demonstrated that such characteristics increase uncertainty in times of market stress and, accordingly, pose risks to financial stability. This Regulation lays down conditions for mitigating those risks and improving the transparency of derivative contracts.

(5) At the 26 September 2009 summit in Pittsburgh, G20 leaders agreed that all standardised OTC derivative contracts should be cleared through a central counterparty (CCP) by the end of 2012 and that OTC derivative contracts should be reported to trade repositories. In June 2010, G20 leaders in Toronto reaffirmed their commitment and also committed to accelerate the implementation of strong measures to improve transparency and regulatory oversight of OTC derivative contracts in an internationally consistent and non-discriminatory way.

(6) The Commission will monitor and endeavour to ensure that those commitments are implemented in a similar way by the Union's international partners. The Commission should cooperate with third-country authorities in order to explore mutually supportive solutions to ensure consistency between this Regulation and the requirements established by third countries and thus avoid any possible overlapping in this respect. With the assistance of ESMA, the Commission should monitor and prepare reports to the European Parliament and the Council on the international application of principles laid down in this Regulation. In order to avoid potential duplicate or conflicting requirements, the Commission might adopt decisions on equivalence of the legal, supervisory and enforcement framework in third countries, if a number of conditions are met. The assessment which forms the basis of such decisions should not prejudice the right of a CCP established in a third country and recognised by ESMA to provide clearing services to clearing members or trading venues established in the Union, as the recognition decision should be independent of this assessment. Similarly, neither an equivalence decision nor the assessment should prejudice the right of a trade repository established in a third country and recognised by ESMA to provide services to entities established in the Union.

(7) With regard to the recognition of third-country CCPs, and in accordance with the Union's international obligations under the agreement establishing the World Trade Organisation, including the General Agreement on Trade in Services, decisions determining third-country legal regimes as equivalent to the legal regime of the Union should be adopted only if the legal regime of the third country provides for an effective equivalent system for the recognition of CCPs authorised under foreign legal regimes in accordance with the general regulatory goals and standards set out by the G20 in September 2009 of improving transparency in the derivatives markets, mitigating systemic risk, and protecting against market abuse. Such a system should be considered equivalent if it ensures that the substantial result of the applicable regulatory regime is similar to Union requirements and should be considered effective if those rules are being applied in a consistent manner.

(8) It is appropriate and necessary in this context, taking account of the characteristics of derivative markets and the functioning of CCPs, to verify the effective equivalence of foreign regulatory systems in meeting G20 goals and standards in order to improve transparency in derivatives markets, mitigate systemic risk and protect against market abuse. The very special situation of CCPs requires that the provisions relating to third countries are organised and function in accordance with arrangements that are specific to these market structure entities. Therefore this approach does not constitute a precedent for other legislation.

(9) The European Council, in its Conclusions of 2 December 2009, agreed that there was a need to substantially improve the mitigation of counterparty credit risk and that it was important to improve transparency, efficiency and integrity for derivative transactions. The European Parliament resolution of 15 June 2010 on 'Derivatives markets: future policy actions' called for mandatory clearing and reporting of OTC derivative contracts.

(10) ESMA should act within the scope of this Regulation by safeguarding the stability of financial markets in emergency situations, ensuring the consistent application of Union rules by national supervisory authorities and settling disagreements between them. It is also entrusted with developing draft regulatory and implementing technical standards and has a central role in the authorisation and monitoring of CCPs and trade repositories.

(11) One of the basic tasks to be carried out through the European System of Central Banks (ESCB) is to promote the smooth operation of payment systems. In this respect, the members of the ESCB execute oversight by ensuring efficient and sound clearing and payment systems, including CCPs. The members of the ESCB are thus closely involved in the authorisation and monitoring of CCPs, recognition of third-country CCPs and the approval of interoperability arrangements. In addition, they are closely involved in respect of the setting of regulatory technical standards as well as guidelines and recommendations. This Regulation is without prejudice

to the responsibilities of the European Central Bank (ECB) and the national central banks (NCBs) to ensure efficient and sound clearing and payment systems within the Union and with other countries. Consequently, and in order to prevent the possible creation of parallel sets of rules, ESMA and the ESCB should cooperate closely when preparing the relevant draft technical standards. Further, the access to information by the ECB and the NCBs is crucial when fulfilling their tasks relating to the oversight of clearing and payment systems as well as to the functions of a central bank of issue.

(12) Uniform rules are required for derivative contracts set out in Annex I, Section C, points (4) to (10) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments [1].

(13) Incentives to promote the use of CCPs have not proven to be sufficient to ensure that standardised OTC derivative contracts are in fact cleared centrally. Mandatory CCP clearing requirements for those OTC derivative contracts that can be cleared centrally are therefore necessary.

(14) It is likely that Member States will adopt divergent national measures which could create obstacles to the smooth functioning of the internal market and be to the detriment of market participants and financial stability. A uniform application of the clearing obligation in the Union is also necessary to ensure a high level of investor protection and to create a level playing field between market participants.

(15) Ensuring that the clearing obligation reduces systemic risk requires a process of identification of classes of derivatives that should be subject to that obligation. That process should take into account the fact that not all CCP-cleared OTC derivative contracts can be considered suitable for mandatory CCP clearing.

(16) This Regulation sets out the criteria for determining whether or not different classes of OTC derivative contracts should be subject to a clearing obligation. On the basis of draft regulatory technical standards developed by ESMA, the Commission should decide whether a class of OTC derivative contract is to be subject to a clearing obligation, and from when the clearing obligation takes effect including, where appropriate, phased-in implementation and the minimum remaining maturity of contracts entered into or novated before the date on which the clearing obligation takes effect, in accordance with this Regulation. A phased-in implementation of the clearing obligation could be in terms of the types of market participants that must comply with the clearing obligation. In determining which classes of OTC derivative contracts are to be subject to the clearing obligation, ESMA should take into account the specific nature of OTC derivative contracts which are concluded with covered bond issuers or with cover pools for covered bonds.

(17) When determining which classes of OTC derivative contracts are to be subject to the clearing obligation, ESMA should also pay due regard to other relevant considerations, most importantly the interconnectedness between counterparties using the relevant classes of OTC derivative contracts and the impact on the levels of counterparty credit risk as well as promote equal conditions of competition within the internal market as referred to in Article 1(5)(d) of Regulation (EU) No 1095/2010.

(18) Where ESMA has identified that an OTC derivative product is standardised and suitable for clearing but no CCP is willing to clear that product, ESMA should investigate the reason for this.

(19) In determining which classes of OTC derivative contracts are to be subject to the clearing obligation, due account should be taken of the specific nature of the relevant classes of OTC derivative contracts. The predominant risk for transactions in some classes of OTC derivative contracts may relate to settlement risk, which is addressed through separate infrastructure arrangements, and may distinguish certain classes of OTC derivative contracts (such as foreign exchange) from other classes. CCP clearing specifically addresses counterparty credit risk, and may not be the optimal solution for dealing with settlement risk. The regime for such contracts should rely, in particular, on preliminary international convergence and mutual recognition of the relevant infrastructure.

(20) In order to ensure a uniform and coherent application of this Regulation and a level playing field for market participants when a class of OTC derivative contract is declared subject to the clearing obligation, this obligation should also apply to all contracts pertaining to that class of OTC derivative contract entered into on or after the date of notification of a CCP authorisation for the purpose of the clearing obligation received by ESMA but before the date from which the clearing obligation takes effect, provided that those contracts have a remaining maturity above the minimum determined by the Commission.

[1] OJ L 145, 30.4.2004, p. 1.

(21) In determining whether a class of OTC derivative contract is to be subject to clearing requirements, ESMA should aim for a reduction in systemic risk. This includes taking into account in the assessment factors such as the level of contractual and operational standardisation of contracts, the volume and the liquidity of the relevant class of OTC derivative contract as well as the availability of fair, reliable and generally accepted pricing information in the relevant class of OTC derivative contract.

(22) For an OTC derivative contract to be cleared, both parties to that contract must be subject to a clearing obligation or must consent. Exemptions to the clearing obligation should be narrowly tailored as they would reduce the effectiveness of the obligation and the benefits of CCP clearing and may lead to regulatory arbitrage between groups of market participants.

(23) In order to foster financial stability within the Union, it might be necessary also to subject the transactions entered into by entities established in third countries to the clearing and risk-mitigation techniques obligations, provided that the transactions concerned have a direct, substantial and foreseeable effect within the Union or where such obligations are necessary or appropriate to prevent the evasion of any provisions of this Regulation.

(24) OTC derivative contracts that are not considered suitable for CCP clearing entail counterparty credit and operational risk and therefore, rules should be established to manage that risk. To mitigate counterparty credit risk, market participants that are subject to the clearing obligation should have risk-management procedures that require the timely, accurate and appropriately segregated exchange of collateral. When preparing draft regulatory technical standards specifying those risk-management procedures, ESMA should take into account the proposals of the international standard setting bodies on margining requirements for non-centrally cleared derivatives. When developing draft regulatory technical standards to specify the arrangements required for the accurate and appropriate exchange of collateral to manage risks associated with uncleared trades, ESMA should take due account of impediments faced by covered bond issuers or cover pools in providing collateral in a number of Union jurisdictions. ESMA should also take into account the fact that preferential claims given to covered bond issuers counterparties on the covered bond issuer's assets provides equivalent protection against counterparty credit risk.

(25) Rules on clearing OTC derivative contracts, reporting on derivative transactions and risk-mitigation techniques for OTC derivative contracts not cleared by a CCP should apply to financial counterparties, namely investment firms as authorised in accordance with Directive 2004/39/EC, credit institutions as authorised in accordance with Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions [1], insurance undertakings as authorised in accordance with First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, Regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life insurance [2], assurance undertakings as authorised in accordance with Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance [3], reinsurance undertakings as authorised in accordance with Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance [4], undertakings for collective investments in transferable securities (UCITS) and, where relevant, their management companies, as authorised in accordance with Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) [5], institutions for occupational retirement provision as defined in Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision [6] and alternative investment funds managed by alternative investment fund managers (AIFM) as authorised or registered in accordance with Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers [7].

(26) Entities operating pension scheme arrangements, the primary purpose of which is to provide benefits upon retirement, usually in the form of payments for life, but also as payments made for a temporary period or as a lump sum, typically minimise their allocation to cash in order to maximise the efficiency and the return for their policy holders. Hence, requiring such entities to clear OTC derivative contracts centrally would lead to divesting a significant proportion of their assets for cash in order for them to meet the ongoing margin requirements of CCPs. To avoid a likely negative impact of such a requirement on the retirement income of future pensioners, the clearing obligation should not apply to pension schemes until a suitable technical solution for the transfer of non-cash collateral

[1] OJ L 177, 30.6.2006, p. 1.
[2] OJ L 228, 16.8.1973, p. 3.
[3] OJ L 345, 19.12.2002, p. 1.
[4] OJ L 323, 9.12.2005, p. 1.
[5] OJ L 302, 17.11.2009, p. 32.
[6] OJ L 235, 23.9.2003, p. 10.
[7] OJ L 174, 1.7.2011, p. 1.

as variation margins is developed by CCPs to address this problem. Such a technical solution should take into account the special role of pension scheme arrangements and avoid materially adverse effects on pensioners. During a transitional period, OTC derivative contracts entered into with a view to decreasing investment risks directly relating to the financial solvency of pension scheme arrangements should be subject not only to the reporting obligation, but also to bilateral collateralisation requirements. The ultimate aim, however, is central clearing as soon as this is tenable.

(27) It is important to ensure that only appropriate entities and arrangements receive special treatment as well as to take into account the diversity of pension systems across the Union, while also to provide for a level playing field for all pension scheme arrangements. Therefore, the temporary derogation should apply to institutions for occupational retirement provision registered in accordance with Directive 2003/41/EC, including any authorised entity responsible for managing such an institution and acting on its behalf as referred to in Article 2(1) of that Directive as well as any legal entity set up for the purpose of investment by such institutions, acting solely and exclusively in their interest, and to occupational retirement provision businesses of institutions referred to in Article 3 of Directive 2003/41/EC.

(28) The temporary derogation should also apply to occupational retirement provision businesses of life insurance undertakings provided that all corresponding assets and liabilities are ring-fenced, managed and organised separately, without any possibility of transfer. It should also apply to any other authorised and supervised entities operating on a national basis only or arrangements that are provided mainly in the territory of one Member State, only if both of them are recognised by national law and their primary purpose is to provide benefits upon retirement. The entities and arrangements referred to in this recital should be subject to the decision of the relevant competent authority and in order to ensure consistency, remove possible misalignments and avoid any abuse, the opinion of ESMA, after consulting EIOPA. This could include entities and arrangements that are not necessarily linked to an employer pension programme but still have the primary purpose of providing income at retirement, either on a compulsory or on a voluntary basis. Examples could include legal entities operating pension schemes on a funded basis under national law, provided that they invest in accordance with the 'prudent person' principle, and pension arrangements taken up by individuals directly, which may also be provided by life insurers. The exemption in the case of pension arrangements taken up by individuals directly should not cover OTC derivative contracts relating to other life insurance products of the insurer which do not have the primary purpose of providing an income at retirement.

Further examples might be retirement provision businesses of insurance undertakings covered by Directive 2002/83/EC, provided that all assets corresponding to the businesses are included in a special register in accordance with the Annex to Directive 2001/17/EC of the European Parliament and of the Council of 19 March 2001 on the reorganisation and winding-up of insurance undertakings [1] as well as occupational retirement provision arrangements of insurance undertakings based on collective bargaining agreements. Institutions established for the purpose of providing compensation to members of pension scheme arrangements in the case of a default should also be treated as a pension scheme for the purpose of this Regulation.

(29) Where appropriate, rules applicable to financial counterparties, should also apply to non-financial counterparties. It is recognised that non-financial counterparties use OTC derivative contracts in order to cover themselves against commercial risks directly linked to their commercial or treasury financing activities. Consequently, in determining whether a non-financial counterparty should be subject to the clearing obligation, consideration should be given to the purpose for which that non-financial counterparty uses OTC derivative contracts and to the size of the exposures that it has in those instruments. In order to ensure that non-financial institutions have the opportunity to state their views on the clearing thresholds, ESMA should, when preparing the relevant regulatory technical standards, conduct an open public consultation ensuring the participation of non-financial institutions. ESMA should also consult all relevant authorities, for example the Agency for the Cooperation of Energy Regulators, in order to ensure that the particularities of those sectors are fully taken into account. Moreover, by 17 August 2015, the Commission should assess the systemic importance of the transactions of non-financial firms in OTC derivative contracts in different sectors, including in the energy sector.

(30) In determining whether an OTC derivative contract reduces risks directly relating to the commercial activities and treasury activities of a non-financial counterparty, due account should be taken of that non-financial counterparty's overall hedging and risk-mitigation strategies. In particular, consideration should be given to whether an OTC derivative contract is economically appropriate for the reduction of risks in the conduct

[1] OJ L 110, 20.4.2001, p. 28.

and management of a non-financial counterparty, where the risks relate to fluctuations in interest rates, foreign exchange rates, inflation rates or commodity prices.

(31) The clearing threshold is a very important figure for all non-financial counterparties. When the clearing threshold is set, the systemic relevance of the sum of net positions and exposures per counterparty and per class of OTC derivative contract should be taken into account. In that connection, appropriate efforts should be made to recognise the methods of risk mitigation used by non-financial counterparties in the context of their normal business activity.

(32) Members of the ESCB and other Member States' bodies performing similar functions, other Union public bodies charged with or intervening in the management of the public debt, and the Bank for International Settlements should be excluded from the scope of this Regulation in order to avoid limiting their power to perform their tasks of common interest.

(33) As not all market participants that are subject to the clearing obligation are able to become clearing members of the CCP, they should have the possibility to access CCPs as clients or indirect clients subject to certain conditions.

(34) The introduction of a clearing obligation along with a process to establish which CCPs can be used for the purpose of this obligation may lead to unintended competitive distortions of the OTC derivatives market. For example, a CCP could refuse to clear transactions executed on certain trading venues because the CCP is owned by a competing trading venue. In order to avoid such discriminatory practices, CCPs should agree to clear transactions executed in different trading venues, to the extent that those trading venues comply with the operational and technical requirements established by the CCP, without reference to the contractual documents on the basis of which the parties concluded the relevant OTC derivative transaction, provided that those documents are consistent with market standards. Trading venues should provide the CCPs with trade feeds on a transparent and non-discriminatory basis. The right of access of a CCP to a trading venue should allow for arrangements whereby multiple CCPs use trade feeds of the same trading venue. However, this should not lead to interoperability for derivatives clearing or create liquidity fragmentation.

(35) This Regulation should not block fair and open access between trading venues and CCPs in the internal market, subject to the conditions laid down in this Regulation and in the regulatory technical standards developed by ESMA and adopted by the Commission. The Commission should continue to monitor closely the evolution of the OTC derivatives market and should, where necessary, intervene in order to prevent competitive distortions from occurring in the internal market with the aim of ensuring a level playing field in the financial markets.

(36) In certain areas within financial services and trading of derivative contracts, commercial and intellectual property rights may also exist. In instances where such property rights relate to products or services which have become, or impact upon, industry standards, licences should be available on proportionate, fair, reasonable and non-discriminatory terms.

(37) In order to identify the relevant classes of OTC derivative contracts that should be subject to the clearing obligation, the thresholds and systemically relevant non-financial counterparties, reliable data is needed. Therefore, for regulatory purposes, it is important that a uniform derivatives data reporting requirement is established at Union level. Moreover, a retrospective reporting obligation is needed, to the largest possible extent, for both financial counterparties and non-financial counterparties, in order to provide comparative data, including to ESMA and the relevant competent authorities.

(38) An intragroup transaction is a transaction between two undertakings which are included in the same consolidation on a full basis and are subject to appropriate centralised risk evaluation, measurement and control procedures. They are part of the same institutional protection scheme as referred to in Article 80(8) of Directive 2006/48/EC or, in the case of credit institutions affiliated to the same central body, as referred to in Article 3(1) of that Directive, both are credit institutions or one is a credit institution and the other is a central body. OTC derivative contracts may be recognised within non-financial or financial groups, as well as within groups composed of both financial and non-financial undertakings, and if such a contract is considered an intragroup transaction in respect of one counterparty, then it should also be considered an intragroup transaction in respect of the other counterparty to that contract. It is recognised that intragroup transactions may be necessary for aggregating risks within a group structure and that intragroup risks are therefore specific. Since the submission of those transactions to the clearing obligation may limit the efficiency of those intragroup risk-management processes, an exemption of intragroup transactions from the clearing obligation may be beneficial, provided that this exemption does not increase systemic risk. As a result, adequate exchange

of collateral should be substituted to the CCP clearing those transactions, where that is appropriate to mitigate intragroup counterparty risks.

(39) However, some intragroup transactions could be exempted, in some cases on the basis of the decision of the competent authorities, from the collateralisation requirement provided that their risk-management procedures are adequately sound, robust and consistent with the level of complexity of the transaction and there is no impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties. Those criteria as well as the procedures for the counterparties and the relevant competent authorities to be followed while applying exemptions should be specified in regulatory technical standards adopted in accordance with the relevant regulations establishing the ESAs. Before developing such draft regulatory technical standards, the ESAs should prepare an impact assessment of their potential impact on the internal market as well as on financial market participants and in particular on the operations and the structure of groups concerned. All the technical standards applicable to the collateral exchanged in intragroup transactions, including criteria for the exemption, should take into account the prevailing specificities of those transactions and existing differences between non-financial and financial counterparties as well as their purpose and methods of using derivatives.

(40) Counterparties should be considered to be included in the same consolidation at least where they are both included in a consolidation in accordance with Council Directive 83/349/EEC [1] or International Financial Reporting Standards (IFRS) adopted pursuant to Regulation (EC) No 1606/2002 of the European Parliament and of the Council [2] or, in relation to a group the parent undertaking of which has its head office in a third country, in accordance with generally accepted accounting principles of a third country determined to be equivalent to IFRS in accordance with Commission Regulation (EC) No 1569/2007 [3] (or accounting standards of a third country the use of which is permitted in accordance with Article 4 of Regulation (EC) No 1569/2007), or where they are both covered by the same consolidated supervision in accordance with Directive 2006/48/EC or with Directive 2006/49/EC of the European Parliament and of the Council [4] or, in relation to a group the parent undertaking of which has its head office in a third country, the same consolidated supervision by a third country competent authority verified as equivalent to that governed by the principles laid down in Article 143 of Directive 2006/48/EC or in Article 2 of Directive 2006/49/EC.

(41) It is important that market participants report all details regarding derivative contracts they have entered into to trade repositories. As a result, information on the risks inherent in derivatives markets will be centrally stored and easily accessible, inter alia, to ESMA, the relevant competent authorities, the European Systemic Risk Board (ESRB) and the relevant central banks of the ESCB.

(42) The provision of trade repository services is characterised by economies of scale, which may hamper competition in this particular field. At the same time, the imposition of a comprehensive reporting requirement on market participants may increase the value of the information maintained by trade repositories also for third parties providing ancillary services such as trade confirmation, trade matching, credit event servicing, portfolio reconciliation or portfolio compression. It is appropriate to ensure that a level playing field in the post-trade sector more generally is not compromised by a possible natural monopoly in the provision of trade repository services. Therefore, trade repositories should be required to provide access to the information held in the repository on fair, reasonable and non-discriminatory terms, subject to necessary precautions on data protection.

(43) In order to allow for a comprehensive overview of the market and for assessing systemic risk, both CCP-cleared and non-CCP-cleared derivative contracts should be reported to trade repositories.

(44) The ESAs should be provided with adequate resources in order to perform the tasks they are given in this Regulation effectively.

(45) Counterparties and CCPs that conclude, modify, or terminate a derivative contract should ensure that the details of that contract are reported to a trade repository. They should be able to delegate the reporting of the contract to another entity. An entity or its employees that report the details of a derivative contract to a trade repository on behalf of a counterparty, in accordance with this Regulation, should not be in breach of any restriction on disclosure. When

[1] Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts (OJ L 193, 18.7.1983, p. 1).

[2] Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p. 1).

[3] Commission Regulation (EC) No 1569/2007 of 21 December 2007 establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities pursuant to Directives 2003/71/EC and 2004/109/EC of the European Parliament and of the Council (OJ L 340, 22.12.2007, p. 66).

[4] Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (OJ L 177, 30.6.2006, p. 201).

preparing the draft regulatory technical standards regarding reporting, ESMA should take into account the progress made in the development of a unique contract identifier and the list of required reporting data in Annex I, Table 1 of Commission Regulation (EC) No 1287/2006 [1] implementing Directive 2004/39/EC and consult other relevant authorities such as the Agency for the Cooperation of Energy Regulators.

(46) Taking into consideration the principles set out in the Commission's Communication on reinforcing sanctioning regimes in the financial services sector and legal acts of the Union adopted as a follow-up to that Communication, Member States should lay down rules on penalties applicable to infringements of this Regulation. Member States should enforce those penalties in a manner that does not reduce the effectiveness of those rules. Those penalties should be effective, proportionate and dissuasive. They should be based on guidelines adopted by ESMA to promote convergence and cross-sector consistency of penalty regimes in the financial sector. Member States should ensure that the penalties imposed are publicly disclosed, where appropriate, and that assessment reports on the effectiveness of existing rules are published at regular intervals.

(47) A CCP might be established in accordance with this Regulation in any Member State. No Member State or group of Member States should be discriminated against, directly or indirectly, as a venue for clearing services. Nothing in this Regulation should attempt to restrict or impede a CCP in one jurisdiction from clearing a product denominated in the currency of another Member State or in the currency of a third country.

(48) Authorisation of a CCP should be conditional on a minimum amount of initial capital. Capital, including retained earnings and reserves of a CCP, should be proportionate to the risk stemming from the activities of the CCP at all times in order to ensure that it is adequately capitalised against credit, counterparty, market, operational, legal and business risks which are not already covered by specific financial resources and that it is able to conduct an orderly winding-up or restructuring of its operations if necessary.

(49) As this Regulation introduces a legal obligation to clear through specific CCPs for regulatory purposes, it is essential to ensure that those CCPs are safe and sound and comply at all times with the stringent organisational, business conduct, and prudential requirements established by this Regulation. In order to ensure uniform application of this Regulation, those requirements should apply to the clearing of all financial instruments in which the CCPs deal.

(50) It is therefore necessary, for regulatory and harmonisation purposes, to ensure that counterparties only use CCPs which comply with the requirements laid down in this Regulation. Those requirements should not prevent Member States from adopting or continuing to apply additional requirements in respect of CCPs established in their territory including certain authorisation requirements under Directive 2006/48/EC. However, imposing such additional requirements should not influence the right of CCPs authorised in other Member States or recognised, in accordance with this Regulation, to provide clearing services to clearing members and their clients established in the Member State introducing additional requirements, since those CCPs are not subject to those additional requirements and do not need to comply with them. By 30 September 2014, ESMA should draft a report on the impact of the application of additional requirements by Member States.

(51) Direct rules regarding the authorisation and supervision of CCPs are an essential corollary to the obligation to clear OTC derivative contracts. It is appropriate that competent authorities retain responsibility for all aspects of the authorisation and the supervision of CCPs, including the responsibility for verifying that the applicant CCP complies with this Regulation and with Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems [2], in view of the fact that those national competent authorities remain best placed to examine how the CCPs operate on a daily basis, to carry out regular reviews and to take appropriate action, where necessary.

(52) Where a CCP risks insolvency, fiscal responsibility may lie predominantly with the Member State in which that CCP is established. It follows that authorisation and supervision of that CCP should be exercised by the relevant competent authority of that Member State. However, since a CCP's clearing members may be established in different Member States and they will be the first to be impacted by the CCP's default, it is imperative that all relevant competent authorities and ESMA be involved in the authorisation and supervisory process. This will avoid divergent national measures or practices and obstacles to the proper functioning of the internal market. Furthermore, no proposal or policy of any member of a college of supervisors should, directly or indirectly, discriminate against any Member State or group of Member States as a venue for clearing services in any currency. ESMA should be a participant

[1] OJ L 241, 2.9.2006, p. 1.

[2] OJ L 166, 11.6.1998, p. 45.

in every college in order to ensure the consistent and correct application of this Regulation. ESMA should involve other competent authorities in the Member States concerned in the work of preparing recommendations and decisions.

(53) In light of the role assigned to colleges, it is important that all the relevant competent authorities as well as members of the ESCB are involved in performing their tasks. The college should consist not only of the competent authorities supervising the CCP but also of the supervisors of the entities on which the operations of that CCP might have an impact, namely selected clearing members, trading venues, interoperable CCPs and central securities depositories. Members of the ESCB that are responsible for the oversight of the CCP and interoperable CCPs as well as those responsible for the issue of the currencies of the financial instruments cleared by the CCP, should be able to participate in the college. As the supervised or overseen entities would be established in a limited range of Member States in which the CCP operates, a single competent authority or member of the ESCB could be responsible for supervision or oversight of a number of those entities. In order to ensure smooth cooperation between all the members of the college, appropriate procedures and mechanisms should be put in place.

(54) Since the establishment and functioning of the college is assumed to be based on a written agreement between all of its members, it is appropriate to confer upon them the power to determine the college's decision-making procedures, given the sensitivity of the issue. Therefore, detailed rules on voting procedures should be laid down in a written agreement between the members of the college. However, in order to balance the interests of all the relevant market participants and Member States appropriately, the college should vote in accordance with the general principle whereby each member has one vote, irrespective of the number of functions it performs in accordance with this Regulation. For colleges with up to and including 12 members, a maximum of two college members belonging to the same Member State should have a vote and each voting member should have one vote. For colleges with more than 12 members, a maximum of three college members belonging to the same Member State should have a vote and each voting member should have one vote.

(55) The very particular situation of CCPs requires that colleges are organised and function in accordance with arrangements that are specific to the supervision of CCPs.

(56) The arrangements provided for in this Regulation do not constitute a precedent for other legislation on the supervision and oversight of financial market infrastructures, in particular with regard to the voting modalities for referrals to ESMA.

(57) A CCP should not be authorised where all the members of the college, excluding the competent authorities of the Member State where the CCP is established, reach a joint opinion by mutual agreement that the CCP should not be authorised. If, however, a sufficient majority of the college has expressed a negative opinion and any of the competent authorities concerned, based on that majority of two-thirds of the college, has referred the matter to ESMA, the competent authority of the Member State where the CCP is established should defer its decision on the authorisation and await any decision that ESMA may take regarding conformity with Union law. The competent authority of the Member State where the CCP is established should take its decision in accordance with such a decision by ESMA. Where all the members of the college, excluding the authorities of the Member State where the CCP is established, reach a joint opinion to the effect that they consider that the requirements are not met and that the CCP should not receive authorisation, the competent authority of the Member State where the CCP is established should be able to refer the matter to ESMA to decide on conformity with Union law.

(58) It is necessary to reinforce provisions on exchange of information between competent authorities, ESMA and other relevant authorities and to strengthen the duties of assistance and cooperation between them. Due to increasing cross-border activity, those authorities should provide each other with the relevant information for the exercise of their functions so as to ensure the effective enforcement of this Regulation, including in situations where infringements or suspected infringements may be of concern to authorities in two or more Member States. For the exchange of information, strict professional secrecy is needed. It is essential, due to the wide impact of OTC derivative contracts, that other relevant authorities, such as tax authorities and energy regulators, have access to information necessary to the exercise of their functions.

(59) In view of the global nature of financial markets, ESMA should be directly responsible for recognising CCPs established in third countries and thus allowing them to provide clearing services within the Union, provided that the Commission has recognised the legal and supervisory framework of that third country as equivalent to the Union framework and that certain other conditions are met. Therefore, a CCP established in a third country, providing clearing services to clearing members or trading venues established in the Union should be recognised by ESMA. However, in order not to hamper the further development of cross-border investment management business in the Union, a third-country CCP providing services to clients established in the Union through a clearing member established in a third country should not have to be recognised by ESMA. In this context, agreements with the Union's major international partners will be of particular importance in order to ensure a global level playing field and financial stability.

(60) On 16 September 2010, the European Council agreed on the need for the Union to promote its interest and values more assertively and, in a spirit of reciprocity and mutual benefit, in the context of the Union's external relations and to take steps, inter alia, to secure greater market access for European business and deepen regulatory cooperation with major trade partners.

(61) A CCP should have robust governance arrangements, senior management of good repute and independent members on its board, irrespective of its ownership structure. At least one-third, and no less than two, members of its board should be independent. However, different governance arrangements and ownership structures may influence a CCP's willingness or ability to clear certain products. It is thus appropriate that the independent members of the board and the risk committee to be established by the CCP address any potential conflict of interests within a CCP. Clearing members and clients need to be adequately represented as decisions taken by the CCP may have an impact on them.

(62) A CCP may outsource functions. The CCP's risk committee should advise on such outsourcing. Major activities linked to risk management should not be outsourced unless this is approved by the competent authority.

(63) The participation requirements for a CCP should be transparent, proportionate, and non-discriminatory and should allow for remote access to the extent that this does not expose the CCP to additional risks.

(64) Clients of clearing members that clear their OTC derivative contracts with CCPs should be granted a high level of protection. The actual level of protection depends on the level of segregation that those clients choose. Intermediaries should segregate their assets from those of their clients. For this reason, CCPs should keep updated and easily identifiable records, in order to facilitate the transfer of the positions and assets of a defaulting clearing member's clients to a solvent clearing member or, as the case may be, the orderly liquidation of the clients' positions and the return of excess collateral to the clients. The requirements laid down in this Regulation on the segregation and portability of clients' positions and assets should therefore prevail over any conflicting laws, regulations and administrative provisions of the Member States that prevent the parties from fulfilling them.

(65) A CCP should have a sound risk-management framework to manage credit risks, liquidity risks, operational and other risks, including the risks that it bears or poses to other entities as a result of interdependencies. A CCP should have adequate procedures and mechanisms in place to deal with the default of a clearing member. In order to minimise the contagion risk of such a default, the CCP should have in place stringent participation requirements, collect appropriate initial margins, maintain a default fund and other financial resources to cover potential losses. In order to ensure that it benefits from sufficient resources on an ongoing basis, the CCP should establish a minimum amount below which the size of the default fund is not generally to fall. This should not, however, limit the CCP's ability to use the entirety of the default fund to cover the losses caused by a clearing member's default.

(66) When defining a sound risk-management framework, a CCP should take into account its potential risk and economic impact on the clearing members and their clients. Although the development of a highly robust risk management should remain its primary objective, a CCP may adapt its features to the specific activities and risk profiles of the clients of the clearing members, and if deemed appropriate on the basis of the criteria specified in the regulatory technical standards to be developed by ESMA, may include in the scope of the highly liquid assets accepted as collateral, at least cash, government bonds, covered bonds in accordance with Directive 2006/48/EC subject to adequate haircuts, guarantees callable on first demand granted by a member of the ESCB, commercial bank guarantees under strict conditions, in particular relating to the creditworthiness of the guarantor, and the guarantor's capital links with CCP's clearing members. Where appropriate, ESMA may also consider gold as an asset acceptable as collateral. CCPs should be able to accept, under strict risk-management conditions, commercial bank guarantees from non-financial counterparties acting as clearing members.

(67) CCPs' risk-management strategies should be sufficiently sound so as to avoid risks for the taxpayer.

(68) Margin calls and haircuts on collateral may have procyclical effects. CCPs, competent authorities and ESMA should therefore adopt measures to prevent and control possible procyclical effects in risk-management practices adopted by CCPs, to the extent that a CCP's soundness and financial security is not negatively affected.

(69) Exposure management is an essential part of the clearing process. Access to, and use of, the relevant pricing sources should be granted to provide clearing services

in general. Such pricing sources should include those relating to indices that are used as references to derivatives or other financial instruments.

(70) Margins are the primary line of defence for a CCP. Although CCPs should invest the margins received in a safe and prudent manner, they should make particular efforts to ensure adequate protection of margins to guarantee that they are returned in a timely manner to the non-defaulting clearing members or to an interoperable CCP where the CCP collecting these margins defaults.

(71) Access to adequate liquidity resources is essential for a CCP. It is possible for such liquidity to derive from access to central bank liquidity, creditworthy and reliable commercial bank liquidity, or a combination of both. Access to liquidity could result from an authorisation granted in accordance with Article 6 of Directive 2006/48/EC or other appropriate arrangements. In assessing the adequacy of liquidity resources, especially in stress situations, a CCP should take into consideration the risks of obtaining the liquidity by only relying on commercial banks credit lines.

(72) The 'European Code of Conduct for Clearing and Settlement' of 7 November 2006 established a voluntary framework for establishing links between CCPs. However, the post-trade sector remains fragmented along national lines, making cross-border trades more costly and hindering harmonisation. It is therefore necessary to lay down the conditions for the establishment of interoperability arrangements between CCPs to the extent these do not expose the relevant CCPs to risks that are not appropriately managed.

(73) Interoperability arrangements are important for greater integration of the post-trading market within the Union and regulation should be provided for. However, as interoperability arrangements may expose CCPs to additional risks, CCPs should have been, for three years, authorised to clear or recognised in accordance with this Regulation, or authorised under a pre-existing national authorisation regime, before competent authorities grant approval of such interoperability arrangements. In addition, given the additional complexities involved in an interoperability arrangement between CCPs clearing OTC derivative contracts, it is appropriate at this stage to restrict the scope of interoperability arrangements to transferable securities and money-market instruments. However, by 30 September 2014, ESMA should submit a report to the Commission on whether an extension of that scope to other financial instruments would be appropriate.

(74) Trade repositories collect data for regulatory purposes that are relevant to authorities in all Member States. ESMA should assume responsibility for the registration, withdrawal of registration and supervision of trade repositories.

(75) Given that regulators, CCPs and other market participants rely on the data maintained by trade repositories, it is necessary to ensure that those trade repositories are subject to strict operational, record-keeping and data-management requirements.

(76) Transparency of prices, fees and risk-management models associated with the services provided by CCPs, their members and trade repositories is necessary to enable market participants to make an informed choice.

(77) In order to carry out its duties effectively, ESMA should be able to require, by simple request or by decision, all necessary information from trade repositories, related third parties and third parties to which the trade repositories have outsourced operational functions or activities. If ESMA requires such information by simple request, the addressee is not obliged to provide the information but, in the event that it does so voluntarily, the information provided should not be incorrect or misleading. Such information should be made available without delay.

(78) Without prejudice to cases covered by criminal or tax law, the competent authorities, ESMA, bodies or natural or legal persons other than the competent authorities, which receive confidential information should use it only in the performance of their duties and for the exercise of their functions. However, this should not prevent the exercise, in accordance with national law, of the functions of national bodies responsible for the prevention, investigation or correction of cases of maladministration.

(79) In order to exercise its supervisory powers effectively, ESMA should be able to conduct investigations and on-site inspections.

(80) ESMA should be able to delegate specific supervisory tasks to the competent authority of a Member State, for instance where a supervisory task requires knowledge and experience with respect to local conditions, which are more easily available at national level. ESMA should be able to delegate the carrying out of specific investigatory tasks and on-site inspections. Prior to the delegation of tasks, ESMA should consult the relevant competent authority about the detailed conditions relating to such delegation of tasks, including the scope of the task to be delegated, the timetable for the performance of the task, and the transmission of necessary information by and to ESMA. ESMA

should compensate the competent authorities for carrying out a delegated task in accordance with a regulation on fees to be adopted by the Commission by means of a delegated act. ESMA should not be able to delegate the power to adopt decisions on registration.

(81) It is necessary to ensure that competent authorities are able to request that ESMA examine whether the conditions for the withdrawal of a trade repository's registration are met. ESMA should assess such requests and take any appropriate measures.

(82) ESMA should be able to impose periodic penalty payments to compel trade repositories to put an end to an infringement, to supply complete and correct information required by ESMA or to submit to an investigation or an on-site inspection.

(83) ESMA should also be able to impose fines on trade repositories where it finds that they have committed, intentionally or negligently, an infringement of this Regulation. Fines should be imposed according to the level of seriousness of the infringement. Infringements should be divided into different groups for which specific fines should be allocated. In order to calculate the fine relating to a particular infringement, ESMA should use a two-step methodology consisting of setting a basic amount and adjusting that basic amount, if necessary, by certain coefficients. The basic amount should be established by taking into account the annual turnover of the trade repository concerned and the adjustments should be made by increasing or decreasing the basic amount through the application of the relevant coefficients in accordance with this Regulation.

(84) This Regulation should establish coefficients linked to aggravating and mitigating circumstances in order to give the necessary tools to ESMA to decide on a fine which is proportionate to the seriousness of the infringement committed by a trade repository, taking into account the circumstances under which that infringement has been committed.

(85) Before taking a decision to impose fines or periodic penalty payments, ESMA should give the persons subject to the proceedings the opportunity to be heard in order to respect their rights of defence.

(86) ESMA should refrain from imposing fines or periodic penalty payments where a prior acquittal or conviction arising from identical facts, or from facts which are substantially the same, has acquired the force of res judicata as a result of criminal proceedings under national law.

(87) ESMA's decisions imposing fines and periodic penalty payments should be enforceable and their enforcement should be subject to the rules of civil procedure which are in force in the State in the territory of which it is carried out. Rules of civil procedure should not include criminal procedural rules but could include administrative procedural rules.

(88) In the case of an infringement committed by a trade repository, ESMA should be empowered to take a range of supervisory measures, including requiring the trade repository to bring the infringement to an end, and, as a last resort, withdrawing the registration where the trade repository has seriously or repeatedly infringed this Regulation. The supervisory measures should be applied by ESMA taking into account the nature and seriousness of the infringement and should respect the principle of proportionality. Before taking a decision on supervisory measures, ESMA should give the persons subject to the proceedings an opportunity to be heard in order to comply with their rights of defence.

(89) It is essential that Member States and ESMA protect the right to privacy of natural persons when processing personal data, in accordance with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1] and with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and of the free movement of such data [2].

(90) It is important to ensure international convergence of requirements for CCPs and trade repositories. This Regulation follows the existing recommendations developed by the Committee on Payment and Settlement Systems (CPSS) and International Organization of Securities Commissions (IOSCO) noting that the CPSS-IOSCO principles for financial market infrastructure, including CCPs, were established on 16 April 2012. It creates a Union framework in which CCPs can operate safely. ESMA should consider these existing standards and their future developments when drawing up or proposing to revise the regulatory technical standards as well as the guidelines and recommendations foreseen in this Regulation.

(91) The power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of amendments to the list of entities exempt from this

[1] OJ L 281, 23.11.1995, p. 31.
[2] OJ L 8, 12.1.2001, p. 1.

Regulation, further rules of procedure relating to the imposition of fines or periodic penalty payments, including provisions on the rights of the defence, time limits, the collection of fines or periodic penalty payments and the limitation periods for the imposition and enforcement of penalty payments or fines; measures to amend Annex II in order to take account of developments in the financial markets; the further specification of the type of fees, the matters for which fees are due, the amount of the fees and the manner in which they are to be paid. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(92) In order to ensure consistent harmonisation, power should be delegated to the Commission to adopt the ESAs' draft regulatory technical standards in accordance with Articles 10 to 14 of Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010 for the application, for the purposes of this Regulation, of points (4) to (10) of Section C of Annex I to Directive 2004/39/EC and in order to specify: the OTC derivative contracts that are considered to have a direct, substantial and foreseeable effect within the Union or the cases where it is necessary or appropriate to prevent the evasion of any provision of this Regulation; the types of indirect contractual arrangements that meet the conditions set out in this Regulation; the classes of OTC derivative contracts that should be subject to the clearing obligation, the date or dates from which the clearing obligation is to take effect, including any phase-in, the categories of counterparties to which the clearing obligation applies, and the minimum remaining maturity of the OTC derivative contracts entered into or novated before the date on which the clearing obligation takes effect; the details to be included in a competent authority's notification to ESMA of its authorisation of a CCP to clear a class of OTC derivative contract; particular classes of OTC derivative contracts, the degree of standardisation of the contractual terms and operational processes, the volume and the liquidity, and the availability of fair, reliable and generally accepted pricing information; the details to be included in ESMA's register of classes of OTC derivative contracts subject to the clearing obligation; the details and type of the reports for the different classes of derivatives; criteria to determine which OTC derivative contracts are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity and values of the clearing thresholds, the procedures and the arrangements in regard to risk-mitigation techniques for OTC derivative contracts not cleared by a CCP; the risk-management procedures, including the required levels and type of collateral and segregation arrangements and the required level of capital; the notion of liquidity fragmentation; requirements regarding the capital, retained earnings and reserves of CCPs; the minimum content of the rules and governance arrangements for CCPs; the details of the records and information to be retained by CCPs; the minimum content and requirements for CCPs' business continuity policies and disaster recovery plans; the appropriate percentage and time horizons for the liquidation period and the calculation of historical volatility to be considered for the different classes of financial instruments taking into account the objective to limit pro-cyclicality and the conditions under which portfolio margining practices can be implemented; the framework for defining extreme but plausible market conditions which should be used when defining the size of the default fund and the resources of CCPs; the methodology for calculating and maintaining the amount of CCPs' own resources; the type of collateral that could be considered highly liquid, such as cash, gold, government and high-quality corporate bonds, covered bonds and the haircuts and the conditions under which commercial bank guarantees can be accepted as collateral; the financial instruments that can be considered highly liquid, bearing minimal credit and market risk, highly secured arrangements and concentration limits; the type of stress tests to be undertaken by CCPs for different classes of financial instruments and portfolios, the involvement of clearing members or other parties in the tests, the frequency and timing of the tests and the key information that the CCP is to disclose on its risk-management model and assumptions adopted to perform the stress tests; the details of the application by trade repositories for registration with ESMA; the frequency and the detail in which trade repositories are to disclose information relating to aggregate positions by class of OTC derivative contract; and the operational standards required in order to aggregate and compare data across repositories.

(93) Any obligation imposed by this Regulation which is to be further developed by means of delegated or implementing acts adopted under Article 290 or 291 TFEU should be understood as applying only from the date on which those acts take effect.

(94) As a part of its development of technical guidelines and regulatory technical standards, and in particular when setting the clearing threshold for non-financial counterparties under this Regulation, ESMA should organise public hearings of market participants.

(95) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers [1].

(96) The Commission should monitor and assess the need for any appropriate measures to ensure the consistent and effective application and development of regulations, standards and practices falling within the scope of this Regulation, taking into consideration the outcome of the work performed by relevant international forums.

[1] OJ L 55, 28.2.2011, p. 13.

(97) In view of the rules regarding interoperable systems, it was deemed appropriate to amend Directive 98/26/EC to protect the rights of a system operator that provides collateral security to a receiving system operator in the event of insolvency proceedings against that receiving system operator.

(98) In order to facilitate efficient clearing, recording, settlement and payment, CCPs and trade repositories should accommodate in their communication procedures with participants and with the market infrastructures they interface with, the relevant international communication procedures and standards for messaging and reference data.

(99) Since the objectives of this Regulation, namely to lay down uniform requirements for OTC derivative contracts and for the performance of activities of CCPs and trade repositories, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS REGULATION:

TITLE I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter and scope

1. This Regulation lays down clearing and bilateral risk-management requirements for over-the-counter ('OTC') derivative contracts, reporting requirements for derivative contracts and uniform requirements for the performance of activities of central counterparties ('CCPs') and trade repositories.

2. This Regulation shall apply to CCPs and their clearing members, to financial counterparties and to trade repositories. It shall apply to non-financial counterparties and trading venues where so provided.

3. Title V of this Regulation shall apply only to transferable securities and money-market instruments, as defined in point (18)(a) and (b) and point (19) of Article 4(1) of Directive 2004/39/EC.

4. This Regulation shall not apply to:

(a) the members of the ESCB and other Member States' bodies performing similar functions and other Union public bodies charged with or intervening in the management of the public debt;

(b) the Bank for International Settlements.

5. With the exception of the reporting obligation under Article 9, this Regulation shall not apply to the following entities:

(a) multilateral development banks, as listed under Section 4.2 of Part 1 of Annex VI to Directive 2006/48/EC;

(b) public sector entities within the meaning of point (18) of Article 4 of Directive 2006/48/EC where they are owned by central governments and have explicit guarantee arrangements provided by central governments;

(c) the European Financial Stability Facility and the European Stability Mechanism.

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 82 to amend the list set out in paragraph 4 of this Article.

To that end, by 17 November 2012 the Commission shall present to the European Parliament and the Council a report assessing the international treatment of public bodies charged with or intervening in the management of the public debt and central banks.

The report shall include a comparative analysis of the treatment of those bodies and of central banks within the legal framework of a significant number of third countries, including at least the three most important jurisdictions as regards volumes of contracts traded, and the risk-management standards applicable to the derivative transactions entered into by those bodies and by central banks in those jurisdictions. If the report concludes, in particular in regard to the comparative analysis, that the exemption of the monetary responsibilities of those third-country central banks from the clearing and reporting obligation is necessary, the Commission shall add them to the list set out in paragraph 4.

Article 2

Definitions

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

(1) 'CCP' means a legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer;

(2) 'trade repository' means a legal person that centrally collects and maintains the records of derivatives;

(3) 'clearing' means the process of establishing positions, including the calculation of net obligations, and ensuring that financial instruments, cash, or both, are available to secure the exposures arising from those positions;

(4) 'trading venue' means a system operated by an investment firm or a market operator within the meaning of Article 4(1)(1) and 4(1)(13) of Directive 2004/39/EC other than a systematic internaliser within the meaning of Article 4(1)(7) thereof, which brings together buying or selling interests in financial instruments in the system, in a way that results in a contract in accordance with Title II or III of that Directive;

(5) 'derivative' or 'derivative contract' means a financial instrument as set out in points (4) to (10) of Section C of Annex I to Directive 2004/39/EC as implemented by Article 38 and 39 of Regulation (EC) No 1287/2006;

(6) 'class of derivatives' means a subset of derivatives sharing common and essential characteristics including at least the relationship with the underlying asset, the type of underlying asset, and currency of notional amount. Derivatives belonging to the same class may have different maturities;

(7) 'OTC derivative' or 'OTC derivative contract' means a derivative contract the execution of which does not take place on a regulated market as within the meaning of Article 4(1)(14) of Directive 2004/39/EC or on a third-country market considered as equivalent to a regulated market in accordance with Article 19(6) of Directive 2004/39/EC;

(8) 'financial counterparty' means an investment firm authorised in accordance with Directive 2004/39/EC, a credit institution authorised in accordance with Directive 2006/48/EC, an insurance undertaking authorised in accordance with Directive 73/239/EEC, an assurance undertaking authorised in accordance with Directive 2002/83/EC, a reinsurance undertaking authorised in accordance with Directive 2005/68/EC, a UCITS and, where relevant, its management company, authorised in accordance with Directive 2009/65/EC, an institution for occupational retirement provision within the meaning of Article 6(a) of Directive 2003/41/EC and an alternative investment fund managed by AIFMs authorised or registered in accordance with Directive 2011/61/EU;

(9) 'non-financial counterparty' means an undertaking established in the Union other than the entities referred to in points (1) and (8);

(10) 'pension scheme arrangement' means:

(a) institutions for occupational retirement provision within the meaning of Article 6(a) of Directive 2003/41/EC, including any authorised entity responsible for managing such an institution and acting on its behalf as referred to in Article 2(1) of that Directive as well as any legal entity set up for the purpose of investment of such institutions, acting solely and exclusively in their interest;

(b) occupational retirement provision businesses of institutions referred to in Article 3 of Directive 2003/41/EC;

(c) occupational retirement provision businesses of life insurance undertakings covered by Directive 2002/83/EC, provided that all assets and liabilities corresponding to the business are ring-fenced, managed and organised separately from the other activities of the insurance undertaking, without any possibility of transfer;

(d) any other authorised and supervised entities, or arrangements, operating on a national basis, provided that:

(i) they are recognised under national law; and

(ii) their primary purpose is to provide retirement benefits;

(11) 'counterparty credit risk' means the risk that the counterparty to a transaction defaults before the final settlement of the transaction's cash flows;

(12) 'interoperability arrangement' means an arrangement between two or more CCPs that involves a cross-system execution of transactions;

(13) 'competent authority' means the competent authority referred to in the legislation referred to in point (8) of this Article, the competent authority referred to in Article 10(5) or the authority designated by each Member State in accordance with Article 22;

(14) 'clearing member' means an undertaking which participates in a CCP and which is responsible for discharging the financial obligations arising from that participation;

(15) 'client' means an undertaking with a contractual relationship with a clearing member of a CCP which enables that undertaking to clear its transactions with that CCP;

(16) 'group' means the group of undertakings consisting of a parent undertaking and its subsidiaries within the meaning of Articles 1 and 2 of Directive 83/349/EEC or the group of undertakings referred to in Article 3(1) and Article 80(7) and (8) of Directive 2006/48/EC;

(17) 'financial institution' means an undertaking other than a credit institution, the principal activity of which is to acquire holdings or to carry on one or more of the activities listed in points (2) to (12) of Annex I to Directive 2006/48/EC;

(18) 'financial holding company' means a financial institution, the subsidiary undertakings of which are either exclusively or mainly credit institutions or financial institutions, at least one of such subsidiary undertakings being a credit institution, and which is not a mixed financial holding company within the meaning of Article 2(15) of Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate [1];

(19) 'ancillary services undertaking' means an undertaking the principal activity of which consists in owning or managing property, managing data-processing services, or a similar activity which is ancillary to the principal activity of one or more credit institution;

(20) 'qualifying holding' means any direct or indirect holding in a CCP or trade repository which represents at least 10 % of the capital or of the voting rights, as set out in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market [2], taking into account the conditions regarding aggregation thereof laid down in Article 12(4) and (5) of that Directive, or which makes it possible to exercise a significant influence over the management of the CCP or trade repository in which that holding subsists;

(21) 'parent undertaking' means a parent undertaking as described in Articles 1 and 2 of Directive 83/349/EEC;

(22) 'subsidiary' means a subsidiary undertaking as described in Articles 1 and 2 of Directive 83/349/EEC, including a subsidiary of a subsidiary undertaking of an ultimate parent undertaking;

(23) 'control' means the relationship between a parent undertaking and a subsidiary, as described in Article 1 of Directive 83/349/EEC;

(24) 'close links' means a situation in which two or more natural or legal persons are linked by:

(a) participation, by way of direct ownership or control, of 20 % or more of the voting rights or capital of an undertaking; or

(b) control or a similar relationship between any natural or legal person and an undertaking or a subsidiary of a subsidiary also being considered a subsidiary of the parent undertaking which is at the head of those undertakings.

A situation in which two or more natural or legal persons are permanently linked to one and the same person by a control relationship shall also be regarded as constituting a close link between such persons.

(25) 'capital' means subscribed capital within the meaning of Article 22 of Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions [3] in so far it has been paid up, plus the related share premium accounts, it fully absorbs losses in going concern situations, and, in the event of bankruptcy or liquidation, it ranks after all other claims;

(26) 'reserves' means reserves as set out in Article 9 of Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies [4] and profits and losses brought forward as a result of the application of the final profit or loss;

(27) 'board' means administrative or supervisory board, or both, in accordance with national company law;

(28) 'independent member' of the board means a member of the board who has no business, family or other relationship that raises a conflict of interests regarding the CCP concerned or its controlling shareholders, its management or its clearing members, and who has had no such relationship during the five years preceding his membership of the board;

(29) 'senior management' means the person or persons who effectively direct the business of the CCP or the trade repository, and the executive member or members of the board.

Article 3

Intragroup transactions

1. In relation to a non-financial counterparty, an intragroup transaction is an OTC derivative contract entered into with another counterparty which is part of the same group provided that both counterparties are included in the same consolidation on a full basis and they are subject to an appropriate centralised risk evaluation, measurement and control procedures and that counterparty is established in the Union or, if it is established in a third country, the Commission has adopted an implementing act under Article 13(2) in respect of that third country.

[1] OJ L 35, 11.2.2003, p. 1.
[2] OJ L 390, 31.12.2004, p. 38.
[3] OJ L 372, 31.12.1986, p. 1.
[4] OJ L 222, 14.8.1978, p. 11.

2. In relation to a financial counterparty, an intragroup transaction is any of the following:

(a) an OTC derivative contract entered into with another counterparty which is part of the same group, provided that the following conditions are met:

(i) the financial counterparty is established in the Union or, if it is established in a third country, the Commission has adopted an implementing act under Article 13(2) in respect of that third country;

(ii) the other counterparty is a financial counterparty, a financial holding company, a financial institution or an ancillary services undertaking subject to appropriate prudential requirements;

(iii) both counterparties are included in the same consolidation on a full basis; and

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

(b) an OTC derivative contract entered into with another counterparty where both counterparties are part of the same institutional protection scheme, referred to in Article 80(8) of Directive 2006/48/EC, provided that the condition set out in point (a)(ii) of this paragraph is met;

(c) an OTC derivative contract entered into between credit institutions affiliated to the same central body or between such credit institution and the central body, as referred to in Article 3(1) of Directive 2006/48/EC; or

(d) an OTC derivative contract entered into with a non-financial counterparty which is part of the same group provided that both counterparties are included in the same consolidation on a full basis and they are subject to an appropriate centralised risk evaluation, measurement and control procedures and that counterparty is established in the Union or in a third-country jurisdiction for which the Commission has adopted an implementing act as referred to in Article 13(2) in respect of that third country.

3. For the purposes of this Article, counterparties shall be considered to be included in the same consolidation when they are both either:

(a) included in a consolidation in accordance with Directive 83/349/EEC or International Financial Reporting Standards (IFRS) adopted pursuant to Regulation (EC) No 1606/2002 or, in relation to a group the parent undertaking of which has its head office in a third country, in accordance with generally accepted accounting principles of a third country determined to be equivalent to IFRS in accordance with Regulation (EC) No 1569/2007 (or accounting standards of a third country the use of which is permitted in accordance with Article 4 of that Regulation); or

(b) covered by the same consolidated supervision in accordance with Directive 2006/48/EC or Directive 2006/49/EC or, in relation to a group the parent undertaking of which has its head office in a third country, the same consolidated supervision by a third-country competent authority verified as equivalent to that governed by the principles laid down in Article 143 of Directive 2006/48/EC or in Article 2 of Directive 2006/49/EC.

TITLE II

CLEARING, REPORTING AND RISK MITIGATION OF OTC DERIVATIVES

Article 4

Clearing obligation

1. Counterparties shall clear all OTC derivative contracts pertaining to a class of OTC derivatives that has been declared subject to the clearing obligation in accordance with Article 5(2), if those contracts fulfil both of the following conditions:

(a) they have been concluded in one of the following ways:

(i) between two financial counterparties;

(ii) between a financial counterparty and a non-financial counterparty that meets the conditions referred to in Article 10(1)(b);

(iii) between two non-financial counterparties that meet the conditions referred to in Article 10(1)(b);

(iv) between a financial counterparty or a non-financial counterparty meeting the conditions referred to in Article 10(1)(b) and an entity established in a third country that would be subject to the clearing obligation if it were established in the Union; or

(v) between two entities established in one or more third countries that would be subject to the clearing obligation if they were established in the Union, provided that the contract has a direct, substantial and foreseeable effect within the Union or where such an obligation is necessary or appropriate to prevent the evasion of any provisions of this Regulation; and

(b) they are entered into or novated either:

(i) on or after the date from which the clearing obligation takes effect; or

(ii) on or after notification as referred to in Article 5(1) but before the date from which the clearing obligation takes effect if the contracts have a remaining maturity higher than the minimum remaining maturity determined by the Commission in accordance with Article 5(2)(c).

2. Without prejudice to risk-mitigation techniques under Article 11, OTC derivative contracts that are intragroup transactions as described in Article 3 shall not be subject to the clearing obligation.

The exemption set out in the first subparagraph shall apply only:

(a) where two counterparties established in the Union belonging to the same group have first notified their respective competent authorities in writing that they intend to make use of the exemption for the OTC derivative contracts concluded between each other. The notification shall be made not less than 30 calendar days before the use of the exemption. Within 30 calendar days after receipt of that notification, the competent authorities may object to the use of this exemption if the transactions between the counterparties do not meet the conditions laid down in Article 3, without prejudice to the right of the competent authorities to object after that period of 30 calendar days has expired where those conditions are no longer met. If there is disagreement between the competent authorities, ESMA may assist those authorities in reaching an agreement in accordance with its powers under Article 19 of Regulation (EU) No 1095/2010;

(b) to OTC derivative contracts between two counterparties belonging to the same group which are established in a Member State and in a third country, where the counterparty established in the Union has been authorised to apply the exemption by its competent authority within 30 calendar days after it has been notified by the counterparty established in the Union, provided that the conditions laid down in Article 3 are met. The competent authority shall notify ESMA of that decision.

3. The OTC derivative contracts that are subject to the clearing obligation pursuant to paragraph 1 shall be cleared in a CCP authorised under Article 14 or recognised under Article 25 to clear that class of OTC derivatives and listed in the register in accordance with Article 6(2)(b).

For that purpose a counterparty shall become a clearing member, a client, or shall establish indirect clearing arrangements with a clearing member, provided that those arrangements do not increase counterparty risk and ensure that the assets and positions of the counterparty benefit from protection with equivalent effect to that referred to in Articles 39 and 48.

4. In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards specifying the contracts that are considered to have a direct, substantial and foreseeable effect within the Union or the cases where it is necessary or appropriate to prevent the evasion of any provision of this Regulation as referred to in paragraph 1(a)(v), and the types of indirect contractual arrangements that meet the conditions referred to in the second subparagraph of paragraph 3.

ESMA shall submit those draft regulatory technical standards to the Commission by 30 September 2012.

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 5

Clearing obligation procedure

1. Where a competent authority authorises a CCP to clear a class of OTC derivatives under Article 14 or 15, it shall immediately notify ESMA of that authorisation.

In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards specifying the details to be included in the notifications referred to in the first subparagraph.

ESMA shall submit those draft regulatory technical standards to the Commission by 30 September 2012.

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

2. Within six months of receiving notification in accordance with paragraph 1 or accomplishing a procedure for recognition set out in Article 25, ESMA shall, after conducting a public consultation and after consulting the ESRB and, where appropriate, the competent authorities of third countries, develop and submit to the Commission for endorsement draft regulatory technical standards specifying the following:

(a) the class of OTC derivatives that should be subject to the clearing obligation referred to in Article 4;

(b) the date or dates from which the clearing obligation takes effect, including any phase in and the categories of counterparties to which the obligation applies; and

(c) the minimum remaining maturity of the OTC derivative contracts referred to in Article 4(1)(b)(ii).

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

3. ESMA shall, on its own initiative, after conducting a public consultation and after consulting the ESRB and, where appropriate, the competent authorities of third countries, identify, in accordance with the criteria set out in points (a), (b) and (c) of paragraph 4 and notify to the Commission the classes of derivatives that should be subject to the clearing obligation provided in Article 4, but for which no CCP has yet received authorisation.

Following the notification, ESMA shall publish a call for a development of proposals for the clearing of those classes of derivatives.

4. With the overarching aim of reducing systemic risk, the draft regulatory technical standards for the part referred to in paragraph 2(a) shall take into consideration the following criteria:

(a) the degree of standardisation of the contractual terms and operational processes of the relevant class of OTC derivatives;

(b) the volume and liquidity of the relevant class of OTC derivatives;

(c) the availability of fair, reliable and generally accepted pricing information in the relevant class of OTC derivatives.

In preparing those draft regulatory technical standards, ESMA may take into consideration the interconnectedness between counterparties using the relevant classes of OTC derivatives, the anticipated impact on the levels of counterparty credit risk between counterparties as well as the impact on competition across the Union.

In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards further specifying the criteria referred to in points (a), (b) and (c) of the first subparagraph.

ESMA shall submit those draft regulatory technical standards to the Commission by 30 September 2012.

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

5. The draft regulatory technical standards for the part referred to in paragraph 2(b) shall take into consideration the following criteria:

(a) the expected volume of the relevant class of OTC derivatives;

(b) whether more than one CCP already clear the same class of OTC derivatives;

(c) the ability of the relevant CCPs to handle the expected volume and to manage the risk arising from the clearing of the relevant class of OTC derivatives;

(d) the type and number of counterparties active, and expected to be active within the market for the relevant class of OTC derivatives;

(e) the period of time a counterparty subject to the clearing obligation needs in order to put in place arrangements to clear its OTC derivative contracts through a CCP;

(f) the risk management and the legal and operational capacity of the range of counterparties that are active in the market for the relevant class of OTC derivatives and that would be captured by the clearing obligation pursuant to Article 4(1).

6. If a class of OTC derivative contracts no longer has a CCP which is authorised or recognised to clear those contracts under this Regulation, it shall cease to be subject to the clearing obligation referred to in Article 4, and paragraph 3 of this Article shall apply.

Article 6

Public register

1. ESMA shall establish, maintain and keep up to date a public register in order to identify the classes of OTC derivatives subject to the clearing obligation correctly and unequivocally. The public register shall be available on ESMA's website.

2. The register shall include:

(a) the classes of OTC derivatives that are subject to the clearing obligation pursuant to Article 4;

(b) the CCPs that are authorised or recognised for the purpose of the clearing obligation;

(c) the dates from which the clearing obligation takes effect, including any phased-in implementation;

(d) the classes of OTC derivatives identified by ESMA in accordance with Article 5(3);

(e) the minimum remaining maturity of the derivative contracts referred to in Article 4(1)(b)(ii);

(f) the CCPs that have been notified to ESMA by the competent authority for the purpose of the clearing obligation and the date of notification of each of them.

3. Where a CCP is no longer authorised or recognised in accordance with this Regulation to clear a given class of derivatives, ESMA shall immediately remove it from the public register in relation to that class of OTC derivatives.

4. In order to ensure consistent application of this Article, ESMA may develop draft regulatory technical standards specifying the details to be included in the public register referred to in paragraph 1.

ESMA shall submit any such draft regulatory technical standards to the Commission by 30 September 2012.

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 7

Access to a CCP

1. A CCP that has been authorised to clear OTC derivative contracts shall accept clearing such contracts on a non-discriminatory and transparent basis, regardless of the trading venue.

A CCP may require that a trading venue comply with the operational and technical requirements established by the CCP, including the risk-management requirements.

2. A CCP shall accede to or refuse a formal request for access by a trading venue within three months of such a request.

3. Where a CCP refuses access under paragraph 2, it shall provide the trading venue with full reasons for such refusal.

4. Save where the competent authority of the trading venue and that of the CCP refuse access, the CCP shall, subject to the second subparagraph, grant access within three months of a decision acceding to the trading venue's formal request in accordance with paragraph 2.

The competent authority of the trading venue and that of the CCP may refuse access to the CCP following a formal request by the trading venue only where such access would threaten the smooth and orderly functioning of the markets or would adversely affect systemic risk.

5. ESMA shall settle any dispute arising from a disagreement between competent authorities in accordance with its powers under Article 19 of Regulation (EU) No 1095/2010.

Article 8

Access to a trading venue

1. A trading venue shall provide trade feeds on a non-discriminatory and transparent basis to any CCP that has been authorised to clear OTC derivative contracts traded on that trading venue upon request by the CCP.

2. Where a request to access a trading venue has been formally submitted to a trading venue by a CCP, the trading venue shall respond to the CCP within three months.

3. Where access is refused by a trading venue, it shall notify the CCP accordingly, providing full reasons.

4. Without prejudice to the decision by competent authorities of the trading venue and of the CCP, access shall be made possible by the trading venue within three months of a positive response to a request for access.

Access of the CCP to the trading venue shall be granted only where such access would not require interoperability or threaten the smooth and orderly functioning of markets in particular due to liquidity fragmentation and the trading venue has put in place adequate mechanisms to prevent such fragmentation.

5. In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards specifying the notion of liquidity fragmentation.

ESMA shall submit those draft regulatory technical standards to the Commission by 30 September 2012.

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 9

Reporting obligation

1. Counterparties and CCPs shall ensure that the details of any derivative contract they have concluded and of any modification or termination of the contract are reported to a trade repository registered in accordance with Article 55 or recognised in accordance with Article 77. The details shall be reported no later than the working day following the conclusion, modification or termination of the contract.

The reporting obligation shall apply to derivative contracts which:

(a) were entered into before 16 August 2012 and remain outstanding on that date;

(b) are entered into on or after 16 August 2012.

A counterparty or a CCP which is subject to the reporting obligation may delegate the reporting of the details of the derivative contract.

Counterparties and CCPs shall ensure that the details of their derivative contracts are reported without duplication.

2. Counterparties shall keep a record of any derivative contract they have concluded and any modification for at least five years following the termination of the contract.

3. Where a trade repository is not available to record the details of a derivative contract, counterparties and CCPs shall ensure that such details are reported to ESMA.

In this case ESMA shall ensure that all the relevant entities referred to in Article 81(3) have access to all the details of derivative contracts they need to fulfil their respective responsibilities and mandates.

4. A counterparty or a CCP that reports the details of a derivative contract to a trade repository or to ESMA, or an entity that reports such details on behalf of a counterparty or a CCP shall not be considered in breach of any restriction on disclosure of information imposed by that contract or by any legislative, regulatory or administrative provision.

No liability resulting from that disclosure shall lie with the reporting entity or its directors or employees.

5. In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards specifying the details and type of the reports referred to in paragraphs 1 and 3 for the different classes of derivatives.

The reports referred to in paragraphs 1 and 3 shall specify at least:

(a) the parties to the derivative contract and, where different, the beneficiary of the rights and obligations arising from it;

(b) the main characteristics of the derivative contracts, including their type, underlying maturity, notional value, price, and settlement date.

ESMA shall submit those draft regulatory technical standards to the Commission by 30 September 2012.

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. In order to ensure uniform conditions of application of paragraphs 1 and 3, ESMA shall develop draft implementing technical standards specifying:

(a) the format and frequency of the reports referred to in paragraphs 1 and 3 for the different classes of derivatives;

(b) the date by which derivative contracts are to be reported, including any phase-in for contracts entered into before the reporting obligation applies.

ESMA shall submit those draft implementing technical standards to the Commission by 30 September 2012.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 10

Non-financial counterparties

1. Where a non-financial counterparty takes positions in OTC derivative contracts and those positions exceed the clearing threshold as specified under paragraph 3, that non-financial counterparty shall:

(a) immediately notify ESMA and the competent authority referred to in paragraph 5 thereof;

(b) become subject to the clearing obligation for future contracts in accordance with Article 4 if the rolling average position over 30 working days exceeds the threshold; and

(c) clear all relevant future contracts within four months of becoming subject to the clearing obligation.

2. A non-financial counterparty that has become subject to the clearing obligation in accordance with paragraph 1(b) and that subsequently demonstrates to the authority designated in accordance with paragraph 5 that its rolling average position over 30 working days does not exceed the clearing threshold, shall no longer be subject to the clearing obligation set out in Article 4.

3. In calculating the positions referred to in paragraph 1, the non-financial counterparty shall include all the OTC derivative contracts entered into by the non-financial counterparty or by other non-financial entities within the group to which the non-financial counterparty belongs, which are not objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the non-financial counterparty or of that group.

4. In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards, after consulting the ESRB and other relevant authorities, specifying:

(a) criteria for establishing which OTC derivative contracts are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity referred to in paragraph 3; and

(b) values of the clearing thresholds, which are determined taking into account the systemic relevance of the sum of net positions and exposures per counterparty and per class of OTC derivatives.

After conducting an open public consultation, ESMA shall submit those draft regulatory technical standards to the Commission by 30 September 2012.

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.

After consulting the ESRB and other relevant authorities, ESMA shall periodically review the thresholds and, where necessary, propose regulatory technical standards to amend them.

5. Each Member State shall designate an authority responsible for ensuring that the obligation under paragraph 1 is met.

Article 11

Risk-mitigation techniques for OTC derivative contracts not cleared by a CCP

1. Financial counterparties and non-financial counterparties that enter into an OTC derivative contract not cleared by a CCP, shall ensure, exercising due diligence, that appropriate procedures and arrangements are in place to measure, monitor and mitigate operational risk and counterparty credit risk, including at least:

(a) the timely confirmation, where available, by electronic means, of the terms of the relevant OTC derivative contract;

(b) formalised processes which are robust, resilient and auditable in order to reconcile portfolios, to manage the associated risk and to identify disputes between parties early and resolve them, and to monitor the value of outstanding contracts.

2. Financial counterparties and non-financial counterparties referred to in Article 10 shall mark-to-market on a daily basis the value of outstanding contracts. Where market conditions prevent marking-to-market, reliable and prudent marking-to-model shall be used.

3. Financial counterparties shall have risk-management procedures that require the timely, accurate and appropriately segregated exchange of collateral with respect to OTC derivative contracts that are entered into on or after 16 August 2012. Non-financial counterparties referred to in Article 10 shall have risk-management procedures that require the timely, accurate and appropriately segregated exchange of collateral with respect to OTC derivative contracts that are entered into on or after the clearing threshold is exceeded.

4. Financial counterparties shall hold an appropriate and proportionate amount of capital to manage the risk not covered by appropriate exchange of collateral.

5. The requirement laid down in paragraph 3 of this Article shall not apply to an intragroup transaction referred to in Article 3 that is entered into by counterparties which are established in the same Member State provided that there is no current or foreseen practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between counterparties.

6. An intragroup transaction referred to in Article 3(2)(a), (b) or (c) that is entered into by counterparties which are established in different Member States shall be exempt totally or partially from the requirement laid down in paragraph 3 of this Article, on the basis of a positive decision of both the relevant competent authorities, provided that the following conditions are fulfilled:

(a) the risk-management procedures of the counterparties are adequately sound, robust and consistent with the level of complexity of the derivative transaction;

(b) there is no current or foreseen practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties.

If the competent authorities fail to reach a positive decision within 30 calendar days of receipt of the application for exemption, ESMA may assist those authorities in reaching agreement in accordance with its powers under Article 19 of Regulation (EU) No 1095/2010.

7. An intragroup transaction referred to in Article 3(1) that is entered into by non-financial counterparties which are established in different Member States shall be exempt from the requirement laid down in paragraph 3 of this Article, provided that the following conditions are fulfilled:

(a) the risk-management procedures of the counterparties are adequately sound, robust and consistent with the level of complexity of the derivative transaction;

(b) there is no current or foreseen practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties.

The non-financial counterparties shall notify their intention to apply the exemption to the competent authorities referred to in Article 10(5). The exemption shall be valid unless either of the notified competent authorities does not agree upon fulfilment of the conditions referred to in point (a) or (b) of the first subparagraph within three months of the date of the notification.

8. An intragroup transaction referred to in Article 3(2)(a) to (d) that is entered into by a counterparty which is established in the Union and a counterparty which is established in a third-country jurisdiction shall be exempt totally or partially from the requirement laid down in paragraph 3 of this Article, on the basis of a positive decision of the relevant competent authority responsible for supervision of the counterparty which is established in the Union, provided that the following conditions are fulfilled:

(a) the risk-management procedures of the counterparties are adequately sound, robust and consistent with the level of complexity of the derivative transaction;

(b) there is no current or foreseen practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties.

9. An intragroup transaction referred to in Article 3(1) that is entered into by a non-financial counterparty which is established in the Union and a counterparty which is established in a third-country jurisdiction shall be exempt from the requirement laid down in paragraph 3 of this Article, provided that the following conditions are fulfilled:

(a) the risk-management procedures of the counterparties are adequately sound, robust and consistent with the level of complexity of the derivative transaction;

(b) there is no current or foreseen practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties.

The non-financial counterparty shall notify its intention to apply the exemption to the competent authority referred to in Article 10(5). The exemption shall be valid unless the notified competent authority does not agree upon fulfilment of the conditions referred to in point (a) or (b) of the first subparagraph within three months of the date of notification.

10. An intragroup transaction referred to in Article 3(1) that is entered into by a non-financial counterparty and a financial counterparty which are established in different Member States shall be exempt totally or partially from the requirement laid down in paragraph 3 of this Article, on the basis of a positive decision of the relevant competent authority responsible for supervision of the financial counterparty, provided that the following conditions are fulfilled:

(a) the risk-management procedures of the counterparties are adequately sound, robust and consistent with the level of complexity of the derivative transaction;

(b) there is no current or foreseen practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties.

The relevant competent authority responsible for supervision of the financial counterparty shall notify any such decision to the competent authority referred to in Article 10(5). The exemption is valid unless the notified competent authority does not agree upon fulfilment of the conditions referred to in point (a) or (b) of the first subparagraph. If there is disagreement between the competent authorities, ESMA may assist those authorities in reaching an agreement in accordance with its powers under Article 19 of Regulation (EU) No 1095/2010.

11. The counterparty of an intragroup transaction which has been exempted from the requirement laid down in paragraph 3 shall publicly disclose information on the exemption.

A competent authority shall notify ESMA of any decision adopted pursuant to paragraph 6, 8 or 10, or any notification received pursuant to paragraph 7, 9 or 10, and shall provide ESMA with the details of the intragroup transaction concerned.

12. The obligations set out in paragraphs 1 to 11 shall apply to OTC derivative contracts entered into between third country entities that would be subject to those obligations if they were established in the Union, provided that those contracts have a direct, substantial and foreseeable effect within the Union or where such obligation is necessary or appropriate to prevent the evasion of any provision of this Regulation.

13. ESMA shall regularly monitor the activity in derivatives not eligible for clearing in order to identify cases where a particular class of derivatives may pose systemic risk and to prevent regulatory arbitrage between cleared and non-cleared derivative transactions. In particular, ESMA shall, after consulting the ESRB, take action in accordance with Article 5(3) or review the regulatory technical standards on margin requirements laid down in paragraph 14 of this Article and in Article 41.

14. In order to ensure consistent application of this Article, ESMA shall draft regulatory technical standards specifying:

(a) the procedures and arrangements referred to in paragraph 1;

(b) the market conditions that prevent marking-to-market and the criteria for using marking-to-model referred to in paragraph 2;

(c) the details of the exempted intragroup transactions to be included in the notification referred to in paragraphs 7, 9 and 10;

(d) the details of the information on exempted intragroup transactions referred to in paragraph 11;

(e) the contracts that are considered to have a direct, substantial and foreseeable effect within the Union or the cases where it is necessary or appropriate to prevent the evasion of any provision of this Regulation as referred to in paragraph 12;

ESMA shall submit those draft regulatory technical standards to the Commission by 30 September 2012.

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.

15. In order to ensure consistent application of this Article, the ESAs shall develop common draft regulatory technical standards specifying:

(a) the risk-management procedures, including the levels and type of collateral and segregation arrangements, required for compliance with paragraph 3;

(b) the level of capital required for compliance with paragraph 4;

(c) the procedures for the counterparties and the relevant competent authorities to be followed when applying exemptions under paragraphs 6 to 10;

(d) the applicable criteria referred to in paragraphs 5 to 10 including in particular what should be considered as practical or legal impediment to the prompt transfer of own funds and repayment of liabilities between the counterparties.

The ESAs shall submit those common draft regulatory technical standards to the Commission by 30 September 2012.

Depending on the legal nature of the counterparty, power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with either Articles 10 to 14 of Regulations (EU) No 1093/2010, (EU) No 1094/2010 or (EU) No 1095/2010.

Article 12

Penalties

1. Member States shall lay down the rules on penalties applicable to infringements of the rules under this Title and shall take all measures necessary to ensure that they are implemented. Those penalties shall include at least administrative fines. The penalties provided for shall be effective, proportionate and dissuasive.

2. Member States shall ensure that the competent authorities responsible for the supervision of financial, and, where appropriate, non-financial counterparties disclose every penalty that has been imposed for infringements of Articles 4, 5 and 7 to 11 to the public, unless such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved. Member States shall, at regular intervals, publish assessment reports on the effectiveness of the penalty rules being applied. Such disclosure and publication shall not contain personal data within the meaning of Article 2(a) of Directive 95/46/EC.

By 17 February 2013, the Member States shall notify the rules referred to in paragraph 1 to the Commission. They shall notify the Commission of any subsequent amendment thereto without delay.

3. An infringement of the rules under this Title shall not affect the validity of an OTC derivative contract or the possibility for the parties to enforce the provisions of an OTC derivative contract. An infringement of the rules under this Title shall not give rise to any right to compensation from a party to an OTC derivative contract.

Article 13

Mechanism to avoid duplicative or conflicting rules

1. The Commission shall be assisted by ESMA in monitoring and preparing reports to the European Parliament and to the Council on the international application of principles laid down in Articles 4, 9, 10 and 11, in particular with regard to potential duplicative or conflicting requirements on market participants, and recommend possible action.

2. The Commission may adopt implementing acts declaring that the legal, supervisory and enforcement arrangements of a third country:

(a) are equivalent to the requirements laid down in this Regulation under Articles 4, 9, 10 and 11;

(b) ensure protection of professional secrecy that is equivalent to that set out in this Regulation; and

(c) are being effectively applied and enforced in an equitable and non-distortive manner so as to ensure effective supervision and enforcement in that third country.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 86(2).

3. An implementing act on equivalence as referred to in paragraph 2 shall imply that counterparties entering into a transaction subject to this Regulation shall be deemed to have fulfilled the obligations contained in Articles 4, 9, 10 and 11 where at least one of the counterparties is established in that third country.

4. The Commission shall, in cooperation with ESMA, monitor the effective implementation by third countries, for which an implementing act on equivalence has been adopted, of the requirements equivalent to those laid down in Articles 4, 9, 10 and 11 and regularly report, at least on an annual basis, to the European Parliament and the Council. Where the report reveals an insufficient or inconsistent application of the equivalent requirements by third country authorities, the Commission shall, within 30 calendar days of the presentation of the report, withdraw the recognition as equivalent of the third country legal framework in question. Where an implementing act on equivalence is withdrawn, counterparties shall automatically be subject again to all requirements laid down in this Regulation.

TITLE III

AUTHORISATION AND SUPERVISION OF CCPs

CHAPTER 1

Conditions and procedures for the authorisation of a CCP

Article 14

Authorisation of a CCP

1. Where a legal person established in the Union intends to provide clearing services as a CCP, it shall apply for authorisation to the competent authority of the Member State where it is established (the CCP's competent authority), in accordance with the procedure set out in Article 17.

2. Once authorisation has been granted in accordance with Article 17, it shall be effective for the entire territory of the Union.

3. Authorisation referred to in paragraph 1 shall be granted only for activities linked to clearing and shall specify the services or activities which the CCP is authorised to provide or perform including the classes of financial instruments covered by such authorisation.

4. A CCP shall comply at all times with the conditions necessary for authorisation.

A CCP shall, without undue delay, notify the competent authority of any material changes affecting the conditions for authorisation.

5. Authorisation referred to in paragraph 1 shall not prevent Member States from adopting or continuing to apply, in respect of CCPs established in their territory, additional requirements including certain requirements for authorisation under Directive 2006/48/EC.

Article 15

Extension of activities and services

1. 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.

2. Where a CCP wishes to extend its business into a Member State other than that where it is established, the CCP's competent authority shall immediately notify the competent authority of that other Member State.

Article 16

Capital requirements

1. A CCP shall have a permanent and available initial capital of at least EUR 7,5 million to be authorised pursuant to Article 14.

2. A CCP's capital, including retained earnings and reserves, shall be proportionate to the risk stemming from the activities of the CCP. It shall at all times be sufficient to ensure an orderly winding-down or restructuring of the activities over an appropriate time span and an adequate protection of the CCP against credit, counterparty, market, operational, legal and business risks which are not already covered by specific financial resources as referred to in Articles 41 to 44.

3. In order to ensure consistent application of this Article, EBA shall, in close cooperation with the ESCB and after consulting ESMA, develop draft regulatory technical standards specifying requirements regarding the capital, retained earnings and reserves of a CCP referred to in paragraph 2.

EBA shall submit those draft regulatory technical standards to the Commission by 30 September 2012.

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 1093/2010.

Article 17

Procedure for granting and refusing authorisation

1. The applicant CCP shall submit an application for authorisation to the competent authority of the Member State where it is established.

2. The applicant CCP shall provide all information necessary to satisfy the competent authority that the applicant CCP has established, at the time of authorisation, all the necessary arrangements to meet the requirements laid down in this Regulation. The competent authority shall immediately transmit all the information received from the applicant CCP to ESMA and the college referred to in Article 18(1).

3. Within 30 working days of receipt of the application, the competent authority shall assess whether the application is complete. If the application is not complete, the competent authority shall set a deadline by which the applicant CCP has to provide additional information. After assessing that an application is complete, the competent authority shall notify the applicant CCP and the members of the college established in accordance with Article 18(1) and ESMA accordingly.

4. The competent authority shall grant authorisation only where it is fully satisfied that the applicant CCP complies with all the requirements laid down in this Regulation and that the CCP is notified as a system pursuant to Directive 98/26/EC.

The competent authority shall duly consider the opinion of the college reached in accordance with Article 19. Where the CCP's competent authority does not agree with a positive opinion of the college, its decision shall contain full reasons and an explanation of any significant deviation from that positive opinion.

The CCP shall not be authorised where all the members of the college, excluding the authorities of the Member State where the CCP is established, reach a joint opinion by mutual agreement, pursuant to Article 19(1), that the CCP not be authorised. That opinion shall state in writing the full and detailed reasons why the college consider that the requirements laid down in this Regulation or other Union law are not met.

Where a joint opinion by mutual agreement as referred to in the third subparagraph has not been reached and a majority of two-thirds of the college have expressed a negative opinion, any of the competent authorities concerned, based on that majority of two-thirds of the college, may, within 30 calendar days of the adoption of that negative opinion, refer the matter to ESMA in accordance with Article 19 of Regulation (EU) No 1095/2010.

The referral decision shall state in writing the full and detailed reasons why the relevant members of the college consider that the requirements laid down in this Regulation or other parts of Union law are not met. In that case the CCP's competent authority shall defer its decision on authorisation and await any decision on authorisation that ESMA may take in accordance with Article 19(3) of Regulation (EU) No 1095/2010. The competent authority shall take its decision in conformity with ESMA's decision. The matter shall not be referred to ESMA after the end of the 30-day period referred to in the fourth subparagraph.

Where all the members of the college, excluding the authorities of the Member State where the CCP is established, reach a joint opinion by mutual agreement, pursuant to Article 19(1), that the CCP not be authorised, the CCP's competent authority may refer the matter to ESMA in accordance with Article 19 of Regulation (EU) No 1095/2010.

The competent authority of the Member State where the CCP is established shall transmit the decision to the other competent authorities concerned.

5. ESMA shall act in accordance with Article 17 of Regulation (EU) No 1095/2010 in the event that the CCP's competent authority has not applied the provisions of this Regulation, or has applied them in a way which appears to be in breach of Union law.

ESMA may investigate an alleged breach or non-application of Union law upon request from any member of the college or on its own initiative, after having informed the competent authority.

6. While performing their duties, any action taken by any member of the college shall not, directly or indirectly, discriminate against any Member State or group of Member States as a venue for clearing services in any currency.

7. Within six months of the submission of a complete application, the competent authority shall inform the applicant CCP in writing, with a fully reasoned explanation, whether authorisation has been granted or refused.

Article 18

College

1. Within 30 calendar days of the submission of a complete application in accordance with Article 17, the CCP's competent authority shall establish, manage and chair a college to facilitate the exercise of the tasks referred to in Articles 15, 17, 49, 51 and 54.

2. The college shall consist of:

(a) ESMA;

(b) the CCP's competent authority;

(c) the competent authorities responsible for the supervision of the clearing members of the CCP that are established in the three Member States with the largest contributions to the default fund of the CCP referred to in Article 42 on an aggregate basis over a one-year period;

(d) the competent authorities responsible for the supervision of trading venues served by the CCP;

(e) the competent authorities supervising CCPs with which interoperability arrangements have been established;

(f) the competent authorities supervising central securities depositories to which the CCP is linked;

(g) the relevant members of the ESCB responsible for the oversight of the CCP and the relevant members of the ESCB responsible for the oversight of the CCPs with which interoperability arrangements have been established;

(h) the central banks of issue of the most relevant Union currencies of the financial instruments cleared.

3. The competent authority of a Member State which is not a member of the college may request from the college any information relevant for the performance of its supervisory duties.

4. The college shall, without prejudice to the responsibilities of competent authorities under this Regulation, ensure:

(a) the preparation of the opinion referred to in Article 19;

(b) the exchange of information, including requests for information pursuant to Article 84;

(c) agreement on the voluntary entrustment of tasks among its members;

(d) the coordination of supervisory examination programmes based on a risk assessment of the CCP; and

(e) the determination of procedures and contingency plans to address emergency situations, as referred to in Article 24.

5. The establishment and functioning of the college shall be based on a written agreement between all its members.

That agreement shall determine the practical arrangements for the functioning of the college, including detailed rules on voting procedures as referred to in Article 19(3), and may determine tasks to be entrusted to the CCP's competent authority or another member of the college.

6. In order to ensure the consistent and coherent functioning of colleges across the Union, ESMA shall develop draft regulatory technical standards specifying the conditions under which the Union currencies referred to in paragraph 2(h) are to be considered as the most relevant and the details of the practical arrangements referred to in paragraph 5.

ESMA shall submit those draft regulatory technical standards to the Commission by 30 September 2012.

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 19

Opinion of the college

1. Within four months of the submission of a complete application by the CCP in accordance with Article 17, the CCP's competent authority shall conduct a risk assessment of the CCP and submit a report to the college.

Within 30 calendar days of receipt, and on the basis of the findings in, that report, the college shall reach a joint opinion determining whether the applicant CCP complies with all the requirements laid down in this Regulation.

Without prejudice to the fourth subparagraph of Article 17(4) and if no joint opinion is reached in accordance with the second subparagraph, the college shall adopt a majority opinion within the same period.

2. ESMA shall facilitate the adoption of the joint opinion in accordance with its general coordination function under Article 31 of Regulation (EU) No 1095/2010.

3. A majority opinion of the college shall be adopted on the basis of a simple majority of its members. For colleges up to and including 12 members, a maximum of two college members belonging to the same Member State shall have a vote and each voting member shall have one vote. For colleges with more than 12 members, a maximum of three members belonging to the same Member State shall have a vote and each voting member shall have one vote. ESMA shall have no voting rights on the opinions of the college.

Article 20

Withdrawal of authorisation

1. Without prejudice to Article 22(3), the CCP's competent authority shall withdraw authorisation where the CCP:

(a) has not made use of the authorisation within 12 months, expressly renounces the authorisation or has provided no services or performed no activity for the preceding six months;

(b) has obtained authorisation by making false statements or by any other irregular means;

(c) is no longer in compliance with the conditions under which authorisation was granted and has not taken the remedial action requested by the CCP's competent authority within a set time frame;

(d) has seriously and systematically infringed any of the requirements laid down in this Regulation.

2. Where the CCP's competent authority considers that one of the circumstances referred to in paragraph 1 applies, it shall, within five working days, notify ESMA and the members of college accordingly.

3. The CCP's competent authority shall consult the members of the college on the necessity to withdraw the authorisation of the CCP, except where a decision is required urgently.

4. Any member of the college may, at any time, request that the CCP's competent authority examine whether the CCP remains in compliance with the conditions under which authorisation was granted.

5. The CCP's competent authority may limit the withdrawal to a particular service, activity, or class of financial instruments.

6. The CCP's competent authority shall send ESMA and the members of the college its fully reasoned decision, which shall take into account the reservations of the members of the college.

7. The decision on the withdrawal of authorisation shall take effect throughout the Union.

Article 21

Review and evaluation

1. Without prejudice to the role of the college, the competent authorities referred to in Article 22 shall review the arrangements, strategies, processes and mechanisms implemented by CCPs to comply with this Regulation and evaluate the risks to which CCPs are, or might be, exposed.

2. The review and evaluation referred to in paragraph 1 shall cover all the requirements on CCPs laid down in this Regulation.

3. The competent authorities shall establish the frequency and depth of the review and evaluation referred to in paragraph 1 having regard to the size, systemic importance, nature, scale and complexity of the activities of the CCPs concerned. The review and evaluation shall be updated at least on an annual basis.

The CCPs shall be subject to on-site inspections.

4. The competent authorities shall regularly, and at least annually, inform the college of the results of the review and evaluation as referred to in paragraph 1, including any remedial action taken or penalty imposed.

5. The competent authorities shall require any CCP that does not meet the requirements laid down in this Regulation to take the necessary action or steps at an early stage to address the situation.

6. ESMA shall fulfil a coordination role between competent authorities and across colleges with a view to building a common supervisory culture and consistent supervisory practices, ensuring uniform procedures and consistent approaches, and strengthening consistency in supervisory outcomes.

For the purposes of the first subparagraph, ESMA shall, at least annually:

(a) conduct a peer review analysis of the supervisory activities of all competent authorities in relation to the authorisation and the supervision of CCPs in accordance with Article 30 of Regulation (EU) No 1095/2010; and

(b) initiate and coordinate Union-wide assessments of the resilience of CCPs to adverse market developments in accordance with Article 32(2) of Regulation (EU) No 1095/2010.

Where an assessment referred to in point (b) of the second subparagraph exposes shortcomings in the resilience of one or more CCPs, ESMA shall issue the necessary recommendations pursuant to Article 16 of Regulation (EU) No 1095/2010.

CHAPTER 2

Supervision and oversight of CCPs

Article 22

Competent authority

1. Each Member State shall designate the competent authority responsible for carrying out the duties resulting from this Regulation for the authorisation and supervision of CCPs established in its territory and shall inform the Commission and ESMA thereof.

Where a Member State designates more than one competent authority, it shall clearly determine the respective roles and shall designate a single authority to be responsible for coordinating cooperation and the exchange of information with the Commission, ESMA, other Member States' competent authorities, EBA and the relevant members of the ESCB, in accordance with Articles 23, 24, 83 and 84.

2. Each Member State shall ensure that the competent authority has the supervisory and investigatory powers necessary for the exercise of its functions.

3. Each Member State shall ensure that appropriate administrative measures, in conformity with national law, can be taken or imposed against the natural or legal persons responsible for non-compliance with this Regulation.

Those measures shall be effective, proportionate and dissuasive and may include requests for remedial action within a set time frame.

4. ESMA shall publish on its website a list of the competent authorities designated in accordance with paragraph 1.

CHAPTER 3

Cooperation

Article 23

Cooperation between authorities

1. Competent authorities shall cooperate closely with each other, with ESMA and, if necessary, with the ESCB.

2. Competent authorities shall, in the exercise of their general duties, duly consider the potential impact of their decisions on the stability of the financial system in all other Member States concerned, in particular the emergency situations referred to in Article 24, based on the available information at the time.

Article 24

Emergency situations

The CCP's competent authority or any other authority shall inform ESMA, the college, the relevant members of the ESCB and other relevant authorities without undue delay of any emergency situation relating to a CCP, including developments in financial markets, which may have an adverse effect on market liquidity and the stability of the financial system in any of the Member States where the CCP or one of its clearing members are established.

CHAPTER 4

Relations with third countries

Article 25

Recognition of a third-country CCP

1. A CCP established in a third country may provide clearing services to clearing members or trading venues established in the Union only where that CCP is recognised by ESMA.

2. ESMA, after consulting the authorities referred to in paragraph 3, may recognise a CCP established in a third country that has applied for recognition to provide certain clearing services or activities where:

(a) the Commission has adopted an implementing act in accordance with paragraph 6;

(b) the CCP is authorised in the relevant third country, and is subject to effective supervision and enforcement ensuring full compliance with the prudential requirements applicable in that third country;

(c) cooperation arrangements have been established pursuant to paragraph 7;

(d) the CCP is established or authorised in a third country that is considered as having equivalent systems for anti-money-laundering and combating the financing of terrorism to those of the Union in accordance with the criteria set out in the common understanding between Member States on third-country equivalence under Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing [1].

3. When assessing whether the conditions referred to in paragraph 2 are met, ESMA shall consult:

(a) the competent authority of a Member State in which the CCP provides or intends to provide clearing services and which has been selected by the CCP;

(b) the competent authorities responsible for the supervision of the clearing members of the CCP that are established in the three Member States which make or are anticipated by the CCP to make the largest contributions to the default fund of the CCP referred to in Article 42 on an aggregate basis over a one-year period;

(c) the competent authorities responsible for the supervision of trading venues located in the Union, served or to be served by the CCP;

(d) the competent authorities supervising CCPs established in the Union with which interoperability arrangements have been established;

(e) the relevant members of the ESCB of the Member States in which the CCP provides or intends to provide clearing services and the relevant members of the ESCB responsible for the oversight of the CCPs with which interoperability arrangements have been established;

(f) the central banks of issue of the most relevant Union currencies of the financial instruments cleared or to be cleared.

4. The CCP referred to in paragraph 1 shall submit its application to ESMA.

The applicant CCP shall provide ESMA with all information necessary for its recognition. Within 30 working days of receipt, ESMA shall assess whether the application is complete. If the application is not complete, ESMA shall set a deadline by which the applicant CCP has to provide additional information.

The recognition decision shall be based on the conditions set out in paragraph 2 and shall be independent of any assessment as the basis for the equivalence decision as referred to in Article 13(3).

ESMA shall consult the authorities and entities referred to in paragraph 3 prior to taking its decision.

Within 180 working days of the submission of a complete application, ESMA shall inform the applicant CCP in writing, with a fully reasoned explanation, whether the recognition has been granted or refused.

ESMA shall publish on its website a list of the CCPs recognised in accordance with this Regulation.

5. ESMA shall, after consulting the authorities and entities referred to in paragraph 3, review the recognition of the CCP established in a third country where that CCP has extended the range of its activities and services in the Union. That review shall be conducted in accordance with paragraphs 2, 3 and 4. ESMA may withdraw the recognition of that CCP where the conditions set out in paragraph 2 are no longer met and in the same circumstances as those described in Article 20.

[1] OJ L 309, 25.11.2005, p. 15.

6. The Commission may adopt an implementing act under Article 5 of Regulation (EU) No 182/2011, determining that the legal and supervisory arrangements of a third country ensure that CCPs authorised in that third country comply with legally binding requirements which are equivalent to the requirements laid down in Title IV of this Regulation, that those CCPs are subject to effective supervision and enforcement in that third country on an ongoing basis and that the legal framework of that third country provides for an effective equivalent system for the recognition of CCPs authorised under third-country legal regimes.

7. ESMA shall establish cooperation arrangements with the relevant competent authorities of third countries whose legal and supervisory frameworks have been recognised as equivalent to this Regulation in accordance with paragraph 6. Such arrangements shall specify at least:

(a) the mechanism for the exchange of information between ESMA and the competent authorities of the third countries concerned, including access to all information requested by ESMA regarding CCPs authorised in third countries;

(b) the mechanism for prompt notification to ESMA where a third-country competent authority deems a CCP it is supervising to be in breach of the conditions of its authorisation or of other law to which it is subject;

(c) the mechanism for prompt notification to ESMA by a third-country competent authority where a CCP it is supervising has been granted the right to provide clearing services to clearing members or clients established in the Union;

(d) the procedures concerning the coordination of supervisory activities including, where appropriate, on-site inspections.

8. In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards specifying the information that the applicant CCP shall provide ESMA in its application for recognition.

ESMA shall submit those draft regulatory technical standards to the Commission by 30 September 2012.

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.

TITLE IV

REQUIREMENTS FOR CCPs

CHAPTER 1

Organisational requirements

Article 26

General provisions

1. A CCP shall have robust governance arrangements, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks to which it is or might be exposed, and adequate internal control mechanisms, including sound administrative and accounting procedures.

2. A CCP shall adopt policies and procedures which are sufficiently effective so as to ensure compliance with this Regulation, including compliance of its managers and employees with all the provisions of this Regulation.

3. A CCP shall maintain and operate an organisational structure that ensures continuity and orderly functioning in the performance of its services and activities. It shall employ appropriate and proportionate systems, resources and procedures.

4. A CCP shall maintain a clear separation between the reporting lines for risk management and those for the other operations of the CCP.

5. A CCP shall adopt, implement and maintain a remuneration policy which promotes sound and effective risk management and which does not create incentives to relax risk standards.

6. A CCP shall maintain information technology systems adequate to deal with the complexity, variety and type of services and activities performed so as to ensure high standards of security and the integrity and confidentiality of the information maintained.

7. A CCP shall make its governance arrangements, the rules governing the CCP, and its admission criteria for clearing membership, available publicly free of charge.

8. The CCP shall be subject to frequent and independent audits. The results of those audits shall be communicated to the board and shall be made available to the competent authority.

9. In order to ensure consistent application of this Article, ESMA, after consulting the members of the ESCB, shall develop draft regulatory technical standards specifying the minimum content of the rules and governance arrangements referred to in paragraphs 1 to 8.

ESMA shall submit those draft regulatory technical standards to the Commission by 30 September 2012.

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 27

Senior management and the board

1. The senior management of a CCP shall be of sufficiently good repute and shall have sufficient experience so as to ensure the sound and prudent management of the CCP.

2. A CCP shall have a board. At least one third, but no less than two, of the members of that board shall be independent. Representatives of the clients of clearing members shall be invited to board meetings for matters relevant to Articles 38 and 39. The compensation of the independent and other non-executive members of the board shall not be linked to the business performance of the CCP.

The members of a CCP's board, including its independent members, shall be of sufficiently good repute and shall have adequate expertise in financial services, risk management and clearing services.

3. A CCP shall clearly determine the roles and responsibilities of the board and shall make the minutes of the board meetings available to the competent authority and auditors.

Article 28

Risk committee

1. A CCP shall establish a risk committee, which shall be composed of representatives of its clearing members, independent members of the board and representatives of its clients. The risk committee may invite employees of the CCP and external independent experts to attend risk-committee meetings in a non-voting capacity. Competent authorities may request to attend risk-committee meetings in a non-voting capacity and to be duly informed of the activities and decisions of the risk committee. The advice of the risk committee shall be independent of any direct influence by the management of the CCP. None of the groups of representatives shall have a majority in the risk committee.

2. A CCP shall clearly determine the mandate, the governance arrangements to ensure its independence, the operational procedures, the admission criteria and the election mechanism for risk-committee members. The governance arrangements shall be publicly available and shall, at least, determine that the risk committee is chaired by an independent member of the board, reports directly to the board and holds regular meetings.

3. The risk committee shall advise the board on any arrangements that may impact the risk management of the CCP, such as a significant change in its risk model, the default procedures, the criteria for accepting clearing members, the clearing of new classes of instruments, or the outsourcing of functions. The advice of the risk committee is not required for the daily operations of the CCP. Reasonable efforts shall be made to consult the risk committee on developments impacting the risk management of the CCP in emergency situations.

4. Without prejudice to the right of competent authorities to be duly informed, the members of the risk committee shall be bound by confidentiality. Where the chairman of the risk committee determines that a member has an actual or potential conflict of interest on a particular matter, that member shall not be allowed to vote on that matter.

5. A CCP shall promptly inform the competent authority of any decision in which the board decides not to follow the advice of the risk committee.

Article 29

Record keeping

1. A CCP shall maintain, for a period of at least 10 years, all the records on the services and activity provided so as to enable the competent authority to monitor the CCP's compliance with this Regulation.

2. A CCP shall maintain, for a period of at least 10 years following the termination of a contract, all information on all contracts it has processed. That information shall at least enable the identification of the original terms of a transaction before clearing by that CCP.

3. A CCP shall make the records and information referred to in paragraphs 1 and 2 and all information on the positions of cleared contracts, irrespective of the venue where the transactions were executed, available upon request to the competent authority, to ESMA and to the relevant members of the ESCB.

4. In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards specifying the details of the records and information to be retained as referred to in paragraphs 1 to 3.

ESMA shall submit those draft regulatory technical standards to the Commission by 30 September 2012.

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.

5. In order to ensure uniform conditions of application of paragraphs 1 and 2, ESMA shall develop draft implementing technical standards specifying the format of the records and information to be retained.

ESMA shall submit those draft implementing technical standards to the Commission by 30 September 2012.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 30

Shareholders and members with qualifying holdings

1. The competent authority shall not authorise a CCP unless it has been informed of the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and of the amounts of those holdings.

2. The competent authority shall refuse to authorise a CCP where it is not satisfied as to the suitability of the shareholders or members that have qualifying holdings in the CCP, taking into account the need to ensure the sound and prudent management of a CCP.

3. Where close links exist between the CCP and other natural or legal persons, the competent authority shall grant authorisation only where those links do not prevent the effective exercise of the supervisory functions of the competent authority.

4. Where the persons referred to in paragraph 1 exercise an influence which is likely to be prejudicial to the sound and prudent management of the CCP, the competent authority shall take appropriate measures to terminate that situation, which may include the withdrawal of the authorisation of the CCP.

5. The competent authority shall refuse authorisation where the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the CCP has close links, or difficulties involved in their enforcement, prevent the effective exercise of the supervisory functions of the competent authority.

Article 31

Information to competent authorities

1. A CCP shall notify its competent authority of any changes to its management, and shall provide the competent authority with all the information necessary to assess compliance with Article 27(1) and the second subparagraph of Article 27(2).

Where the conduct of a member of the board is likely to be prejudicial to the sound and prudent management of the CCP, the competent authority shall take appropriate measures, which may include removing that member from the board.

2. Any natural or legal person or such persons acting in concert (the 'proposed acquirer'), who have taken a decision either to acquire, directly or indirectly, a qualifying holding in a CCP or to further increase, directly or indirectly, such a qualifying holding in a CCP as a result of which the proportion of the voting rights or of the capital held would reach or exceed 10 %, 20 %, 30 % or 50 % or so that the CCP would become its subsidiary (the 'proposed acquisition'), shall first notify in writing the competent authority of the CCP in which they are seeking to acquire or increase a qualifying holding, indicating the size of the intended holding and relevant information, as referred to in Article 32(4).

Any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in a CCP (the 'proposed vendor') shall first notify the competent authority in writing thereof, indicating the size of such holding. Such a person shall likewise notify the competent authority where it has taken a decision to reduce a qualifying holding so that the proportion of the voting rights or of the capital held would fall below 10 %, 20 %, 30 % or 50 % or so that the CCP would cease to be that person's subsidiary.

The competent authority shall, promptly and in any event within two working days of receipt of the notification referred to in this paragraph and of the information referred to in paragraph 3, acknowledge receipt in writing thereof to the proposed acquirer or vendor.

The competent authority shall have a maximum of 60 working days as from the date of the written acknowledgement of receipt of the notification and all documents required to be attached to the notification on the basis of the list referred to in Article 32(4) (the assessment period), to carry out the assessment provided for in Article 32(1) (the assessment).

The competent authority shall inform the proposed acquirer or vendor of the date of the expiry of the assessment period at the time of acknowledging receipt.

3. The competent authority may, during the assessment period, where necessary, but no later than on the 50th working day of the assessment period, request any further information that is necessary to complete the assessment. Such request shall be made in writing and shall specify the additional information needed.

The assessment period shall be interrupted for the period between the date of request for information by the competent authority and the receipt of a response thereto by the proposed acquirer. The interruption shall not exceed 20 working days. Any further requests by the competent authority for completion or clarification of the information shall be at its discretion but may not result in an interruption of the assessment period.

4. The competent authority may extend the interruption referred to in the second subparagraph of paragraph 3 up to 30 working days where the proposed acquirer or vendor is either:

(a) situated or regulated outside the Union;

(b) a natural or legal person not subject to supervision under this Regulation or Directive 73/239/EEC, Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance [1] or Directives 2002/83/EC, 2003/41/EC, 2004/39/EC, 2005/68/EC, 2006/48/EC, 2009/65/EC or 2011/61/EU.

5. Where the competent authority, upon completion of the assessment, decides to oppose the proposed acquisition, it shall, within two working days, and not exceeding the assessment period, inform the proposed acquirer in writing and provide the reasons for that decision. The competent authority shall

[1] OJ L 228, 11.8.1992, p. 1.

notify the college referred to in Article 18 accordingly. Subject to national law, an appropriate statement of the reasons for the decision may be made accessible to the public at the request of the proposed acquirer. However, Member States may allow a competent authority to make such disclosure in the absence of a request by the proposed acquirer.

6. Where the competent authority does not oppose the proposed acquisition within the assessment period, it shall be deemed to be approved.

7. The competent authority may fix a maximum period for concluding the proposed acquisition and extend it where appropriate.

8. Member States shall not impose requirements for notification to, and approval by, the competent authority of direct or indirect acquisitions of voting rights or capital that are more stringent than those set out in this Regulation.

Article 32

Assessment

1. Where assessing the notification provided for in Article 31(2) and the information referred to in Article 31(3), the competent authority shall, in order to ensure the sound and prudent management of the CCP in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on the CCP, appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following:

(a) the reputation and financial soundness of the proposed acquirer;

(b) the reputation and experience of any person who will direct the business of the CCP as a result of the proposed acquisition;

(c) whether the CCP will be able to comply and continue to comply with this Regulation;

(d) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

Where assessing the financial soundness of the proposed acquirer, the competent authority shall pay particular attention to the type of business pursued and envisaged in the CCP in which the acquisition is proposed.

Where assessing the CCP's ability to comply with this Regulation, the competent authority shall pay particular attention to whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, to effectively exchange information among the competent authorities and to determine the allocation of responsibilities among the competent authorities.

2. The competent authorities may oppose the proposed acquisition only where there are reasonable grounds for doing so on the basis of the criteria set out in paragraph 1 or where the information provided by the proposed acquirer is incomplete.

3. Member States shall neither impose any prior conditions in respect of the level of holding that shall be acquired nor allow their competent authorities to examine the proposed acquisition in terms of the economic needs of the market.

4. Member States shall make publicly available a list specifying the information that is necessary to carry out the assessment and that shall be provided to the competent authorities at the time of notification referred to in Article 31(2). The information required shall be proportionate and shall be adapted to the nature of the proposed acquirer and the proposed acquisition. Member States shall not require information that is not relevant for a prudential assessment.

5. Notwithstanding Article 31(2), (3) and (4), where two or more proposals to acquire or increase qualifying holdings in the same CCP have been notified to the competent authority, the latter shall treat the proposed acquirers in a non-discriminatory manner.

6. The relevant competent authorities shall cooperate closely with each other when carrying out the assessment where the proposed acquirer is one of the following:

(a) another CCP, a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm, market operator, an operator of a securities settlement system, a UCITS management company or an AIFM authorised in another Member State;

(b) the parent undertaking of another CCP, a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm, market operator, an operator of a securities settlement system, a UCITS management company or an AIFM authorised in another Member State;

(c) a natural or legal person controlling another CCP, a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm, market operator, an operator of a securities settlement system, a UCITS management company or an AIFM authorised in another Member State.

7. The competent authorities shall, without undue delay, provide each other with any information which is essential or relevant for the assessment. The competent authorities shall, upon request, communicate all relevant information to each other and shall communicate all essential information at their own initiative. A decision by the competent authority that has authorised the CCP in which the acquisition is proposed shall indicate any views or reservations expressed by the competent authority responsible for the proposed acquirer.

Article 33

Conflicts of interest

1. A CCP shall maintain and operate effective written organisational and administrative arrangements to identify and manage any potential conflicts of interest between itself, including its managers, employees, or any person with direct or indirect control or close links, and its clearing members or their clients known to the CCP. It shall maintain and implement adequate procedures aiming at resolving possible conflicts of interest.

2. Where the organisational or administrative arrangements of a CCP to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of a clearing member or client are prevented, it shall clearly disclose the general nature or sources of conflicts of interest to the clearing member before accepting new transactions from that clearing member. Where the client is known to the CCP, the CCP shall inform the client and the clearing member whose client is concerned.

3. Where the CCP is a parent undertaking or a subsidiary, the written arrangements shall also take into account any circumstances, of which the CCP is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other undertakings with which it has a parent undertaking or a subsidiary relationship.

4. The written arrangements established in accordance with paragraph 1 shall include the following:

(a) the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of one or more clearing members or clients;

(b) procedures to be followed and measures to be adopted in order to manage such conflict.

5. A CCP shall take all reasonable steps to prevent any misuse of the information held in its systems and shall prevent the use of that information for other business activities. A natural person who has a close link to a CCP or a legal person that has a parent undertaking or a subsidiary relationship with a CCP shall not use confidential information recorded in that CCP for any commercial purposes without the prior written consent of the client to whom such confidential information belongs.

Article 34

Business continuity

1. A CCP shall establish, implement and maintain an adequate business continuity policy and disaster recovery plan aiming at ensuring the preservation of its functions, the timely recovery of operations and the fulfilment of the CCP's obligations. Such a plan shall at least allow for the recovery of all transactions at the time of disruption to allow the CCP to continue to operate with certainty and to complete settlement on the scheduled date.

2. A CCP shall establish, implement and maintain an adequate procedure ensuring the timely and orderly settlement or transfer of the assets and positions of clients and clearing members in the event of a withdrawal of authorisation pursuant to a decision under Article 20.

3. In order to ensure consistent application of this Article, ESMA shall, after consulting the members of the ESCB, develop draft regulatory technical standards specifying the minimum content and requirements of the business continuity policy and of the disaster recovery plan.

ESMA shall submit those draft regulatory technical standards to the Commission by 30 September 2012.

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 35

Outsourcing

1. Where a CCP outsources operational functions, services or activities, it shall remain fully responsible for discharging all of its obligations under this Regulation and shall ensure at all times that:

(a) outsourcing does not result in the delegation of its responsibility;

(b) the relationship and obligations of the CCP towards its clearing members or, where relevant, towards their clients are not altered;

(c) the conditions for authorisation of the CCP do not effectively change;

(d) outsourcing does not prevent the exercise of supervisory and oversight functions, including on-site access to acquire any relevant information needed to fulfil those mandates;

(e) outsourcing does not result in depriving the CCP from the necessary systems and controls to manage the risks it faces;

(f) the service provider implements equivalent business continuity requirements to those that the CCP must fulfil under this Regulation;

(g) the CCP retains the necessary expertise and resources to evaluate the quality of the services provided and the organisational and capital adequacy of the service provider, and to supervise the outsourced functions effectively and manage the risks associated with the outsourcing and supervises those functions and manages those risks on an ongoing basis;

(h) the CCP has direct access to the relevant information of the outsourced functions;

(i) the service provider cooperates with the competent authority in connection with the outsourced activities;

(j) the service provider protects any confidential information relating to the CCP and its clearing members and clients or, where that service provider is established in a third country, ensures that the data protection standards of that third country, or those set out in the agreement between the parties concerned, are comparable to the data protection standards in effect in the Union.

A CCP shall not outsource major activities linked to risk management unless such outsourcing is approved by the competent authority.

2. The competent authority shall require the CCP to allocate and set out its rights and obligations, and those of the service provider, clearly in a written agreement.

3. A CCP shall make all information necessary to enable the competent authority to assess the compliance of the performance of the outsourced activities with this Regulation available on request.

CHAPTER 2

Conduct of business rules

Article 36

General provisions

1. When providing services to its clearing members, and where relevant, to their clients, a CCP shall act fairly and professionally in accordance with the best interests of such clearing members and clients and sound risk management.

2. A CCP shall have accessible, transparent and fair rules for the prompt handling of complaints.

Article 37

Participation requirements

1. A CCP shall establish, where relevant per type of product cleared, the categories of admissible clearing members and the admission criteria, upon the advice of the risk committee pursuant to Article 28(3). Such criteria shall be non-discriminatory, transparent and objective so as to ensure fair and open access to the CCP and shall ensure that clearing members have sufficient financial resources and operational capacity to meet the obligations arising from participation in a CCP. Criteria that restrict access shall be permitted only to the extent that their objective is to control the risk for the CCP.

2. A CCP shall ensure that the application of the criteria referred to in paragraph 1 is met on an ongoing basis and shall have timely access to the information relevant for such assessment. A CCP shall conduct, at least once a year, a comprehensive review of compliance with this Article by its clearing members.

3. Clearing members that clear transactions on behalf of their clients shall have the necessary additional financial resources and operational capacity to perform this activity. The CCP's rules for clearing members shall allow it to gather relevant basic information to identify, monitor and manage relevant concentrations of risk relating to the provision of services to clients. Clearing members shall, upon request, inform the CCP about the criteria and arrangements they adopt to allow their clients to access the services of the CCP. Responsibility for ensuring that clients comply with their obligations shall remain with clearing members.

4. A CCP shall have objective and transparent procedures for the suspension and orderly exit of clearing members that no longer meet the criteria referred to in paragraph 1.

5. A CCP may only deny access to clearing members meeting the criteria referred to in paragraph 1 where duly justified in writing and based on a comprehensive risk analysis.

6. A CCP may impose specific additional obligations on clearing members, such as the participation in auctions of a defaulting clearing member's position. Such additional obligations shall be proportional to the risk brought by the clearing member and shall not restrict participation to certain categories of clearing members.

Article 38

Transparency

1. A CCP and its clearing members shall publicly disclose the prices and fees associated with the services provided. They shall disclose the prices and fees of each service provided separately, including discounts and rebates and the conditions to benefit from those reductions. A CCP shall allow its clearing members and, where relevant, their clients separate access to the specific services provided.

A CCP shall account separately for costs and revenues of the services provided and shall disclose that information to the competent authority.

2. A CCP shall disclose to clearing members and clients the risks associated with the services provided.

3. A CCP shall disclose to its clearing members and to its competent authority the price information used to calculate its end-of-day exposures to its clearing members.

A CCP shall publicly disclose the volumes of the cleared transactions for each class of instruments cleared by the CCP on an aggregated basis.

4. A CCP shall publicly disclose the operational and technical requirements relating to the communication protocols covering content and message formats it uses to interact with third parties, including the operational and technical requirements referred to in Article 7.

5. A CCP shall publicly disclose any breaches by clearing members of the criteria referred to in Article 37(1) and the requirements laid down in paragraph 1 of this Article, except where the competent authority, after consulting ESMA, considers that such disclosure would constitute a threat to financial stability or to market confidence or would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

Article 39

Segregation and portability

1. A CCP shall keep separate records and accounts that shall enable it, at any time and without delay, to distinguish in accounts with the CCP the assets and positions held for the account of one clearing member from the assets and positions held for the account of any other clearing member and from its own assets.

2. A CCP shall offer to keep separate records and accounts enabling each clearing member to distinguish in accounts with the CCP the assets and positions of that clearing member from those held for the accounts of its clients ('omnibus client segregation').

3. A CCP shall offer to keep separate records and accounts enabling each clearing member to distinguish in accounts with the CCP the assets and positions held for the account of a client from those held for the account of other clients ('individual client segregation'). Upon request, the CCP shall offer clearing members the possibility to open more accounts in their own name or for the account of their clients.

4. A clearing member shall keep separate records and accounts that enable it to distinguish both in accounts held with the CCP and in its own accounts its assets and positions from the assets and positions held for the account of its clients at the CCP.

5. A clearing member shall offer its clients, at least, the choice between omnibus client segregation and individual client segregation and inform them of the costs and level of protection referred to in paragraph 7 associated with each option. The client shall confirm its choice in writing.

6. When a client opts for individual client segregation, any margin in excess of the client's requirement shall also be posted to the CCP and distinguished from the margins of other clients or clearing members and shall not be exposed to losses connected to positions recorded in another account.

7. CCPs and clearing members shall publicly disclose the levels of protection and the costs associated with the different levels of segregation that they provide and shall offer those services on reasonable commercial terms. Details of the different levels of segregation shall include a description of the main legal implications of the respective levels of segregation offered including information on the insolvency law applicable in the relevant jurisdictions.

8. A CCP shall have a right of use relating to the margins or default fund contributions collected via a security financial collateral arrangement, within the meaning of Article 2(1)(c) of Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements [1] provided that the use of such arrangements is provided for in its operating rules. The clearing member shall confirm its acceptance of the operating rules in writing. The CCP shall publicly disclose that right of use, which shall be exercised in accordance with Article 47.

9. The requirement to distinguish assets and positions with the CCP in accounts is satisfied where:

(a) the assets and positions are recorded in separate accounts;

(b) the netting of positions recorded on different accounts is prevented;

(c) the assets covering the positions recorded in an account are not exposed to losses connected to positions recorded in another account.

10. Assets refer to collateral held to cover positions and include the right to the transfer of assets equivalent to that collateral or the proceeds of the realisation of any collateral, but does not include default fund contributions.

[1] OJ L 168, 27.6.2002, p. 43.

CHAPTER 3

Prudential requirements

Article 40

Exposure management

A CCP shall measure and assess its liquidity and credit exposures to each clearing member and, where relevant, to another CCP with which it has concluded an interoperability arrangement, on a near to real-time basis. A CCP shall have access in a timely manner and on a non-discriminatory basis to the relevant pricing sources to effectively measure its exposures. This shall be done on a reasonable cost basis.

Article 41

Margin requirements

1. A CCP shall impose, call and collect margins to limit its credit exposures from its clearing members and, where relevant, from CCPs with which it has interoperability arrangements. Such margins shall be sufficient to cover potential exposures that the CCP estimates will occur until the liquidation of the relevant positions. They shall also be sufficient to cover losses that result from at least 99 % of the exposures movements over an appropriate time horizon and they shall ensure that a CCP fully collateralises its exposures with all its clearing members, and, where relevant, with CCPs with which it has interoperability arrangements, at least on a daily basis. A CCP shall regularly monitor and, if necessary, revise the level of its margins to reflect current market conditions taking into account any potentially procyclical effects of such revisions.

2. A CCP shall adopt models and parameters in setting its margin requirements that capture the risk characteristics of the products cleared and take into account the interval between margin collections, market liquidity and the possibility of changes over the duration of the transaction. The models and parameters shall be validated by the competent authority and subject to an opinion in accordance with Article 19.

3. A CCP shall call and collect margins on an intraday basis, at least when predefined thresholds are exceeded.

4. A CCP shall call and collect margins that are adequate to cover the risk stemming from the positions registered in each account kept in accordance with Article 39 with respect to specific financial instruments. A CCP may calculate margins with respect to a portfolio of financial instruments provided that the methodology used is prudent and robust.

5. In order to ensure consistent application of this Article, ESMA shall, after consulting EBA and the ESCB, develop draft regulatory technical standards specifying the appropriate percentage and time horizons for the liquidation period and the calculation of historical volatility, as referred to in paragraph 1, to be considered for the different classes of financial instruments, taking into account the objective to limit procyclicality, and the conditions under which portfolio margining practices referred to in paragraph 4 can be implemented.

ESMA shall submit those draft regulatory technical standards to the Commission by 30 September 2012.

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 42

Default fund

1. To limit its credit exposures to its clearing members further, a CCP shall maintain a pre-funded default fund to cover losses that exceed the losses to be covered by margin requirements laid down in Article 41, arising from the default, including the opening of an insolvency procedure, of one or more clearing members.

The CCP shall establish a minimum amount below which the size of the default fund is not to fall under any circumstances.

2. A CCP shall establish the minimum size of contributions to the default fund and the criteria to calculate the contributions of the single clearing members. The contributions shall be proportional to the exposures of each clearing member.

3. The default fund shall at least enable the CCP to withstand, under extreme but plausible market conditions, the default of the clearing member to which it has the largest exposures or of the second and third largest clearing members, if the sum of their exposures is larger. A CCP shall develop scenarios of extreme but plausible market conditions. The scenarios shall include the most volatile periods that have been experienced by the markets for which the CCP provides its services and a range of potential future scenarios. They shall take into account sudden sales of financial resources and rapid reductions in market liquidity.

4. A CCP may establish more than one default fund for the different classes of instrument that it clears.

5. In order to ensure consistent application of this Article, ESMA shall, in close cooperation with the ESCB and after consulting EBA, develop draft regulatory technical standards specifying the framework for defining extreme but plausible market conditions referred to in paragraph 3, that should be used when defining the size of the default fund and the other financial resources referred to in Article 43.

ESMA shall submit those draft regulatory technical standards to the Commission by 30 September 2012.

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 43

Other financial resources

1. A CCP shall maintain sufficient pre-funded available financial resources to cover potential losses that exceed the losses to be covered by margin requirements laid down in Article 41 and the default fund as referred to in Article 42. Such pre-funded financial resources shall include dedicated resources of the CCP, shall be freely available to the CCP and shall not be used to meet the capital required under Article 16.

2. The default fund referred to in Article 42 and the other financial resources referred to in paragraph 1 of this Article shall at all times enable the CCP to withstand the default of at least the two clearing members to which it has the largest exposures under extreme but plausible market conditions.

3. A CCP may require non-defaulting clearing members to provide additional funds in the event of a default of another clearing member. The clearing members of a CCP shall have limited exposures toward the CCP.

Article 44

Liquidity risk controls

1. A CCP shall at all times have access to adequate liquidity to perform its services and activities. To that end, it shall obtain the necessary credit lines or similar arrangements to cover its liquidity needs in case the financial resources at its disposal are not immediately available. A clearing member, parent undertaking or subsidiary of that clearing member together shall not provide more than 25 % of the credit lines needed by the CCP.

A CCP shall measure, on a daily basis, its potential liquidity needs. It shall take into account the liquidity risk generated by the default of at least the two clearing members to which it has the largest exposures.

2. In order to ensure consistent application of this Article, ESMA shall, after consulting the relevant authorities and the members of the ESCB, develop draft regulatory technical standards specifying the framework for managing the liquidity risk that CCPs are to withstand in accordance with paragraph 1.

ESMA shall submit those draft regulatory technical standards to the Commission by 30 September 2012.

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 45

Default waterfall

1. A CCP shall use the margins posted by a defaulting clearing member prior to other financial resources in covering losses.

2. Where the margins posted by the defaulting clearing member are not sufficient to cover the losses incurred by the CCP, the CCP shall use the default fund contribution of the defaulting member to cover those losses.

3. A CCP shall use contributions to the default fund of the non-defaulting clearing members and any other financial resources referred to in Article 43(1) only after having exhausted the contributions of the defaulting clearing member.

4. A CCP shall use dedicated own resources before using the default fund contributions of non-defaulting clearing members. A CCP shall not use the margins posted by non-defaulting clearing members to cover the losses resulting from the default of another clearing member.

5. In order to ensure consistent application of this Article, ESMA, shall, after consulting the relevant competent authorities and the members of the ESCB, develop draft regulatory technical standards specifying the methodology for calculation and maintenance of the amount of the CCP's own resources to be used in accordance with paragraph 4.

ESMA shall submit those draft regulatory technical standards to the Commission by 30 September 2012.

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 46

Collateral requirements

1. A CCP shall accept highly liquid collateral with minimal credit and market risk to cover its initial and ongoing exposure to its clearing members. For non-financial counterparties, a CCP may accept bank guarantees, taking such guarantees into account when calculating its exposure to a bank that is a clearing member. It shall apply adequate haircuts to asset values that reflect the potential for their value to decline over the interval between their last revaluation and the time by which they can reasonably be assumed to be liquidated. It shall take into account the liquidity risk following the default of a market participant and the concentration risk on certain assets that may result in establishing the acceptable collateral and the relevant haircuts.

2. A CCP may accept, where appropriate and sufficiently prudent, the underlying of the derivative contract or the financial instrument that originates the CCP exposure as collateral to cover its margin requirements.

3. In order to ensure consistent application of this Article, ESMA shall, after consulting EBA, the ESRB and the ESCB, develop draft regulatory technical standards specifying:

(a) the type of collateral that could be considered highly liquid, such as cash, gold, government and high-quality corporate bonds and covered bonds;

(b) the haircuts referred to in paragraph 1; and

(c) the conditions under which commercial bank guarantees may be accepted as collateral under paragraph 1.

ESMA shall submit those draft regulatory technical standards to the Commission by 30 September 2012.

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 47

Investment policy

1. A CCP shall invest its financial resources only in cash or in highly liquid financial instruments with minimal market and credit risk. A CCP's investments shall be capable of being liquidated rapidly with minimal adverse price effect.

2. The amount of capital, including retained earnings and reserves of a CCP which are not invested in accordance with paragraph 1, shall not be taken into account for the purposes of Article 16(2) or Article 45(4).

3. Financial instruments posted as margins or as default fund contributions shall, where available, be deposited with operators of securities settlement systems that ensure the full protection of those financial instruments. Alternatively, other highly secure arrangements with authorised financial institutions may be used.

4. Cash deposits of a CCP shall be performed through highly secure arrangements with authorised financial institutions or, alternatively, through the use of the standing deposit facilities of central banks or other comparable means provided for by central banks.

5. Where a CCP deposits assets with a third party, it shall ensure that the assets belonging to the clearing members are identifiable separately from the assets belonging to the CCP and from assets belonging to that third party by means of differently titled accounts on the books of the third party or any other equivalent measures that achieve the same level of protection. A CCP shall have prompt access to the financial instruments when required.

6. A CCP shall not invest its capital or the sums arising from the requirements laid down in Article 41, 42, 43 or 44 in its own securities or those of its parent undertaking or its subsidiary.

7. A CCP shall take into account its overall credit risk exposures to individual obligors in making its investment decisions and shall ensure that its overall risk exposure to any individual obligor remains within acceptable concentration limits.

8. In order to ensure consistent application of this Article, ESMA shall, after consulting EBA and the ESCB, develop draft regulatory technical standards specifying the financial instruments that can be considered highly liquid, bearing minimal credit and market risk as referred to in paragraph 1, the highly secured arrangements referred to in paragraphs 3 and 4 and the concentration limits referred to in paragraph 7.

ESMA shall submit those draft regulatory technical standards to the Commission by 30 September 2012.

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 48

Default procedures

1. A CCP shall have detailed procedures in place to be followed where a clearing member does not comply with the participation requirements of the CCP laid down in Article 37 within the time limit and in accordance with the procedures established by the CCP. The CCP shall set out in detail the procedures to be followed in the event the default of a clearing member is not declared by the CCP. Those procedures shall be reviewed annually.

2. A CCP shall take prompt action to contain losses and liquidity pressures resulting from defaults and shall ensure that the closing out of any clearing member's positions does not disrupt its operations or expose the non-defaulting clearing members to losses that they cannot anticipate or control.

3. Where a CCP considers that the clearing member will not be able to meet its future obligations, it shall promptly inform the competent authority before the default procedure is declared or triggered. The competent authority shall promptly communicate that information to ESMA, to the relevant members of the ESCB and to the authority responsible for the supervision of the defaulting clearing member.

4. A CCP shall verify that its default procedures are enforceable. It shall take all reasonable steps to ensure that it has the legal powers to liquidate the proprietary positions of the defaulting clearing member and to transfer or liquidate the clients' positions of the defaulting clearing member.

5. Where assets and positions are recorded in the records and accounts of a CCP as being held for the account of a defaulting clearing member's clients in accordance with Article 39(2), the CCP shall, at least, contractually commit itself to trigger the procedures for the transfer of the assets and positions held by the defaulting clearing member for the account of its clients to another clearing member designated by all of those clients, on their request and without the consent of the defaulting clearing member. That other clearing member shall be obliged to accept those assets and positions only where it has previously entered into a contractual relationship with the clients by which it has committed itself to do so. If the transfer to that other clearing member has not taken place for any reason within a predefined transfer period specified in its operating rules, the CCP may take all steps permitted by its rules to actively manage its risks in relation to those positions, including liquidating the assets and positions held by the defaulting clearing member for the account of its clients.

6. Where assets and positions are recorded in the records and accounts of a CCP as being held for the account of a defaulting clearing member's client in accordance with Article 39(3), the CCP shall, at least, contractually commit itself to trigger the procedures for the transfer of the assets and positions held by the defaulting clearing member for the account of the client to another clearing member designated by the client, on the client's request and without the consent of the defaulting clearing member. That other clearing member shall be obliged to accept these assets and positions only where it has previously entered into a contractual relationship with the client by which it has committed itself to do so. If the transfer to that other clearing member has not taken place for any reason within a predefined transfer period specified in its operating rules, the CCP may take all steps permitted by its rules to actively manage its risks in relation to those positions, including liquidating the assets and positions held by the defaulting clearing member for the account of the client.

7. Clients' collateral distinguished in accordance with Article 39(2) and (3) shall be used exclusively to cover the positions held for their account. Any balance owed by the CCP after the completion of the clearing member's default management process by the CCP shall be readily returned to those clients when they are known to the CCP or, if they are not, to the clearing member for the account of its clients.

Article 49

Review of models, stress testing and back testing

1. 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 before adopting any significant change to the models and parameters.

The adopted models and parameters, including any significant change thereto, shall be subject to an opinion of the college pursuant to Article 19.

ESMA shall ensure that information on the results of the stress tests is passed on to the ESAs to enable them to assess the exposure of financial undertakings to the default of CCPs.

2. A CCP shall regularly test the key aspects of its default procedures and take all reasonable steps to ensure that all clearing members understand them and have appropriate arrangements in place to respond to a default event.

3. A CCP shall publicly disclose key information on its risk-management model and assumptions adopted to perform the stress tests referred to in paragraph 1.

4. In order to ensure consistent 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:

(a) the type of tests to be undertaken for different classes of financial instruments and portfolios;

(b) the involvement of clearing members or other parties in the tests;

(c) the frequency of the tests;

(d) the time horizons of the tests;

(e) the key information referred to in paragraph 3.

ESMA shall submit those draft regulatory technical standards to the Commission by 30 September 2012.

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 50

Settlement

1. A CCP shall, where practical and available, use central bank money to settle its transactions. Where central bank money is not used, steps shall be taken to strictly limit cash settlement risks.

2. A CCP shall clearly state its obligations with respect to deliveries of financial instruments, including whether it has an obligation to make or receive delivery of a financial instrument or whether it indemnifies participants for losses incurred in the delivery process.

3. Where a CCP has an obligation to make or receive deliveries of financial instruments, it shall eliminate principal risk through the use of delivery-versus-payment mechanisms to the extent possible.

TITLE V

INTEROPERABILITY ARRANGEMENTS

Article 51

Interoperability arrangements

1. A CCP may enter into an interoperability arrangement with another CCP where the requirements laid down in Articles 52, 53 and 54 are fulfilled.

2. When establishing an interoperability arrangement with another CCP for the purpose of providing services to a particular trading venue, the CCP shall have non-discriminatory access, both to the data that it needs for the performance of its functions from that particular trading venue, to the extent that the CCP complies with the operational and technical requirements established by the trading venue, and to the relevant settlement system.

3. Entering into an interoperability arrangement or accessing a data feed or a settlement system referred to in paragraphs 1 and 2 shall be rejected or restricted, directly or indirectly, only in order to control any risk arising from that arrangement or access.

Article 52

Risk management

1. CCPs that enter into an interoperability arrangement shall:

(a) put in place adequate policies, procedures and systems to effectively identify, monitor and manage the risks arising from the arrangement so that they can meet their obligations in a timely manner;

(b) agree on their respective rights and obligations, including the applicable law governing their relationships;

(c) identify, monitor and effectively manage credit and liquidity risks so that a default of a clearing member of one CCP does not affect an interoperable CCP;

(d) identify, monitor and address potential interdependences and correlations that arise from an interoperability arrangement that may affect credit and liquidity risks relating to clearing member concentrations, and pooled financial resources.

For the purposes of point (b) of the first subparagraph, CCPs shall use the same rules concerning the moment of entry of transfer orders into their respective systems and the moment of irrevocability as set out in Directive 98/26/EC, where relevant.

For the purposes of point (c) of the first subparagraph, the terms of the arrangement shall outline the process for managing the consequences of the default where one of the CCPs with which an interoperability arrangement has been concluded is in default.

For the purposes of point (d) of the first subparagraph, CCPs shall have robust controls over the re-use of clearing members' collateral under the arrangement, if permitted by their competent authorities. The arrangement shall outline how those risks have been addressed taking into account sufficient coverage and need to limit contagion.

2. Where the risk-management models used by the CCPs to cover their exposure to their clearing members or their reciprocal exposures are different, the CCPs shall identify those differences, assess risks that may arise therefrom and take measures, including securing additional financial resources, that limit their impact on the interoperability arrangement as well as their potential consequences in terms of contagion risks and ensure that these differences do not affect each CCP's ability to manage the consequences of the default of a clearing member.

3. Any associated costs that arise from paragraphs 1 and 2 shall be borne by the CCP requesting interoperability or access, unless otherwise agreed between the parties.

Article 53

Provision of margins among CCPs

1. A CCP shall distinguish in accounts the assets and positions held for the account of CCPs with whom it has entered into an interoperability arrangement.

2. If a CCP that enters into an interoperability arrangement with another CCP only provides initial margins to that CCP under a security financial collateral arrangement, the receiving CCP shall have no right of use over the margins provided by the other CCP.

3. Collateral received in the form of financial instruments shall be deposited with operators of securities settlement systems notified under Directive 98/26/EC.

4. The assets referred to in paragraphs 1 and 2 shall be available to the receiving CCP only in case of default of the CCP which has provided the collateral in the context of an interoperability arrangement.

5. In case of default of the CCP which has received the collateral in the context of an interoperability arrangement, the collateral referred to in paragraphs 1 and 2 shall be readily returned to the providing CCP.

Article 54

Approval of interoperability arrangements

1. An interoperability arrangement shall be subject to the prior approval of the competent authorities of the CCPs involved. The procedure under Article 17 shall apply.

2. The competent authorities shall grant approval of the interoperability arrangement only where the CCPs involved have been authorised to clear under Article 17 or recognised under Article 25 or authorised under a pre-existing national authorisation regime for a period of at least three years, the requirements laid down in Article 52 are met and the technical conditions for clearing transactions under the terms of the arrangement allow for a smooth and orderly functioning of financial markets and the arrangement does not undermine the effectiveness of supervision.

3. Where a competent authority considers that the requirements laid down in paragraph 2 are not met, it shall provide explanations in writing regarding its risk considerations to the other competent authorities and the CCPs involved. It shall also notify ESMA, which shall issue an opinion on the effective validity of the risk considerations as grounds for denial of the interoperability arrangement. ESMA's opinion shall be made available to all the CCPs involved. Where ESMA's opinion differs from the assessment of the relevant competent authority, that competent authority shall reconsider its position, taking into account ESMA's opinion.

4. By 31 December 2012, ESMA shall issue guidelines or recommendations with a view to establishing consistent, efficient and effective assessments of interoperability arrangements, in accordance with the procedure laid down in Article 16 of Regulation (EU) No 1095/2010.

ESMA shall develop drafts of those guidelines or recommendations after consulting the members of the ESCB.

TITLE VI

REGISTRATION AND SUPERVISION OF TRADE REPOSITORIES

CHAPTER 1

Conditions and procedures for registration of a trade repository

Article 55

Registration of a trade repository

1. A trade repository shall register with ESMA for the purposes of Article 9.

2. To be eligible to be registered under this Article, a trade repository shall be a legal person established in the Union and meet the requirements laid down in Title VII.

3. The registration of a trade repository shall be effective for the entire territory of the Union.

4. A registered trade repository shall comply at all times with the conditions for registration. A trade repository shall, without undue delay, notify ESMA of any material changes to the conditions for registration.

Article 56

Application for registration

1. A trade repository shall submit an application for registration to ESMA.

2. ESMA shall assess whether the application is complete within 20 working days of receipt of the application.

Where the application is not complete, ESMA shall set a deadline by which the trade repository is to provide additional information.

After assessing an application as complete, ESMA shall notify the trade repository accordingly.

3. In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards specifying the details of the application for registration referred to in paragraph 1.

ESMA shall submit those draft regulatory technical standards to the Commission by 30 September 2012.

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.

4. In order to ensure uniform conditions of application of paragraph 1, ESMA shall develop draft implementing technical standards specifying the format of the application for registration to ESMA.

ESMA shall submit those draft implementing technical standards to the Commission by 30 September 2012.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 57

Notification of and consultation with competent authorities prior to registration

1. If a trade repository which is applying for registration is an entity which is authorised or registered by a competent authority in the Member State where it is established, ESMA shall, without undue delay, notify and consult that competent authority prior to the registration of the trade repository.

2. ESMA and the relevant competent authority shall exchange all information that is necessary for the registration of the trade repository as well as for the supervision of the entity's compliance with the conditions of its registration or authorisation in the Member State where it is established.

Article 58

Examination of the application

1. ESMA shall, within 40 working days from the notification referred to in the third subparagraph of Article 56(2), examine the application for registration based on the compliance of the trade repository with Articles 78 to 81 and shall adopt a fully reasoned registration decision or decision refusing registration.

2. A decision issued by ESMA pursuant to paragraph 1 shall take effect on the fifth working day following its adoption.

Article 59

Notification of ESMA decisions relating to registration

1. Where ESMA adopts a registration decision or a decision refusing or withdrawing registration, it shall notify the trade repository within five working days with a fully reasoned explanation of its decision.

ESMA shall, without undue delay, notify the relevant competent authority referred to in Article 57(1) of its decision.

2. ESMA shall communicate any decision taken in accordance with paragraph 1 to the Commission.

3. ESMA shall publish on its website a list of trade repositories registered in accordance with this Regulation. That list shall be updated within five working days following the adoption of a decision under paragraph 1.

Article 60

Exercise of the powers referred to in Articles 61 to 63

The powers conferred on ESMA or any official of or other person authorised by ESMA by Articles 61 to 63 shall not be used to require the disclosure of information or documents which are subject to legal privilege.

Article 61

Request for information

1. ESMA may by simple request or by decision require trade repositories and related third parties to whom the trade repositories have outsourced operational functions or activities to provide all information that is necessary in order to carry out its duties under this Regulation.

2. When sending a simple request for information under paragraph 1, ESMA shall:

(a) refer to this Article as the legal basis of the request;

(b) state the purpose of the request;

(c) specify what information is required;

(d) set a time limit within which the information is to be provided;

(e) inform the person from whom the information is requested that he is not obliged to provide the information but that in case of a voluntary reply to the request the information provided must not be incorrect and misleading; and

(f) indicate the fine provided for in Article 65 in conjunction with point (a) of Section IV of Annex I where the answers to questions asked are incorrect or misleading.

3. When requiring to supply information under paragraph 1 by decision, ESMA shall:

(a) refer to this Article as the legal basis of the request;

(b) state the purpose of the request;

(c) specify what information is required;

(d) set a time limit within which the information is to be provided;

(e) indicate the periodic penalty payments provided for in Article 66 where the production of the required information is incomplete;

(f) indicate the fine provided for in Article 65 in conjunction with point (a) of Section IV of Annex I, where the answers to questions asked are incorrect or misleading; and

(g) indicate the right to appeal the decision before ESMA's Board of Appeal and to have the decision reviewed by the Court of Justice of the European Union ('Court of Justice') in accordance with Articles 60 and 61 of Regulation (EU) No 1095/2010.

4. The persons referred to in paragraph 1 or their representatives and, in the case of legal persons or associations having no legal personality, the persons authorised to represent them by law or by their constitution shall supply the information requested. Lawyers duly authorised to act may supply the information on behalf of their clients. The latter shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.

5. ESMA shall, without delay, send a copy of the simple request or of its decision to the competent authority of the Member State where the persons referred to in paragraph 1 concerned by the request for information are domiciled or established.

Article 62

General investigations

1. In order to carry out its duties under this Regulation, ESMA may conduct necessary investigations of persons referred to in Article 61(1). To that end, the officials and other persons authorised by ESMA shall be empowered to:

(a) examine any records, data, procedures and any other material relevant to the execution of its tasks irrespective of the medium on which they are stored;

(b) take or obtain certified copies of or extracts from such records, data, procedures and other material;

(c) summon and ask any person referred to in Article 61(1) or their representatives or staff for oral or written explanations on facts or documents relating to the subject matter and purpose of the inspection and to record the answers;

(d) interview any other natural or legal person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation;

(e) request records of telephone and data traffic.

2. The officials and other persons authorised by ESMA for the purposes of the investigations referred to in paragraph 1 shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the investigation. That authorisation shall also indicate the periodic penalty payments provided for in Article 66 where the production of the required records, data, procedures or any other material, or the answers to questions asked to persons referred to in Article 61(1) are not provided or are incomplete, and the fines provided for in Article 65 in conjunction with point (b) of Section IV of Annex I, where the answers to questions asked to persons referred to in Article 61(1) are incorrect or misleading.

3. The persons referred to in Article 61(1) are required to submit to investigations launched on the basis of a decision of ESMA. The decision shall specify the subject matter and purpose of the investigation, the periodic penalty payments provided for in Article 66, the legal remedies available under Regulation (EU) No 1095/2010 and the right to have the decision reviewed by the Court of Justice.

4. In good time before the investigation, ESMA shall inform the competent authority of the Member State where the investigation is to be carried out of the investigation and of the identity of the authorised persons. Officials of the competent authority concerned shall, upon the request of ESMA, assist those authorised persons in carrying out their duties. Officials of the competent authority concerned may also attend the investigations upon request.

5. If a request for records of telephone or data traffic referred to in point (e) of paragraph 1 requires authorisation from a judicial authority according to national rules, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

6. Where authorisation as referred to in paragraph 5 is applied for, the national judicial authority shall control that the decision of ESMA is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the investigations. In its control of the proportionality of the coercive measures, the national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the investigation or demand that it be provided with the information on ESMA's file. The lawfulness of ESMA's decision shall be subject to review only by the Court of Justice following the procedure set out in Regulation (EU) No 1095/2010.

Article 63

On-site inspections

1. In order to carry out its duties under this Regulation, ESMA may conduct all necessary on-site inspections at any business premises or land of the legal persons referred to in Article 61(1). Where the proper conduct and efficiency of the inspection so require, ESMA may carry out the on-site inspection without prior announcement.

2. The officials and other persons authorised by ESMA to conduct an on-site inspection may enter any business premises or land of the legal persons subject to an investigation decision adopted by ESMA and shall have all the powers stipulated in Article 62(1). They shall also have the power to seal any business premises and books or records for the period of, and to the extent necessary for, the inspection.

3. The officials and other persons authorised by ESMA to conduct an on-site inspection shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the inspection and the periodic penalty payments provided for in Article 66 where the persons concerned do not submit to the inspection. In good time before the inspection, ESMA shall give notice of the inspection to the competent authority of the Member State where the inspection is to be conducted.

4. The persons referred to in Article 61(1) shall submit to on-site inspections ordered by decision of ESMA. The decision shall specify the subject matter and purpose of the inspection, appoint the date on which it is to begin and indicate the periodic penalty payments provided for in Article 66, the legal remedies available under Regulation (EU) No 1095/2010 as well as the right to have the decision reviewed by the Court of Justice. ESMA shall take such decisions after consulting the competent authority of the Member State where the inspection is to be conducted.

5. Officials of, as well as those authorised or appointed by, the competent authority of the Member State where the inspection is to be conducted shall, at the request of ESMA, actively assist the officials and other persons authorised by ESMA. To that end, they shall enjoy the powers set out in paragraph 2. Officials of the competent authority of the Member State concerned may also attend the on-site inspections on request.

6. ESMA may also require competent authorities to carry out specific investigatory tasks and on-site inspections as provided for in this Article and in Article 62(1) on its behalf. To that end, competent authorities shall enjoy the same powers as ESMA as set out in this Article and in Article 62(1).

7. Where the officials and other accompanying persons authorised by ESMA find that a person opposes an inspection ordered pursuant to this Article, the competent authority of the Member State concerned shall afford them the necessary assistance, requesting, where appropriate, the assistance of the police or of an equivalent enforcement authority, so as to enable them to conduct their on-site inspection.

8. If the on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7 requires authorisation by a judicial authority according to national law, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

9. Where authorisation as referred to in paragraph 8 is applied for, the national judicial authority shall verify that ESMA's decision is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the inspection. In its control of the proportionality of the coercive measures, the national judicial authority may ask ESMA for detailed explanations. Such a request for detailed explanations may in particular relate to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place, as well as to the seriousness of the suspected infringement and the nature of the involvement of the person who is subjected to the coercive measures. However, the national judicial authority may not review the necessity for the inspection or demand to be provided with the information on ESMA's file. The lawfulness of ESMA's decision shall be subject to review only by the Court of Justice following the procedure set out in Regulation (EU) No 1095/2010.

Article 64

Procedural rules for taking supervisory measures and imposing fines

1. Where, in carrying out its duties under this Regulation, ESMA finds that there are serious indications of the possible existence of facts liable to constitute one or more of the infringements listed in Annex I, ESMA shall appoint an independent investigation officer within ESMA to investigate the matter. The appointed officer shall not be involved or have been directly or indirectly involved in the supervision or the registration process of the trade repository concerned and shall perform his functions independently from ESMA.

2. The investigation officer shall investigate the alleged infringements, taking into account any comments submitted by the persons who are subject to the investigations, and shall submit a complete file with his findings to ESMA.

In order to carry out his tasks, the investigation officer may exercise the power to request information in accordance with Article 61 and to conduct investigations and on-site inspections in accordance with Articles 62 and 63. When using those powers, the investigation officer shall comply with Article 60.

Where carrying out his tasks, the investigation officer shall have access to all documents and information gathered by ESMA in its supervisory activities.

3. Upon completion of his investigation and before submitting the file with his findings to ESMA, the investigation officer shall give the persons subject to the investigations the opportunity to be heard on the matters being investigated. The investigation officer shall base his findings only on facts on which the persons concerned have had the opportunity to comment.

The rights of the defence of the persons concerned shall be fully respected during investigations under this Article.

4. When submitting the file with his findings to ESMA, the investigation officer shall notify that fact to the persons who are subject to the investigations. The persons subject to the investigations shall be entitled to have access to the file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information affecting third parties.

5. On the basis of the file containing the investigation officer's findings and, when requested by the persons concerned, after having heard the persons subject to the investigations in accordance with Article 67, ESMA shall decide if one or more of the infringements listed in Annex I has been committed by the persons who have been subject to the investigations and, in such a case, shall take a supervisory measure in accordance with Article 73 and impose a fine in accordance with Article 65.

6. The investigation officer shall not participate in ESMA's deliberations or in any other way intervene in ESMA's decision-making process.

7. The Commission shall adopt further rules of procedure for the exercise of the power to impose fines or periodic penalty payments, including provisions on the rights of the defence, temporal provisions, and the collection of fines or periodic penalty payments, and shall adopt detailed rules on the limitation periods for the imposition and enforcement of penalties.

The rules referred to in the first subparagraph shall be adopted by means of delegated acts in accordance with Article 82.

8. ESMA shall refer matters for criminal prosecution to the relevant national authorities where, in carrying out its duties under this Regulation, it finds that there are serious indications of the possible existence of facts liable to constitute criminal offences. In addition, ESMA shall refrain from imposing fines or periodic penalty payments where a prior acquittal or conviction arising from identical fact or facts which are substantially the same has already acquired the force of res judicata as the result of criminal proceedings under national law.

Article 65

Fines

1. Where, in accordance with Article 64(5), ESMA finds that a trade repository has, intentionally or negligently, committed one of the infringements listed in Annex I, it shall adopt a decision imposing a fine in accordance with paragraph 2 of this Article.

An infringement by a trade repository shall be considered to have been committed intentionally if ESMA finds objective factors which demonstrate that the trade repository or its senior management acted deliberately to commit the infringement.

2. The basic amounts of the fines referred to in paragraph 1 shall be included within the following limits:

(a) for the infringements referred to in point (c) of Section I of Annex I and in points (c) to (g) of Section II of Annex I, and in points (a) and (b) of Section III of Annex I the amounts of the fines shall be at least EUR 10 000 and shall not exceed EUR 20 000;

(b) for the infringements referred to in points (a), (b) and (d) to (h) of Section I of Annex I, and in points (a), (b) and (h) of Section II of Annex I, the amounts of the fines shall be at least EUR 5 000 and shall not exceed EUR 10 000.

In order to decide whether the basic amount of the fines should be at the lower, the middle or the higher end of the limits set out in the first subparagraph, ESMA shall have regard to the annual turnover of the preceding business year of the trade repository concerned. The basic amount shall be at the lower end of the limit for trade repositories whose annual turnover is below EUR 1 million, the middle of the limit for the trade repository whose turnover is between EUR 1 and 5 million and the higher end of the limit for the trade repository whose annual turnover is higher than EUR 5 million.

3. The basic amounts set out in paragraph 2 shall be adjusted, if need be, by taking into account aggravating or mitigating factors in accordance with the relevant coefficients set out in Annex II.

The relevant aggravating coefficients shall be applied one by one to the basic amount. If more than one aggravating coefficient is applicable, the difference between the basic amount and the amount resulting from the application of each individual aggravating coefficient shall be added to the basic amount.

The relevant mitigating coefficients shall be applied one by one to the basic amount. If more than one mitigating coefficient is applicable, the difference between the basic amount and the amount resulting from the application of each individual mitigating coefficient shall be subtracted from the basic amount.

4. Notwithstanding paragraphs 2 and 3, the amount of the fine shall not exceed 20 % of the annual turnover of the trade repository concerned in the preceding business year but, where the trade repository has directly or indirectly benefited financially from the infringement, the amount of the fine shall be at least equal to that benefit.

Where an act or omission of a trade repository constitutes more than one infringement listed in Annex I, only the higher fine calculated in accordance with paragraphs 2 and 3 and relating to one of those infringements shall apply.

Article 66

Periodic penalty payments

1. ESMA shall, by decision, impose periodic penalty payments in order to compel:

(a) a trade repository to put an end to an infringement in accordance with a decision taken pursuant to Article 73(1)(a); or

(b) a person referred to in Article 61(1):

(i) to supply complete information which has been requested by a decision pursuant to Article 61;

(ii) to submit to an investigation and in particular to produce complete records, data, procedures or any other material required and to complete and correct other information provided in an investigation launched by a decision pursuant to Article 62; or

(iii) to submit to an on-site inspection ordered by a decision taken pursuant to Article 63.

2. A periodic penalty payment shall be effective and proportionate. The periodic penalty payment shall be imposed for each day of delay.

3. Notwithstanding paragraph 2, the amount of the periodic penalty payments shall be 3 % of the average daily turnover in the preceding business year, or, in the case of natural persons, 2 % of the average daily income in the preceding calendar year. It shall be calculated from the date stipulated in the decision imposing the periodic penalty payment.

4. A periodic penalty payment shall be imposed for a maximum period of six months following the notification of ESMA's decision. Following the end of the period, ESMA shall review the measure.

Article 67

Hearing of the persons concerned

1. Before taking any decision on a fine or periodic penalty payment under Articles 65 and 66, ESMA shall give the persons subject to the proceedings the opportunity to be heard on its findings. ESMA shall base its decisions only on findings on which the persons subject to the proceedings have had an opportunity to comment.

2. The rights of the defence of the persons subject to the proceedings shall be fully respected in the proceedings. They shall be entitled to have access to ESMA's file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information or ESMA's internal preparatory documents.

Article 68

Disclosure, nature, enforcement and allocation of fines and periodic penalty payments

1. ESMA shall disclose to the public every fine and periodic penalty payment that has been imposed pursuant to Articles 65 and 66 unless such disclosure to the public would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved. Such disclosure shall not contain personal data within the meaning of Regulation (EC) No 45/2001.

2. Fines and periodic penalty payments imposed pursuant to Articles 65 and 66 shall be of an administrative nature.

3. Where ESMA decides to impose no fines or penalty payments, it shall inform the European Parliament, the Council, the Commission, and the competent authorities of the Member State concerned accordingly and shall set out the reasons for its decision.

4. Fines and periodic penalty payments imposed pursuant to Articles 65 and 66 shall be enforceable.

Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out. The order for its enforcement shall be appended to the decision without other formality than verification of the authenticity of the decision by the authority which the government of each Member State shall designate for that purpose and shall make known to ESMA and to the Court of Justice.

When those formalities have been completed on application by the party concerned, the latter may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent body.

Enforcement may be suspended only by a decision of the Court of Justice. However, the courts of the Member State concerned shall have jurisdiction over complaints that enforcement is being carried out in an irregular manner.

5. The amounts of the fines and periodic penalty payments shall be allocated to the general budget of the European Union.

Article 69

Review by the Court of Justice

The Court of Justice shall have unlimited jurisdiction to review decisions whereby ESMA has imposed a fine or a periodic penalty payment. It may annul, reduce or increase the fine or periodic penalty payment imposed.

Article 70

Amendments to Annex II

In order to take account of developments on financial markets the Commission shall be empowered to adopt delegated acts in accordance with Article 82 concerning measures to amend Annex II.

Article 71

Withdrawal of registration

1. Without prejudice to Article 73, ESMA shall withdraw the registration of a trade repository where the trade repository:

(a) expressly renounces the registration or has provided no services for the preceding six months;

(b) obtained the registration by making false statements or by any other irregular means;

(c) no longer meets the conditions under which it was registered.

2. ESMA shall, without undue delay, notify the relevant competent authority referred to in Article 57(1) of a decision to withdraw the registration of a trade repository.

3. The competent authority of a Member State in which the trade repository performs its services and activities and which considers that one of the conditions referred to in paragraph 1 has been met, may request ESMA to examine whether the conditions for the withdrawal of registration of the trade repository concerned are met. Where ESMA decides not to withdraw the registration of the trade repository concerned, it shall provide full reasons.

4. The competent authority referred to in paragraph 3 shall be the authority designated under Article 22.

Article 72

Supervisory fees

1. ESMA shall charge fees to the trade repositories in accordance with this Regulation and in accordance with the delegated acts adopted pursuant to paragraph 3. Those fees shall fully cover ESMA's necessary expenditure relating to the registration and supervision of trade repositories and the reimbursement of any costs that the competent authorities may incur carrying out work pursuant to this Regulation in particular as a result of any delegation of tasks in accordance with Article 74.

2. The amount of a fee charged to a trade repository shall cover all administrative costs incurred by ESMA for its registration and supervision activities and be proportionate to the turnover of the trade repository concerned.

3. The Commission shall adopt a delegated act in accordance with Article 82 to specify further the type of fees, the matters for which fees are due, the amount of the fees and the manner in which they are to be paid.

Article 73

Supervisory measures by ESMA

1. Where, in accordance with Article 64(5), ESMA finds that a trade repository has committed one of the infringements listed in Annex I, it shall take one or more of the following decisions:

(a) requiring the trade repository to bring the infringement to an end;

(b) imposing fines under Article 65;

(c) issuing public notices;

(d) as a last resort, withdrawing the registration of the trade repository.

2. When taking the decisions referred to in paragraph 1, ESMA shall take into account the nature and seriousness of the infringement, having regard to the following criteria:

(a) the duration and frequency of the infringement;

(b) whether the infringement has revealed serious or systemic weaknesses in the undertaking's procedures or in its management systems or internal controls;

(c) whether financial crime has been occasioned, facilitated or otherwise attributable to the infringement;

(d) whether the infringement has been committed intentionally or negligently.

3. Without undue delay, ESMA shall notify any decision adopted pursuant to paragraph 1 to the trade repository concerned, and shall communicate it to the competent authorities of the Member States and to the Commission. It shall publicly disclose any such decision on its website within 10 working days from the date when it was adopted.

When making public its decision as referred to in the first subparagraph, ESMA shall also make public the right of the trade repository concerned to appeal the decision, the fact, where relevant, that such an appeal has been lodged, specifying that such an appeal does not have suspensive effect, and the fact that it is possible for ESMA's Board of Appeal to suspend the application of the contested decision in accordance with Article 60(3) of Regulation (EU) No 1095/2010.

Article 74

Delegation of tasks by ESMA to competent authorities

1. Where necessary for the proper performance of a supervisory task, ESMA may delegate specific supervisory tasks to the competent authority of a Member State in accordance with the guidelines issued by ESMA pursuant to Article 16 of Regulation (EU) No 1095/2010. Such specific supervisory tasks may, in particular, include the power to carry out requests for information in accordance with Article 61 and to conduct investigations and on-site inspections in accordance with Article 62 and Article 63(6).

2. Prior to delegation of a task, ESMA shall consult the relevant competent authority. Such consultation shall concern:

(a) the scope of the task to be delegated;

(b) the timetable for the performance of the task; and

(c) the transmission of necessary information by and to ESMA.

3. In accordance with the regulation on fees adopted by the Commission pursuant to Article 72(3), ESMA shall reimburse a competent authority for costs incurred as a result of carrying out delegated tasks.

4. ESMA shall review the decision referred to in paragraph 1 at appropriate intervals. A delegation may be revoked at any time.

5. A delegation of tasks shall not affect the responsibility of ESMA and shall not limit ESMA's ability to conduct and oversee the delegated activity. Supervisory responsibilities under this Regulation, including registration decisions, final assessments and follow-up decisions concerning infringements, shall not be delegated.

CHAPTER 2

Relations with third countries

Article 75

Equivalence and international agreements

1. The Commission may adopt an implementing act determining that the legal and supervisory arrangements of a third country ensure that:

(a) trade repositories authorised in that third country comply with legally binding requirements which are equivalent to those laid down in this Regulation;

(b) effective supervision and enforcement of trade repositories takes place in that third country on an ongoing basis; and

(c) guarantees of professional secrecy exist, including the protection of business secrets shared with third parties by the authorities, and they are at least equivalent to those set out in this Regulation.

That implementing act shall be adopted in accordance with the examination procedure referred to in Article 86(2).

2. Where appropriate, and in any case after adopting an implementing act as referred to in paragraph 1, the Commission shall submit recommendations to the Council for the negotiation of international agreements with the relevant third countries regarding mutual access to, and exchange of information on, derivative contracts held in trade repositories which are established in that third country, in a way that ensures that Union authorities, including ESMA, have immediate and continuous access to all the information needed for the exercise of their duties.

3. After conclusion of the agreements referred to in paragraph 2, and in accordance with them, ESMA shall establish cooperation arrangements with the competent authorities of the relevant third countries. Those arrangements shall specify at least:

(a) a mechanism for the exchange of information between ESMA and any other Union authorities that exercise responsibilities in accordance with this Regulation on the one hand and the relevant competent authorities of third countries concerned on the other; and

(b) procedures concerning the coordination of supervisory activities.

4. ESMA shall apply Regulation (EC) No 45/2001 with regard to the transfer of personal data to a third country.

Article 76

Cooperation arrangements

Relevant authorities of third countries that do not have any trade repository established in their jurisdiction may contact ESMA with a view to establishing cooperation arrangements to access information on derivatives contracts held in Union trade repositories.

ESMA may establish cooperation arrangements with those relevant authorities regarding access to information on derivatives contracts held in Union trade repositories that these authorities need to fulfil their respective responsibilities and mandates, provided that guarantees of professional secrecy exist, including the protection of business secrets shared by the authorities with third parties.

Article 77

Recognition of trade repositories

1. A trade repository established in a third country may provide its services and activities to entities established in the Union for the purposes of Article 9 only after its recognition by ESMA in accordance with paragraph 2.

2. A trade repository referred to in paragraph 1 shall submit to ESMA its application for recognition together with all necessary information, including at least the information necessary to verify that the trade repository is authorised and subject to effective supervision in a third country which:

(a) has been recognised by the Commission, by means of an implementing act pursuant to Article 75(1), as having an equivalent and enforceable regulatory and supervisory framework;

(b) has entered into an international agreement with the Union pursuant to Article 75(2); and

(c) has entered into cooperation arrangements pursuant to Article 75(3) to ensure that Union authorities, including ESMA, have immediate and continuous access to all the necessary information.

Within 30 working days of receipt of the application, ESMA shall assess whether the application is complete. If the application is not complete, ESMA shall set a deadline by which the applicant trade repository has to provide additional information.

Within 180 working days of the submission of a complete application, ESMA shall inform the applicant trade repository in writing with a fully reasoned explanation whether the recognition has been granted or refused.

ESMA shall publish on its website a list of the trade repositories recognised in accordance with this Regulation.

TITLE VII

REQUIREMENTS FOR TRADE REPOSITORIES

Article 78

General requirements

1. A trade repository shall have robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility and adequate internal control mechanisms, including sound administrative and accounting procedures, which prevent any disclosure of confidential information.

2. A trade repository shall maintain and operate effective written organisational and administrative arrangements to identify and manage any potential conflicts of interest concerning its managers, employees, or any person directly or indirectly linked to them by close links.

3. A trade repository shall establish adequate policies and procedures sufficient to ensure its compliance, including of its managers and employees, with all the provisions of this Regulation.

4. A trade repository shall maintain and operate an adequate organisational structure to ensure continuity and orderly functioning of the trade repository in the performance of its services and activities. It shall employ appropriate and proportionate systems, resources and procedures.

5. Where a trade repository offers ancillary services such as trade confirmation, trade matching, credit event servicing, portfolio reconciliation or portfolio compression services, the trade repository shall maintain those ancillary services operationally separate from the trade repository's function of centrally collecting and maintaining records of derivatives.

6. The senior management and members of the board of a trade repository shall be of sufficiently good repute and experience so as to ensure the sound and prudent management of the trade repository.

7. A trade repository shall have objective, non-discriminatory and publicly disclosed requirements for access by undertakings subject to the reporting obligation under Article 9. A trade repository shall grant service providers non-discriminatory access to information maintained by the trade repository, on condition that the relevant counterparties have provided their consent. Criteria that restrict access shall only be permitted to the extent that their objective is to control the risk to the data maintained by a trade repository.

8. A trade repository shall publicly disclose the prices and fees associated with services provided under this Regulation. It shall disclose the prices and fees of each service provided separately, including discounts and rebates and the conditions to benefit from those reductions. It shall allow reporting entities to access specific services separately. The prices and fees charged by a trade repository shall be cost-related.

Article 79

Operational reliability

1. A trade repository shall identify sources of operational risk and minimise them through the development of appropriate systems, controls and procedures. Such systems shall be reliable and secure and have adequate capacity to handle the information received.

2. A trade repository shall establish, implement and maintain an adequate business continuity policy and disaster recovery plan aiming at ensuring the maintenance of its functions, the timely recovery of operations and the fulfilment of the trade repository's obligations. Such a plan shall at least provide for the establishment of backup facilities.

3. A trade repository from which registration has been withdrawn shall ensure orderly substitution including the transfer of data to other trade repositories and the redirection of reporting flows to other trade repositories.

Article 80

Safeguarding and recording

1. A trade repository shall ensure the confidentiality, integrity and protection of the information received under Article 9.

2. A trade repository may only use the data it receives under this Regulation for commercial purposes if the relevant counterparties have provided their consent.

3. A trade repository shall promptly record the information received under Article 9 and shall maintain it for at least 10 years following the termination of the relevant contracts. It shall employ timely and efficient record keeping procedures to document changes to recorded information.

4. A trade repository shall calculate the positions by class of derivatives and by reporting entity based on the details of the derivative contracts reported in accordance with Article 9.

5. A trade repository shall allow the parties to a contract to access and correct the information on that contract in a timely manner.

6. A trade repository shall take all reasonable steps to prevent any misuse of the information maintained in its systems.

A natural person who has a close link with a trade repository or a legal person that has a parent undertaking or a subsidiary relationship with the trade repository shall not use confidential information recorded in a trade repository for commercial purposes.

Article 81

Transparency and data availability

1. A trade repository shall regularly, and in an easily accessible way, publish aggregate positions by class of derivatives on the contracts reported to it.

2. A trade repository shall collect and maintain data and shall ensure that the entities referred to in paragraph 3 have direct and immediate access to the details of derivatives contracts they need to fulfil their respective responsibilities and mandates.

3. A trade repository shall make the necessary information available to the following entities to enable them to fulfil their respective responsibilities and mandates:

(a) ESMA;

(b) the ESRB;

(c) the competent authority supervising CCPs accessing the trade repository;

(d) the competent authority supervising the trading venues of the reported contracts;

(e) the relevant members of the ESCB;

(f) the relevant authorities of a third country that has entered into an international agreement with the Union as referred to in Article 75;

(g) supervisory authorities appointed under Article 4 of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids [1];

(h) the relevant Union securities and market authorities;

(i) the relevant authorities of a third country that have entered into a cooperation arrangement with ESMA as referred to in Article 76;

(j) the Agency for the Cooperation of Energy Regulators.

[1] OJ L 142, 30.4.2004, p. 12.

4. ESMA shall share the information necessary for the exercise of their duties with other relevant Union authorities.

5. In order to ensure consistent application of this Article, ESMA shall, after consulting the members of the ESCB, develop draft regulatory technical standards specifying the frequency and the details of the information referred to in paragraphs 1 and 3 as well as operational standards required in order to aggregate and compare data across repositories and for the entities referred to in paragraph 3 to have access to information as necessary. Those draft regulatory technical standards shall aim to ensure that the information published under paragraph 1 is not capable of identifying a party to any contract.

ESMA shall submit those draft regulatory technical standards to the Commission by 30 September 2012.

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 82

Exercise of the delegation

1. The power to adopt delegated acts is conferred to the Commission subject to the conditions laid down in this Article.

2. The delegation of power referred to in Article 1(6), Article 64(7), Article 70, Article 72(3) and Article 85(2) shall be conferred to the Commission for an indeterminate period of time.

3. Before adopting a delegated act, the Commission shall endeavour to consult ESMA.

4. A delegation of power referred to in Article 1(6), Article 64(7), Article 70, Article 72(3) and Article 85(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of power specified in that decision. The decision to revoke shall take effect on the day following that of its publication in the *Official Journal of the European Union* or on a later date specified therein. It shall not affect the validity of any delegated acts already in force.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 1(6), Article 64(7), Article 70, Article 72(3) and Article 85(2) shall enter into force only if no objection has been expressed by either the European Parliament or the Council within a period of three months of notification of the act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament or the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.

TITLE VIII

COMMON PROVISIONS

Article 83

Professional secrecy

1. The obligation of professional secrecy shall apply to all persons who work or have worked for the competent authorities designated in accordance with Article 22 and the authorities referred to in Article 81(3), for ESMA, or for auditors and experts instructed by the competent authorities or ESMA. No confidential information that those persons receive in the course of their duties shall be divulged to any person or authority, except in summary or aggregate form such that an individual CCP, trade repository or any other person cannot be identified, without prejudice to cases covered by criminal or tax law or to this Regulation.

2. Where a CCP has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties may be divulged in civil or commercial proceedings where necessary for carrying out the proceeding.

3. Without prejudice to cases covered by criminal or tax law, the competent authorities, ESMA, bodies or natural or legal persons other than competent authorities which receive confidential information pursuant to this Regulation may use it only in the performance of their duties and for the exercise of their functions, in the case of the competent authorities, within the scope of this Regulation or, in the case of other authorities, bodies or natural or legal persons, for the purpose for which such information was provided to them or in the context of administrative or judicial proceedings specifically relating to the exercise of those functions, or both. Where ESMA, the competent authority or another authority, body or person communicating information consents thereto, the authority receiving the information may use it for other non-commercial purposes.

4. Any confidential information received, exchanged or transmitted pursuant to this Regulation shall be subject to the conditions of professional secrecy laid down in paragraphs 1, 2 and 3. However, those conditions shall not prevent ESMA, the competent authorities or the relevant central banks from exchanging or transmitting confidential information in accordance with this Regulation and with other legislation applicable to investment firms, credit institutions, pension funds, UCITS, AIFMs, insurance and reinsurance intermediaries, insurance undertakings, regulated markets or market operators or otherwise with the consent of the competent authority or other authority or body or natural or legal person that communicated the information.

5. Paragraphs 1, 2 and 3 shall not prevent the competent authorities from exchanging or transmitting confidential information, in accordance with national law, that has not been received from a competent authority of another Member State.

Article 84

Exchange of information

1. Competent authorities, ESMA, and other relevant authorities shall, without undue delay, provide one another with the information required for the purposes of carrying out their duties.

2. Competent authorities, ESMA, other relevant authorities and other bodies or natural and legal persons receiving confidential information in the exercise of their duties under this Regulation shall use it only in the course of their duties.

3. Competent authorities shall communicate information to the relevant members of the ESCB where such information is relevant for the exercise of their duties.

TITLE IX

TRANSITIONAL AND FINAL PROVISIONS

Article 85

Reports and review

1. By 17 August 2015, the Commission shall review and prepare a general report on this Regulation. The Commission shall submit the report to the European Parliament and the Council, together with any appropriate proposals.

The Commission shall in particular:

(a) assess, in cooperation with the members of the ESCB, the need for any measure to facilitate the access of CCPs to central bank liquidity facilities;

(b) assess, in coordination with ESMA and the relevant sectoral authorities, the systemic importance of the transactions of non-financial firms in OTC derivatives and, in particular, the impact of this Regulation on the use of OTC derivatives by non-financial firms;

(c) assess, in the light of experience, the functioning of the supervisory framework for CCPs, including the effectiveness of supervisory colleges, the respective voting modalities laid down in Article 19(3), and the role of ESMA, in particular during the authorisation process for CCPs;

(d) assess, in cooperation with ESMA and ESRB, the efficiency of margining requirements to limit procyclicality and the need to define additional intervention capacity in this area;

(e) assess in cooperation with ESMA the evolution of CCP's policies on collateral margining and securing requirements and their adaptation to the specific activities and risk profiles of their users.

The assessment referred to in point (a) of the first subparagraph shall take into account any result of ongoing work between central banks at Union and international level. The assessment shall also take into account the principle of independence of central banks and their right to provide access to liquidity facilities at their own discretion as well as the potential unintended effect on the behaviour of the CCPs or the internal market. Any accompanying proposals shall not, either directly or indirectly, discriminate against any Member State or group of Member States as a venue for clearing services.

2. By 17 August 2014, the Commission shall prepare a report, after consulting ESMA and EIOPA, assessing the progress and effort made by CCPs in developing technical solutions for the transfer by pension scheme arrangements of non-cash collateral as variation margins, as well as the need for any measures to facilitate such solution. If the Commission considers that the necessary effort to develop appropriate technical solutions has not been made and that the adverse effect of centrally clearing derivative contracts on the retirement benefits of future pensioners remain unchanged, it shall be empowered to adopt delegated acts in accordance with Article 82 to extend the three-year period referred to in Article 89(1) once by two years and once by one year.

3. ESMA shall submit to the Commission reports:

(a) on the application of the clearing obligation under Title II and in particular the absence of clearing obligation for OTC derivative contracts entered into before the date of entry into force of this Regulation;

(b) on the application of the identification procedure under Article 5(3);

(c) on the application of the segregation requirements laid down in Article 39;

(d) on the extension of the scope of interoperability arrangements under Title V to transactions in classes of financial instruments other than transferable securities and money-market instruments;

(e) on the access of CCPs to trading venues, the effects on competitiveness of certain practices, and the impact on liquidity fragmentation;

(f) on ESMA's staffing and resources needs arising from the assumption of its powers and duties in accordance with this Regulation;

(g) on the impact of the application of additional requirements by Member States pursuant to Article 14(5).

Those reports shall be communicated to the Commission by 30 September 2014 for the purposes of paragraph 1. They shall also be submitted to the European Parliament and the Council.

4. The Commission shall, in cooperation with the Member States and ESMA, and after requesting the assessment of the ESRB, draw up an annual report assessing any possible systemic risk and cost implications of interoperability arrangements.

The report shall focus at least on the number and complexity of such arrangements, and the adequacy of risk-management systems and models. The Commission shall submit the report to the European Parliament and the Council, together with any appropriate proposals.

The ESRB shall provide the Commission with its assessment of any possible systemic risk implications of interoperability arrangements.

5. ESMA shall present an annual report to the European Parliament, the Council and the Commission on the penalties imposed by competent authorities, including supervisory measures, fines and periodic penalty payments.

Article 86

Committee procedure

1. The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC [1]. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 87

Amendment to Directive 98/26/EC

1. In Article 9(1) of Directive 98/26/EC, the following subparagraph is added:

'Where a system operator has provided collateral security to another system operator in connection with an interoperable system, the rights of the providing system operator to that collateral security shall not be affected by insolvency proceedings against the receiving system operator.'.

2. Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with point (1) by 17 August 2014. They shall forthwith inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to Directive 98/26/EC or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Article 88

Websites

1. ESMA shall maintain a website which provides details of the following:

(a) contracts eligible for the clearing obligation under Article 5;

(b) penalties imposed for breaches of Articles 4, 5 and 7 to 11;

(c) CCPs authorised to offer services or activities in the Union that are established in the Union, and the services or activities which they are authorised to provide or perform, including the classes of financial instruments covered by their authorisation;

(d) penalties imposed for breaches of Titles IV and V;

(e) CCPs authorised to offer services or activities in the Union established in a third country, and the services or activities which they are authorised to provide or perform, including the classes of financial instruments covered by their authorisation;

(f) trade repositories authorised to offer services or activities in the Union;

(g) fines and periodic penalty payments imposed in accordance with Articles 65 and 66;

(h) the public register referred to in Article 6.

[1] OJ L 191, 13.7.2001, p. 45.

2. For the purposes of points (b), (c) and (d) of paragraph 1, competent authorities shall maintain websites, which shall be linked to the ESMA website.

3. All websites referred to in this Article shall be publicly accessible and regularly updated, and shall provide information in a clear format.

Article 89

Transitional provisions

1. For three years after the entry into force of this Regulation, the clearing obligation set out in Article 4 shall not apply to OTC derivative contracts that are objectively measurable as reducing investment risks directly relating to the financial solvency of pension scheme arrangements as defined in Article 2(10). The transitional period shall also apply to entities established for the purpose of providing compensation to members of pension scheme arrangements in case of a default.

The OTC derivative contracts, which would otherwise be subject to the clearing obligation under Article 4, entered into by those entities during this period shall be subject to the requirements laid down in Article 11.

2. In relation to pension scheme arrangements referred to in Article 2(10)(c) and (d) the exemption referred to in paragraph 1 of this Article shall be granted by the relevant competent authority for types of entities or types of arrangements. After receiving the request, the competent authority shall notify ESMA and EIOPA. Within 30 calendar days of receipt of the notification ESMA, after consulting EIOPA, shall issue an opinion assessing compliance of the type of entities or the type of arrangements with Article 2(10)(c) or (d) as well as the reasons why an exemption is justified due to difficulties in meeting the variation margin requirements. The competent authority shall only grant an exemption where it is fully satisfied that the type of entities or the type of arrangements complies with Article 2(10)(c) or (d) and that they encounter difficulties in meeting the variation margin requirements. The competent authority shall adopt a decision within ten working days of receipt of ESMA's opinion, taking due account of that opinion. If the competent authority does not agree with ESMA's opinion, it shall give full reasons in its decision and shall explain any significant deviation therefrom.

ESMA shall publish on its website a list of types of entities and types of arrangements referred to in Article 2(10)(c) and (d) which has been granted an exemption in accordance with the first subparagraph. To further strengthen consistency in supervisory outcomes, ESMA shall conduct a peer review of the entities included on the list every year in accordance with Article 30 of Regulation (EU) No 1095/2010.

3. A CCP that has been authorised in its Member State of establishment to provide clearing services in accordance with the national law of that Member State before all the regulatory technical standards under Articles 4, 5, 8 to 11, 16, 18, 25, 26, 29, 34, 41, 42, 44, 45, 46, 47, 49, 56 and 81 are adopted by the Commission, shall apply for authorisation under Article 14 for the purposes of this Regulation within six months of the date of entry into force of all the regulatory technical standards under Articles 16, 25, 26, 29, 34, 41, 42, 44, 45, 47 and 49.

A CCP established in a third country, which has been recognised to provide clearing services in a Member State in accordance with the national law of that Member State before all the regulatory technical standards under Articles 16, 26, 29, 34, 41, 42, 44, 45, 47 and 49 are adopted by the Commission, shall apply for recognition under Article 25 for the purposes of this Regulation within six months of the date of entry into force of all the regulatory technical standards under Articles 16, 26, 29, 34, 41, 42, 44, 45, 47 and 49.

4. Until a decision is made under this Regulation on the authorisation or recognition of a CCP, the respective national rules on authorisation and recognition of CCPs shall continue to apply and the CCP shall continue to be supervised by the competent authority of its Member State of establishment or recognition.

5. Where a competent authority authorised a CCP to clear a given class of derivatives in accordance with the national law of its Member State before all the regulatory technical standards under Articles 16, 26, 29, 34, 41, 42, 45, 47 and 49 are adopted by the Commission, the competent authority of that Member State shall notify ESMA of that authorisation within one month of the date of entry into force of the regulatory technical standards under Article 5(1).

Where a competent authority recognised a CCP established in a third country to provide clearing services in accordance with the national law of its Member State before all the regulatory technical standards under Articles 16, 26, 29, 34, 41, 42, 45, 47 and 49 are adopted by the Commission, the competent authority of that Member State shall notify ESMA of that recognition within one month of the date of entry into force of the regulatory technical standards under Article 5(1).

6. A trade repository that has been authorised or registered in its Member State of establishment to collect and maintain the records of derivatives in accordance with the national law of that Member State before all the regulatory and implementing technical standards under Articles 9, 56 and 81 are adopted by the Commission, shall apply for registration under Article 55 within six months of the date of entry into force of those regulatory and implementing technical standards.

A trade repository established in a third country, which is allowed to collect and maintain the records of derivatives in a Member State in accordance with the national law of that Member State before all the regulatory and implementing technical standards under Articles 9, 56 and 81 are adopted by the Commission, shall apply for recognition under Article 77 within six months of the date of entry into force of those regulatory and implementing technical standards.

7. Until a decision is made under this Regulation on the registration or recognition of a trade repository, the respective national rules on authorisation, registration and recognition of trade repositories shall continue to apply and the trade repository shall continue to be supervised by the competent authority of its Member State of establishment or recognition.

8. A trade repository that has been authorised or registered in its Member State of establishment to collect and maintain the records of derivatives in accordance with the national law of that Member State before the regulatory and implementing technical standards under Articles 56 and 81 are adopted by the Commission, can be used to meet the reporting requirement under Article 9 until the time a decision is made on the registration of the trade repository under this Regulation.

A trade repository established in a third country which has been allowed to collect and maintain the records of derivatives in accordance with the national law of a Member State before all the regulatory and implementing technical standards under Articles 56 and 81 are adopted by the Commission, can be used to meet the reporting requirement under Article 9 until the time a decision is made on the recognition of the trade repository under this Regulation.

9. Notwithstanding Article 81(3)(f), where no international agreement is in place between a third country and the Union as referred to in Article 75, a trade repository may make the necessary information available to the relevant authorities of that third country until 17 August 2013 provided that it notifies ESMA.

Article 90

Staff and resources of ESMA

By 31 December 2012, ESMA shall assess the staffing and resources needs arising from the assumption of its powers and duties in accordance with this Regulation and submit a report to the European Parliament, the Council and the Commission.

Article 91

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 Strasbourg, 4 July 2012.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
A. D. MAVROYIANNIS

ANNEX I

List of infringements referred to in Article 65(1)

I. Infringements relating to organisational requirements or conflicts of interest:

(a) a trade repository infringes Article 78(1) by not having robust governance arrangements which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility and adequate internal control mechanisms, including sound administrative and accounting procedures, which prevent the disclosure of confidential information;

(b) a trade repository infringes Article 78(2) by not maintaining or operating effective written organisational and administrative arrangements to identify and manage any potential conflicts of interest concerning its managers, its employees, and any person directly or indirectly linked to them by close links;

(c) a trade repository infringes Article 78(3) by not establishing adequate policies and procedures sufficient to ensure compliance, including that of its managers and employees, with all the provisions of this Regulation;

(d) a trade repository infringes Article 78(4) by not maintaining or operating an adequate organisational structure to ensure continuity and orderly functioning of the trade repository in the performance of its services and activities;

(e) a trade repository infringes Article 78(5) by not separating operationally its ancillary services from its function of centrally collecting and maintaining records of derivatives;

(f) a trade repository infringes Article 78(6) by not ensuring that its senior management and the members of the board are of sufficiently good repute and experience so as to ensure the sound and prudent management of the trade repository;

(g) a trade repository infringes Article 78(7) by not having objective non-discriminatory and publicly disclosed requirements for access by services providers and undertakings subject to the reporting obligation under Article 9;

(h) a trade repository infringes Article 78(8) by not publicly disclosing the prices and fees associated with services provided under this Regulation, by not allowing reporting entities to access specific services separately or by charging prices and fees that are not cost related.

II. Infringements relating to operational requirements:

(a) a trade repository infringes Article 79(1) by not identifying sources of operational risk or by not minimising those risks through the development of appropriate systems, controls and procedures;

(b) a trade repository infringes Article 79(2) by not establishing, implementing or maintaining an adequate business continuity policy and disaster recovery plan aimed at ensuring the maintenance of its functions, the timely recovery of operations and the fulfilment of the trade repository's obligations;

(c) a trade repository infringes Article 80(1) by not ensuring the confidentiality, integrity or protection of the information received under Article 9;

(d) a trade repository infringes Article 80(2) by using the data that it receives under this Regulation for commercial purposes without the relevant counterparties having provided their consent;

(e) a trade repository infringes Article 80(3) by not promptly recording the information received under Article 9 or by not maintaining it for at least 10 years following the termination of the relevant contracts or by not employing timely and efficient record-keeping procedures to document changes to recorded information;

(f) a trade repository infringes Article 80(4) by not calculating the positions by class of derivatives and by reporting entity based on the details of the derivative contracts reported in accordance with Article 9;

(g) a trade repository infringes Article 80(5) by not allowing the parties to a contract to access and correct the information on that contract in a timely manner;

(h) a trade repository infringes Article 80(6) by not taking all reasonable steps to prevent any misuse of the information maintained in its systems.

III. Infringements relating to transparency and the availability of information:

(a) a trade repository infringes Article 81(1) by not regularly publishing, in an easily accessible way, aggregate positions by class of derivatives on the contracts reported to it;

(b) a trade repository infringes Article 81(2) by not allowing the entities referred to in Article 81(3) direct and immediate access to the details of derivatives contracts they need to fulfil their respective responsibilities and mandates.

IV. Infringements relating to obstacles to the supervisory activities:

(a) a trade repository infringes Article 61(1) by providing incorrect or misleading information in response to a simple request for information by ESMA in accordance with Article 61(2) or in response to a decision by ESMA requiring information in accordance with Article 61(3);

(b) a trade repository provides incorrect or misleading answers to questions asked pursuant to Article 62(1)(c);

(c) a trade repository does not comply in due time with a supervisory measure adopted by ESMA pursuant to Article 73.

ANNEX II

List of the coefficients linked to aggravating and mitigating factors for the application of Article 65(3)

The following coefficients shall be applicable, cumulatively, to the basic amounts referred to in Article 65(2):

I. Adjustment coefficients linked to aggravating factors:

(a) if the infringement has been committed repeatedly, for every time it has been repeated, an additional coefficient of 1,1 shall apply;

(b) if the infringement has been committed for more than six months, a coefficient of 1,5 shall apply;

(c) if the infringement has revealed systemic weaknesses in the organisation of the trade repository, in particular in its procedures, management systems or internal controls, a coefficient of 2,2 shall apply;

(d) if the infringement has a negative impact on the quality of the data it maintains, a coefficient of 1,5 shall apply;

(e) if the infringement has been committed intentionally, a coefficient of 2 shall apply;

(f) if no remedial action has been taken since the breach has been identified, a coefficient of 1,7 shall apply;

(g) if the trade repository's senior management has not cooperated with ESMA in carrying out its investigations, a coefficient of 1,5 shall apply.

II. Adjustment coefficients linked to mitigating factors:

(a) if the infringement has been committed for less than 10 working days, a coefficient of 0,9 shall apply;

(b) if the trade repository's senior management can demonstrate to have taken all the necessary measures to prevent the infringement, a coefficient of 0,7 shall apply;

(c) if the trade repository has brought quickly, effectively and completely the infringement to ESMA's attention, a coefficient of 0,4 shall apply;

(d) if the trade repository has voluntarily taken measures to ensure that a similar infringement cannot be committed in the future, a coefficient of 0,6 shall apply.

Nasdaq Clearing AB

Disclosure framework

Published:

Based on activities of Nasdaq Clearing AB as at 1st March 2016

Contents

Responding institution:

Nasdaq Clearing AB

Jurisdiction(s) in which the FMI operates:

Sweden
Norway (the FMI has a branch in Norway)

Authority(ies) regulating, supervising or overseeing the FMI:

Nasdaq Clearing AB's competent authority is Finansinspektionen under EMIR. Nasdaq Clearing AB is overseen by college of European regulators, which includes Riksbanken, the central bank in Sweden, which also has financial stability responsibilities for Nasdaq Clearing AB.

The date of this disclosure is March 2016.

This disclosure can also be found at:
http://www.nasdaqomx.com/transactions/posttrade/clearing/europeanclearing

For further information, please contact Linn Lones Luthman,
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I. Executive summary

This document ("**Disclosure Framework**") is prepared in accordance with the Principles for Financial Market Infrastructure" ("**PFMIs**") published in February 2012 and developed jointly by the Committee on Payments and Market Infrastructures ("**CPMI**"[1]) and the Technical Committee of the International Organization of Securities Commissions ("**IOSCO**"). No disclosure is provided with respect to Principles 11 and 24 as they do not apply to CCPs. The objective of this Disclosure Framework is to provide relevant disclosure to market participants with respect to Nasdaq Clearing AB (hereinafter referred to as "**Nasdaq Clearing**", the "**clearing house**" or the "**CCP**") and its role as a central counterparty and its management of different types of risk. The scope of the Disclosure Framework is limited to the clearing activities performed by Nasdaq Clearing under its current clearing license: i.e. (i) Nasdaq Derivatives Markets which is the clearing of financial instruments ("**Nasdaq Financial**"), and (ii) Nasdaq Commodities which is the clearing of commodities instruments ("**Nasdaq Commodities**").

Nasdaq Clearing is part of the Nasdaq Group – an international group that inter alia offers services for trading in securities and technical systems for trading and

[1] In June 2014, the Committee on Payment and Settlement Systems (CPSS), changed name to the Committee on Payments and Market Infrastructures (CPMI).

processing of transactions in securities in more than 50 countries.

The European part of the Nasdaq Group includes the stock exchanges in Copenhagen, Stockholm, Helsinki, Reykjavik, Tallinn, Riga and Vilnius, as well as the central securities depositories in Estonia, Latvia and Iceland. The Nasdaq Group also owns a share of the Lithuanian central securities depository. Derivative operations are conducted organizationally in the business area Global Trading & Market Services ("**GTMS**"), which runs the stock exchanges in Stockholm, Helsinki, Copenhagen and Reykjavik and the derivatives exchange in Stockholm. Clearing is conducted via Nasdaq Clearing that operates central counterparty clearing for derivative instruments.

Nasdaq Clearing handles traditional business risks, as well as specific risks that are unique to the derivative clearing services it provides. The most noteworthy of these risks, with respect to the risk of loss, is counterparty default, the risk that one or several market participants will default on their obligations to the clearing organization. Nasdaq Clearing's counterparty risks are professionally managed within the Risk Management department, through a comprehensive counterparty risk management framework. This consists of policies, procedures, standards, and human, informational and technological resources. All together this provides accurate measurement, reasonable control, and desired level of protection from all identifiable counterparty risks and all operational risks arising within the operations of Nasdaq Clearing.

The European Market Infrastructure Regulation (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) ("**EMIR**") came into force on August 16, 2012. One of the objectives of EMIR is to reinforce the role of central counterparties in mitigating certain aspects of market and counterparty risk with the aim to protect the stability of the financial system.

Nasdaq Clearing has been authorized by and is under supervision by the Swedish Financial Supervisory Authority, Finansinspektionen, (the "**Swedish FSA**") to conduct clearing operations under EMIR. The operations of Nasdaq Clearing are also governed by the Swedish Securities Market Act (2007:528) (Sw: lagen (2007:528) om värdepappersmarknaden). All operations of Nasdaq Clearing are subject to the supervision of the Swedish FSA and the central clearing party operations are also overseen by the Swedish Central Bank ("**Riksbanken**").

Nasdaq Clearing submitted its application for an EMIR clearing license to the Swedish FSA on 16 April, 2013, and was approved by the same authority as a clearing house under EMIR on 18 March 2014.

II. Summary of major changes since the last update of the disclosure

This Disclosure Framework has been conducted on the basis of Nasdaq Clearing's activities as a central counterparty as per 1 March 2016.

The first version of Nasdaq Clearing's Disclosure Framework was published in March 2014. This is the first bi-annual update and material changes include the merger of NOS clearing house into Nasdaq Clearing in April 2014, adding freight, fuel-oil and seafood to the range of products cleared.

III. General background on the FMI

General description of the FMI and the markets it serves

Nasdaq Clearing's role in the overall payment, clearing and settlement landscape

One of the principal functions of a clearing house is to guarantee that all contracts traded will be honored. The derivatives trading carried out at Nasdaq Stockholm AB (the financial derivatives exchange) and Nasdaq Oslo ASA (the commodities derivatives exchange) is automatically subject to clearing at Nasdaq Clearing, whereby Nasdaq Clearing becomes the counterparty in all transactions, i.e. acts as a buyer to the seller and as a seller to the buyer. Counterparty risk is the risk that one party in a transaction will not be able to fulfill its obligations in due time. In its capacity as a clearing house, counterparty risk is always present for Nasdaq Clearing. In order to ensure that the clearing house has the capacity to fulfill its obligations, it requires and receives collateral from the participating counterparties. In addition, it holds a member-sponsored default fund and retains its own capital resources.

As part of the clearing house operations, Nasdaq Clearing carries out expiration procedures, cash settlement and deliveries that arise from the contractual responsibilities established between the clearing house and its members. Daily cash settlement related to premiums, fees, mark-to-market (variation margin) and other cash settlement not related to delivery of securities are settled through one of Nasdaq Clearing's approved settlement banks. Members of Nasdaq Clearing are required to hold a bank account with such approved settlement banks for purposes of managing daily cash settlement.

In addition to the settlement banks, Nasdaq Clearing has appointed concentration banks which act as an intermediary between Nasdaq Clearing's approved settlement banks. All transfers between Nasdaq Clearing's accounts with approved settlement banks are done through a concentration bank. For payments in SEK, DKK, EUR and GBP, the Swedish Riksbank, the Danish National Bank, the Finnish Central Bank, and The Bank of England respectively are engaged as concentration banks. For other currencies, a commercial bank is engaged as concentration bank.

As a central counterparty, Nasdaq Clearing guarantees all deliveries, independent of the original counterparty's delivery or payment ability. However, Nasdaq Clearing does not undertake the responsibility to fulfill the transaction on the original settlement day if the original counterparty cannot fulfill its obligation. In that case, Nasdaq Clearing has the right to buy securities and charge a delay fee for failed delivery or take other steps to complete the delivery.

Delivery of shares is made through Nasdaq Clearing's accounts in certain central securities depositories ("**CSDs**"). The principle Delivery-versus-Payment ("**DvP**") applies for all financial deliveries of underlying securities due to expiration or exercise. Delivery of Swedish fixed income instruments takes place in Euroclear Sweden and delivery of Danish fixed income instruments takes place in VP Securities Denmark. Delivery of the emission allowances and the electricity certificates takes place in Nasdaq Clearing registry accounts with the relevant registry.

The credit enhancing effects of a centralized clearing house boost market efficiency, reduce risk and allow broader client participation. Each of these features contributes to increasing liquidity in the marketplace. As a central counterparty, Nasdaq Clearing also plays an important role in terms of stability in the financial system.

General description of Nasdaq Clearing's operations and services

Nasdaq Clearing clears all trades executed on the derivatives markets operated by Nasdaq Financial and Nasdaq Commodities as well as OTC trades done outside the regulated markets and reported to the clearing house for clearing. Nasdaq Clearing offers clearing of equity and index derivatives on Swedish, Norwegian, Finnish and Danish instruments; fixed income derivatives on Swedish, Norwegian and Danish underlying; commodity derivatives on power, natural gas, emission rights, electricity certificates, freight, fuel-oil, seafood and renewable energy.

As a clearing house, Nasdaq Clearing becomes the legal counterpart to the original buyer and seller in a trade, through so called novation. This means that the original counterparts no longer have risk towards each other. Instead, the clearing house takes on this counterparty risk.

The ability to manage the counterparty risk is dependent on pro-active risk management, a sound legal foundation and the financial strength of the clearing house. Furthermore, rigid financial and operational requirements are applied to its members. Nasdaq Clearing also relies on an advanced portfolio-based margining system to determine the amount of collateral appropriate for the counterparty risks it assumes. In the event of a loss resulting from a counterparty default, Nasdaq Clearing has a member sponsored default fund as well as its own funded risk-bearing capital, which serves as a buffer between any defaulting counterparty and all other counterparties.

By taking on the responsibility of the original counterparts to the trade, as described above, Nasdaq Clearing becomes the counterpart to both the buyer and seller of the original trade. The clearing house thus becomes exposed to the risk of the original

counterparts not being able to fulfill their obligations to the clearing house. Nasdaq Clearing is protected from this risk by a number of means, including the collateral it collects, the default fund and its own capital resources. Nasdaq Clearing also has pre-defined default management procedures, which are tested and proven via real defaults and default fire drills.

Please see below statistics showing the average aggregate intraday exposure that Nasdaq Clearing has towards its participants:

> The intraday exposure of Nasdaq Clearing to its participants can be measured by the total average daily margin requirement, i.e. the total amount of collateral that it demands from its participants. For 2015, the average total daily margin requirement was SEK 36 billion or EUR 3.9 billion.

One of the cornerstones of a clearing house is its operations. The clearing house should have stable and reliable systems, adequate capacity and the ability to quickly handle major disruptions by the use of backup facilities and well-tested routines to mitigate the effects of operational risk. The operational reliability of Nasdaq Clearing is high: availability of the Genium INET clearing system during 2015 was 99.99%, and for the CMS WIZER system during 2015 was 99.87%. As well as resilience of systems, which is tested at least annually with failover from primary to secondary sites, the clearing house also has controls and checks in place to cover resilience of daily operations. These Business Continuity Plan ("**BCP**") arrangements cover all aspects of the business including relocation of staff from the primary office as well as back-up processes in case a critical function is not functioning.

Since the end of 2009 Nasdaq Clearing is in full compliance with the Sarbanes-Oxley Act. Each process that significantly contributes to the financial result of Nasdaq Clearing is described in detail and the existing controls are documented. Subsequently, each process is analyzed from a risk perspective, utilizing the COSO framework, and any potential risk issues or control weaknesses are addressed and remedied.

General organisation of the FMI

Nasdaq Clearing has in place a Board of Directors (the "**Board**"), represented by executive members of the Nasdaq Group as well as independent non-executives. The Board takes overall responsibility for the functioning of the CCP. The Board committees meet on a quarterly basis and include the Audit and Remuneration Committee as well as the Member Risk Committee which consists of four members, three clients and two independent directors. Both the Default Committee and the Recovery Committee have delegated authority from the Board, and meetings would be called if necessary. Internal Audit, the Chief Risk Officer and the Chief Compliance Officer report directly to the Board. Other functions report to the CEO. Key policies, including the Clearing Risk Policy, Risk Mandate, Regulatory Capital Policy, Investment Policy, Compliance Policy and Conflicts of Interest Policy (amongst others) are adopted by the Board on an annual basis, or more frequently if significant changes are required.

Legal and regulatory framework

As mentioned above, Nasdaq Clearing is authorized as a central counterparty and is licensed to conduct clearing operations by the Swedish FSA pursuant to EMIR. The operations of Nasdaq Clearing are also governed by the Swedish Securities Market Act. Nasdaq Clearing submitted its application for an EMIR clearing license to the Swedish FSA on 16 April, 2013, and was approved by the same authority as a clearing house under EMIR on 18 March 2014.The Swedish FSA has also approved and designated Nasdaq Clearing as a system for settlement and notified this to the European Securities and Markets Authority (ESMA) pursuant to the Swedish Act (1999:1309) concerning Systems for the Settlement of Obligations on the Financial Market (Sw: lagen (1999:1309) om system för avveckling av förpliktelser på finansmarknaden) (the Swedish Act implementing the Settlement Finality Directive (98/26/EC)). Similarly, the Norwegian FSA has approved and registered Nasdaq Clearing Oslo Branch as a designated settlement system in accordance with Norwegian Payment System Act 17 December 1999 No 95.

All operations of Nasdaq Clearing are subject to the supervision of the Swedish FSA and the central clearing party operations are also overseen by the Swedish Central Bank, Riksbanken. In Sweden, trading and clearing are primarily governed by the following acts and regulations:

- EMIR
- Securities Market Act (2007:528)
- Systems for the Settlement of Obligations on the Financial Market Act (1999:1309)
- Financial Instruments Trading Act (1991:980)
- Rights of Priority Act (1970:979)
- Swedish Bankruptcy Act (1987:672)
- Financial Instruments Accounts Act (1998:1479)

In addition to the laws and regulations mentioned above, Nasdaq Clearing's activities are also governed by other EU Directives (as implemented in local law) and Regulations, including the Directive 98/26/EC on Settlement Finality in Payment and Securities Settlement Systems (the "**Settlement Finality Directive**") and the Directive 2002/47/EC on Financial Collateral Arrangements (the "**Collateral Directive**").

Nasdaq Clearing has also issued rules and regulations applicable to its clearing activities. The rules and regulations together with the membership agreements constitute the contractual framework governing the relationship between Nasdaq Clearing and its participants. The rules and regulations become binding for participants through the execution of the membership agreement. The contractual relationships between Nasdaq Clearing and the respective participants are governed

by Swedish law (for Nasdaq Financial) and Norwegian law (for Nasdaq Commodities).

System design and operations

The Genium INET Clearing system supports the clearing of equities, fixed-income, commodities and over-the-counter instruments including functionality for margining, risk management, collateral management and settlement activities for all asset classes. CMS WIZER, which is linked to Genium INET is used as a cash settlement, custody and delivery system.

Systems and controls are in place to manage these processes on a day to day basis, and business continuity and crisis management plans and procedures are in place for situations out of the normal routines.

IV. Principle-by-principle summary narrative disclosure

Principle 1: Legal Basis

An FMI should have a well-founded, clear, transparent, and enforceable legal basis for each material aspect of its activities in aii relevant jurisdictions.

Swedish and Norwegian law, together with EU legislation and the rules and regulations of Nasdaq Financial and Nasdaq Commodities (referred to as "Nasdaq FIN R&R" and "Nasdaq COM R&R" respectively and jointly as the "R&Rs"), provide a well-founded, clear, transparent and enforceable legal basis for Nasdaq Clearing's central counterparty clearing.

The material aspects in relation to Nasdaq Clearing operation includes settlement finality, netting arrangements and collateral arrangements, including rights and interest in financial instruments, custody activity and default management procedures.

The legal basis provides a high degree of certainty for each material aspect of Nasdaq Clearing's activities in all relevant jurisdictions and is primarily monitored by its legal department. One of the key objectives of the legal department is to identify and mitigate the legal risks associated with the clearing operations. However, the Board of Directors of Nasdaq Clearing, Risk Management and/or the head of the respective business unit, as well as independent law firms and the Swedish Securities Dealers Association also play an important role in the monitoring of the legal basis as they are involved in the process of reviewing and updating the rules, procedures and contracts. By having this process in place, Nasdaq Clearing ensures the consistency of its rules, procedures and contracts with relevant laws and regulations.

The cross-border nature of the clearing infrastructure gives rise to specific risks. The cross-border implications arise where the seller, the buyer and/or the assets are located in different jurisdictions. Further, agents through which the parties act and/or intermediaries through which the assets are held may be located in different jurisdictions. This cross-border component of clearing necessitates that potential conflict of law issues are addressed and analyzed.

By the implementation of the Settlement Finality Directive and Collateral Directive into Swedish and Norwegian legislation, many of the cross-border implications and risks have been reduced by providing legal certainty as to settlement, netting and collateral risk. However, Nasdaq Clearing is aware that the Settlement Finality Directive and Collateral Directive may have been implemented differently in different member jurisdictions.

Nasdaq Clearing has a legal opinion structure in order to further enhance predictability and certainty as regards the enforceability of the material aspects of Nasdaq Clearing's operations in the relevant jurisdictions, including that any actions taken by Nasdaq Clearing will not be voided, reversed or subject to stays. Nasdaq Clearing has also obtained external legal analysis in relation to the CCP operations

and the R&Rs. The starting point for the external analysis has been the enforceability of the material aspects of the R&Rs (i.e. settlement finality; netting arrangements; and collateral arrangements, including rights and interest in financial instruments, custody activity and default management procedures).

The legal opinions obtained, as per the above description are to be updated on a regular basis to ensure consistency with the latest legal developments.

The R&Rs states that their respective interpretation and application are subject to Swedish law (Nasdaq Financial) and Norwegian law (Nasdaq Commodities). The different rules are publically available on Nasdaq Clearing's website and the website also includes related information, and links that can be used as explanatory notes. Nasdaq Clearing's contact details are also available through the website so that participants can ask any questions directly to Nasdaq Clearing.

The R&Rs clearly specify Nasdaq Clearing's and the participants' rights and obligations, e.g. how and when registration, set-off, netting and settlement take place. The R&Rs also specify when a transfer order should be regarded as irrevocable and the measures available to Nasdaq Clearing in the event of any delay in the delivery of securities or cash. There are clear rules on the requirements to post collateral and the clearing house's right to enforce such collateral.

The process of changing or amending the R&Rs also ensures that the rules, procedures and contracts are clear and understandable and consistent with relevant laws and regulations. Changes and amendments to the R&Rs are approved on a case by case basis, and depending on how significantly the change would impact Nasdaq Clearing or any of its participants, Nasdaq Clearing needs to have the change approved by the Board, the risk management and the heads of respective business unit. Moreover, Nasdaq Clearing's legal department needs to approve the change or amendment and ensures that the change or amendment is consistent with relevant laws and regulations. When necessary, the legal department verifies that the change or amendment is consistent with relevant laws by requesting legal opinions from independent law firms. When making changes to the Nasdaq FIN R&Rs, Nasdaq Clearing has an obligation, which is stipulated in Nasdaq FIN R&R, to consult with the Swedish Securities Dealers Association before any such change would enter into force. Any change or amendment is notified well in advance before entering into force.

Nasdaq Clearing articulates the legal basis for its activities to the relevant authorities as part of its authorisation process.

In the membership agreement and the applicable R&Rs, which are publicly disclosed on Nasdaq Clearing's website, Nasdaq Clearing states the applicable law and the legal basis for its activities to participants and to participants' customers. Through signing the membership agreement and thereby consenting to the relevant R&Rs, the participants confirm that they have received and understood the relevant rules and legal documents.

No court in any of the relevant jurisdictions has held any of Nasdaq Clearing's

relevant activities or arrangements under its rules and procedures to be unenforceable.

Principle 2: Governance

An FMI should have governance arrangements that are clear and transparent, promote the safety and efficiency of the FMI, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders.

Nasdaq Clearing's overall objectives are to provide clearing services honestly, fairly and professionally and in a manner so that public confidence is maintained. Nasdaq Clearing also ensures that any safety requirements associated with the clearing business are met. The main principles guiding Nasdaq Clearing's services are 1) free access for participants that meet the requirements stipulated in law and Nasdaq Clearing's own requirements, and 2) neutrality such that the R&Rs are applied uniformly on the participants.

These objectives and principles are clearly identified in the management report in the annual report, in the R&Rs and also in the various policies and instructions used to govern the activities of the CCP. Nasdaq Clearing has well-established, documented and sound objectives and governance arrangements in place. The Swedish Companies Act, EMIR, the Swedish Securities Market Act and the Articles of Association provide the legal prerequisite for the arrangements. The governance arrangements are complemented by a framework of governance documentation defining the responsibilities of the Board, the President and the different committees, as well as the division of work, accountability and reporting lines between these organs.

The prerequisites for safety, efficiency and financial stability are reflected in the overall governance arrangements of Nasdaq Clearing and in its framework of committees and policies, as well as in the organization and reporting lines of the clearing risk management.

In addition to the above, Nasdaq Clearing has identified the following other public interest considerations:

- providing an efficient CCP solution to lower the risks for parties on the relevant derivatives market; and
- providing support for financial stability and ensure an efficient, safe and sound derivatives market.

These are reflected in the objectives by, inter alia, efficient collateral and risk management system, proper governance structure and a robust capital structure.

The governance arrangements enabling identification and mitigation of possible conflicts of interests pertain to the separation of clearing risk management

organization, including the different committees' roles, from the business organization, compliance and Internal Audit organization working independently from the business line, and reporting directly to the relevant Board of Directors of Nasdaq Clearing, Nasdaq Nordic Ltd and the Nasdaq Group, Inc., respectively.

The legal basis for the responsibilities for the Board is derived from the Swedish Companies Act (Sw. Aktiebolagslagen (2005:551)), the Articles of Association and EMIR. All board members must pass the Swedish FSA's test in respect of being fit and proper, which focuses on three areas: (1) personal conduct; (2) competence; and (3) conflicts of interest.

The Board has legal responsibility for major decisions related to Nasdaq Clearing, as well as for the legal and regulatory compliance of Nasdaq Clearing. All major decisions of legal or regulatory concern to Nasdaq Clearing need to be taken by the Board and consequently decisions by another Nasdaq entity would not be self-executing with respect to Nasdaq Clearing. The role and the responsibilities of the Board, and its individual members, especially the Chairman, are further defined in the Rules of Procedure adopted by the Board. The Board has also adopted Instructions for the President, which define the division of responsibilities between the Board and the President.

The Board shall make all major decisions in respect of investments, organization and agreements, provided they are not defined as matters that should be resolved by the shareholders' general meeting in the Articles of Association or the Swedish Companies Act. The Board shall also ensure that Nasdaq Clearing complies with its obligations under the Swedish FSA's regulatory framework, including the obligations of Nasdaq Clearing as a licensed entity and the regulatory requirements under EMIR. In addition, the Board adopts policies and reviews reports on operational and clearing risk management, internal control, regulatory capital, compliance, remuneration and security, and internal audit. The Board also adopts the internal audit plan. Furthermore, the Board shall make decisions on amendments to the R&Rs where the amendment is of principle significance or major importance.

Any conflict of interest issues with respect to the Board are managed by a policy with the same name. This policy ensures that the CCP assumes final responsibility and accountability for managing the CCP's risks as well as ensuring that the Board members understand their responsibilities with regard to personal conflicts.

The members of the Board, including the independent board members, and the committees, the president and the management have all appropriate skills, experience and integrity to carry out their duties and tasks. The remuneration principles and the performance review procedure have been implemented to ensure the integrity of Nasdaq Clearing's central counterparty clearing operations. Nasdaq seeks to strengthen the integrity of its managers by requiring them to go through regular training regarding the code of conduct and regulatory issues. Moreover, all managers are required to certify annually their compliance with the code of ethics and related code of conduct policies. The CCP has an annual performance review process for the Board of the CCP which assesses both the performance and

competence of the Board and its members.

The Board of the CCP retains responsibility for compliance and risk management of the CCP and has adopted the relevant policies which pertain to this. These include (but are not limited to) the Clearing Risk Policy, the Risk Mandate and the Compliance Policy. The risk management framework within Nasdaq Clearing is substantially provided by way of the establishment of three risk committees:

(i) the Clearing Risk Committee;

(ii) the Default Committee; and

(iii) the Member Risk Committee;

and through the adoption of instructions from the Board for each of these committees. The instructions define the tasks and duties, composition, decision making, meeting procedure and reporting for each committee. The instructions are updated regularly and the framework is assessed in connection with the changes by the Board. Nasdaq Clearing also has in place a Remuneration Committee and an Audit Committee.

A well-established enterprise risk management assessment procedure is conducted at least annually as a key element in the internal control framework. Internal Audit, having an independent position in relation to Nasdaq Clearing's management, carries out regular audits in accordance with the annual plan as well as ad hoc audits, where appropriate. The external auditors, appointed by the general meeting, exercise the control from the owner's point of view. Nasdaq Clearing uses a framework of policies and guidelines, including, but not limited to, clearing operations and clearing capital, risk management, information security, remuneration and outsourcing. The risk management framework is also built upon the separation of the Risk Management from the clearing business line in terms of organization and reporting. The Chief Risk Officer, Chief Compliance Officer and Internal Auditors report directly to the Board of the CCP.

Nasdaq Clearing has a well-established and multi-channel procedure in place in order to ensure that the legitimate interests of its direct and indirect participants and other relevant stakeholders will be taken into account in material decisions, for example pertaining to the strategy, design and R&Rs. Nasdaq Clearing discloses on its public website a considerable amount of information of its governance arrangements, including, but not limited to, the Board, clearing operations and activities, clearing policies, default procedures, stress testing and the audited balance sheet.

Principle 3: Framework for the comprehensive management of risks

An FMI should have a sound risk-management framework for comprehensively managing legal, credit, liquidity, operational, and other risks.

The Risk Management department within Nasdaq Clearing is responsible for managing the day-to-day risk associated with the clearing services and identified by the Board of Directors. The risks in its clearing activity are measured and managed via a comprehensive risk management framework made up of policies, mandates, procedures, standards and different resources, e.g. human, informational and technological resources. The framework ensures that all risks are recorded, assessed and controlled, and that the risks and exposures are reported to the Board of Directors.

The Board of Directors is ultimately responsible for the risk management framework. The Risk Management department consists of experienced resources with competence in both quantitative and qualitative risk management. The Risk Management department is an independent function within Nasdaq Clearing with the CRO reporting directly to the Board.

All risk policies are subject to annual reviews and re-approval by the Board. The Clearing Risk Committee is responsible for updating and developing the risk policies and ensuring that the risk framework, i.e. policies, system and procedures are updated in relation to changes in market structures, regulations or product portfolio.

Nasdaq Clearing has a Member Risk Committee which is chaired by an independent board member. The committee also consists of representatives of clearing members and clients and has the role to exercise oversight, in an advisory role, over Nasdaq Clearing's clearing risk management controls, models, policies and procedures. Nasdaq Clearing is exposed to the following specific risks that relate to the derivative clearing services it provides:

1. Counterparty/Credit risk: in the event that a participant defaults with the result that outstanding payment and delivery obligations are not fulfilled, Nasdaq Clearing guarantees the fulfilment of these obligations resulting in a potential exposure for Nasdaq Clearing. Nasdaq Clearing also has an indirect Counterparty risk towards, Collateral Issuers, Settlement- and Custodian banks.
2. Market/Volatility risk: The risk of financial loss for Nasdaq Clearing that may be incurred as a result of adverse changes in market factors causing a loss when closing out a defaulted counterparty's portfolio.
    a. Systemic risk: a participant default resulting in other participants not being able to fulfil their obligations leading to instability in the wider financial markets;
    b. Concentration Risk: the risk of financial loss that may be incurred as result of a participant's large exposure in a single instrument that may

cause volatility and/or liquidity risk in a default scenario;

c. Wrong way risk: the risk that a member's portfolio is highly correlated to the country of domicile, or that the derivatives portfolio and the collateral assets are highly correlated with the impact that both assets and liabilities may potentially lose value at the same time.

3. Liquidity risk: arising when a participant fails to fulfil its payment obligations creating a temporary exposure for Nasdaq Clearing.
4. Operational risk: encompassing loss arising from break-downs, deficiencies and weak points in respect of IT systems or internal control procedures or due to human error or management failure.
5. Legal risk: in respect of the validity and enforceability of contracts.
6. Business risk: the risk that exogenous factors have adverse effects on the viability of Nasdaq Clearing's business model and long run profitability.
7. Investment risk: the financial risk that arises due to the investment activities undertaken by the clearing house.
8. Default risk: The risks that Nasdaq Clearing itself is not able to fulfil its obligations towards its counterparties, i.e. is in default in accordance with its own rules and regulations.

Nasdaq Clearing provides its members and members' clients with a range of tools to stay well informed about the clearing process and the risk they have towards the clearing house. There is comprehensive information on the website, including description of the clearing process, margin methodology guides, default fund policy and stress test methodology descriptions etc. Participants have access to more specific information via the clearing system, such as account positions, margin requirements, exposure reports, margin simulation etc. The clearing system is available through a variety of interfaces, which enables the participant to establish its exposure and risk towards the clearing house, simulate anticipated changes in the exposure, as well as administrate its transactions with the clearing house in an efficient way.

In addition to the public information and the system tools available to its members, the Clearing Operations and Clearing Risk Management departments are in regular contact with market participants regarding exposures, margining requirements, collateral arrangements and liquidity issues.

A breach of a participant's obligations towards Nasdaq Clearing is ground for default. Certain operational failures are also grounds for default, but more often, penalties are issued for late deliveries, late margin confirmation and late settlement payments. Communication, penalties and the possibility of a defaulting member all contribute to incentives for members to handle and limit the risks they pose to the clearing house.

The mutualization of risk through the default fund also ensures that clearing participants are incentivized to manage the risk they, and other participants, are

posing to Nasdaq Clearing.

Nasdaq Clearing identifies the material risks it bears from other types of entities, such as investment and counterparties for investments, settlement banks, nostro agents, custodians, liquidity providers and other services providers. In the implemented risk framework, Nasdaq Clearing has processes to address the different types of risk stemming from these entities, such as financial-, operational-, legal- and concentration risk.

As with all other parties in the financial markets, Nasdaq Clearing poses risks on its members and on its key providers such as settlement banks. The risks Nasdaq Clearing poses to others are in essence the same type of risks it is exposed to itself as a clearing house, i.e. credit risk, operational risk and liquidity risk. Thus, in building a robust infrastructure to manage the risks it bears from others, Nasdaq Clearing also builds arrangements that protect interdependent entities. Service providers are regulated through service level agreements (SLAs) with the clearing house and quarterly meetings with the settlement banks are held to go through services and BCP's.

To manage and minimize the risks Nasdaq Clearing bears from and poses to other entities, Nasdaq Clearing has different arrangements in place to handle incidents and risk arising from the clearing activity, e.g.;

- in relation to settlement risk, Nasdaq Clearing has liquidity arrangements in place and access to the underlying markets for physical settlement. Well defined processes and routines are in place to handle a default situations, including involvement of participants to secure an efficient close out process thereby mitigating the spill-over effect on other participants;
- credit risk stemming from its members this is managed via the margin and collateral regime and also via robust and tested financial resources;
- for system or business disturbances, Emergency Response Team, and business continuity plans are in place including back-up site outside the main office to secure continuous operations.

These arrangements are monitored and reviewed by the Clearing Risk Committee and the Local Risk Management Forum.

In the established Risk Self-Assessment ("**RSA**") process and the review of the Recovery and Resolution Plan ("**RRP**"), Nasdaq Clearing has identified and continuously assesses scenarios which could have an impact on the clearing house's possibility to perform as going concern. These include various disaster scenarios and Nasdaq Clearing has BCPs for its critical operations and services that is tested every other month and reviewed continuously by the Clearing Operations Department. The identified scenarios include both independent as well as related risks, and entities which have multiple roles towards the clearing house is monitored in the liquidity risk framework and mitigation actions proposed if the risk is assessed to be non-acceptable.

Scenarios considered posing a risk to the clearing house´s critical operations and services are to be identified through the RSA. This is done on at least an annual basis, but also in connection to major changes or whenever deemed necessary. Significant risks are added to this process (whenever identified) and are well documented.

Nasdaq Clearing has implemented a Recovery and Resolution Plan, the RRP. The RRP describes the Recovery process for the clearing house. This includes stress scenarios where the "business as usual" procedures are not sufficient to cover losses encountered by the clearing house. The Recovery procedure also includes early warnings and triggers, defining when the clearing house should consider enter into Recovery and the decision making process in these events. Further, the RRP sets out proposed Recovery tools that can be used to restore Nasdaq Clearing in such a way that it can continue to perform its responsibilities as a clearing house. Orderly wind-down of the clearing house is also covered in the final section of the RRP. A separate Resolution plan is to be maintained by a Resolution Authority (to be appointed). The RRP will be reviewed on an annual basis or more often if deemed necessary due to, inter alia, major changes in recommendations and/or regulations or the operations of Nasdaq Clearing.

Principle 4: Credit risk

An FMI should effectively measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes. An FMI should maintain sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence. In addition, a CCP that is involved in activities with a more-complex risk profile or that is systemically important in multiple jurisdictions should maintain additional financial resources sufficient to cover a wide range of potential stress scenarios that should include, but not be limited to, the default of the two participants and their affiliates that would potentially cause the largest aggregate credit exposure to the CCP in extreme but plausible market conditions. All other CCPs should maintain additional financial resources sufficient to cover a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would potentially cause the largest aggregate credit exposure to the CCP in extreme but plausible market conditions.

Nasdaq Clearing has established a robust framework to manage its credit exposures to its participants and the credit risks arising from its payment, clearing, and settlement processes. Nasdaq Clearing has efficient processes in place to identify, monitor and manage the credit risk resulting from its clearing activity, including robust stress test modeling and a range of tools to control credit risk.

Nasdaq Clearing covers its current and potential future exposures to each participant fully with a high degree of confidence using margin and other prefunded financial

resources. Nasdaq Clearing has identified all relevant sources of credit risk. Nasdaq Clearing monitors and manages on a daily and intra-day basis changes in counterparty/credit risk exposures against a range of risk limits and well-established margining methodologies which are validated regularly by automated model and parameter back testing and sensitivity testing. It also monitors the credit risk relating to the participants of Nasdaq Clearing and that the applicable membership requirements are complied with continuously, including provision of collateral in accordance with the R&Rs.

Nasdaq Clearing also controls and mitigates the credit risk by utilizing central bank money, where possible, and only uses DvP instructions in the delivery processes of financial securities.

Adequate prefunded financial resources are in place to cover the simultaneous defaults of the largest credit exposures (Cover 2) in extreme but plausible market conditions. Nasdaq Clearing has implemented a multilayer protection system in its risk framework where different sources of prefunded resources ensure the fulfilment of the clearing house's obligations. The multilayer system, the Waterfall, includes (in order of utilization):

a) Margin of defaulting member
b) Default fund contribution of defaulting member
c) Dedicated capital by Nasdaq Clearing ("**the Junior Capital**") for the applicable clearing service
d) Default fund contribution by other members for the applicable clearing service Dedicated capital by Nasdaq Clearing ("**the Senior Capital**")
e) Default fund contribution by other members to the "**Mutualized Default Fund**"

In addition to these prefunded resources, members have a guarantee commitment towards Nasdaq Clearing, the so called Assessment Power, amounting to 100% of the prefunded resources in each default fund. The structure of the financial waterfall is specified and publicly available on the Nasdaq Clearing's website[2] and in the R&Rs.

Nasdaq Clearing documents the supporting rationale for, and has appropriate governance arrangements relating to, the amount of total financial resources it maintains. The Clearing Risk Committee (one of Nasdaq Clearing's Board committees) is responsible for the governance and decisions concerning financial resources. All meeting minutes from the Clearing Risk Committee are made available to the Swedish FSA.

Nasdaq Clearing determines the amount and regularly test the sufficiency of its total financial resources available in the event of a default or multiple defaults in extreme but plausible market conditions through rigorous stress testing.

In more detail, the stress tests are performed and monitored on a daily basis by Nasdaq Clearing and used to size the appropriate level of financial resources and

[2] http://www.nasdaqomx.com/europeanclearing/risk-management/default-fund

default funds. As for maintaining the adequacy of capital resources, Nasdaq Clearing re-evaluates the size of its Clearing Capital and member-contributed default funds on a quarterly basis.

The use of an EVT methodology and maximum available price history for individual instruments mitigates the risk of model failure that comes with solely statistical models, and secure coverage of historical extreme market conditions.

Finally, Nasdaq Clearing has established clear and explicit rules and procedures to address fully any uncovered losses it may face and to ensure it can operate in a safe and sound manner even during stress events.

Nasdaq Clearing is further performing the following routines in its framework for managing credit risk:

- Stress parameters and assumptions used in stress testing models are comprehensively and thoroughly reviewed, analyzed, validated and tested on at minimum a monthly basis.
- When the products cleared or markets served display high volatility, become less liquid, or when the size or concentration of positions held by Nasdaq Clearing's participants increases significantly Nasdaq Clearing performs the analysis, validations and tests more frequently than on monthly basis.
- Reverse stress tests are performed on Nasdaq Clearing's capital base, which allows it to determine which market conditions would be necessary for its Clearing Capital to be depleted.
- Full validation of models, including validation from a party that is independent from Nasdaq Clearing's risk management function, is performed on at least an annual basis.

Nasdaq Clearing considers the effect of a wide range of relevant stress scenarios in terms of both defaulters' positions and possible price changes in liquidation periods. Hypothetical scenarios include relevant peak historic price volatilities, shifts in other market factors such as price determinants and yield curves, multiple defaults over various time horizons, simultaneous pressures in funding and asset markets, and a spectrum of forward-looking stress scenarios in a variety of extreme but plausible market conditions. In more detail, Nasdaq Clearing divides its instruments in stress test markets (risk groups). The hypothetical scenarios considered shift these markets up and down, and every combination thereof, to generate an exhaustive series of scenarios. In that way, simultaneous stresses in the equity and funding markets, simultaneous equity stresses across geographies, as well as idiosyncratic market disturbances are all covered. By maximizing the market moves simultaneously across risk groups, as well as using scenarios with both maximum correlation and maximum anti-correlation, very extreme scenarios that have never been observed in history are generated, thereby adding to the robustness of this methodology. In addition, historical stress scenarios are implemented as replay of historical extreme market events. Nasdaq Clearing has a documented methodology for identifying the worst events per market given current cleared portfolios.

Nasdaq Clearing has established explicit rules and procedures that address fully any credit losses it may face as a result of any individual or combined default among its participants with respect to any of their obligations to the FMI. In more detail, Nasdaq Clearing has established rules and procedures to allocate uncovered credit losses (see Nasdaq FIN R&R "Appendix 16 Default Fund Rules" and Nasdaq COM R&R "Clearing Appendix 9 Default Fund Rules").

The rules and procedures addresses how potentially uncovered credit losses would be allocated, including the repayment of any funds Nasdaq Clearing may borrow from liquidity providers. In more detail, Nasdaq Clearing has bilaterally negotiated credit facilities provided by liquidity providers, i.e. not liquidity providers formalized within its R&Rs. If Nasdaq Clearing has utilized any of its credit facilities from its liquidity providers, such facilities should be fully repaid as soon as collateral and any financial resources from the waterfall have been realized in order to cover for the losses incurred as a result of the defaulting member.

The rules and procedures indicate Nasdaq Clearing's process to replenish any financial resources that Nasdaq Clearing may employ during a stress event, so that Nasdaq Clearing can continue to operate in a safe and sound manner. In more detail, the respective default fund rules fully address how utilized default fund contributions shall be replenished, both in regards of members that are obliged to contribute to the default fund and Nasdaq Clearing's own capital (see Nasdaq FIN R&R "Appendix 16 Default Fund Rules" and Nasdaq COM R&R "Clearing Appendix 9 Default Fund Rules"). Replenished funds will not be placed in their original position in the Waterfall until a 90-day period has elapsed (the "Interim Period"). During the Interim Period, the replenished funds will be placed above the Assessment Power in the Waterfall and the same priority order within the replenished funds will be applied as with the Waterfall (i.e. replenished Nasdaq Junior Capital below replenished default fund contributions etc.). When the Interim Period has elapsed, the funds will be moved down to their original, junior level.

Principle 5: Collateral

An FMI that requires collateral to manage its or its participants' credit exposure should accept collateral with low credit, liquidity, and market risks. An FMI should also set and enforce appropriately conservative haircuts and concentration limits.

Nasdaq Clearing only accepts highly liquid collateral with readily available market prices and with low market and credit risk. The haircuts on collateral are applied according to a conservative method to ensure that they can withstand volatility during times of market stress and to avoid pro-cyclical adjustments. Nasdaq Clearing avoids wrong way risk by not allowing securities issued by the counterparty itself, or securities issued by any subsidiary of the counterparty, or any other company in the same group. Eligible collateral, applicable haircuts and valuation principles can be found in Appendix 10 of Nasdaq COM R&R and in Appendix 14 of Nasdaq FIN R&R.

A broad range of acceptable collateral provides diversification and allows for ensuring the best collateralization for each type of participant, client, and position and market conditions at each time. The following are accepted types of collateral in the Eligible Collateral List of Nasdaq Clearing:

1. Cash funds in pre-set currencies (only currencies in which Nasdaq Clearing is clearing products or in currencies which are a natural part of Nasdaq Clearing's day to day operation)
2. Covered bonds issued by Swedish and Danish mortgage institutions (with restrictions)
3. Bonds issued by the Swedish Municipalities Agency, "Kommuninvest" (with restrictions)
4. Government bonds and bills (for selected countries and with credit rating restrictions)
5. Shares (a selection admitted for trading on Nasdaq Stockholm exchange).
6. ETF's (Exchange Traded Funds) (for selected issuers listed on The Nasdaq Nordic Exchange. Approved on an ISIN by ISIN basis)
7. Net sellers of EUAs (European Union Allowances) and El-Certs may pre-deliver allowances to Nasdaq Clearing registered accounts to use it as collateral to cover net sold positions

According to Appendix 14 of Nasdaq FIN R&R and Appendix 10 of Nasdaq COM R&R; all securities accepted as collateral shall have daily prices available. If daily prices are missing, the security is valued at zero. All collateral is valued in Nasdaq Clearing's proprietary Collateral Management Service ("**CMS**"). The collateral valuation is based on the previous business day's prices. The evaluation of collateral in respect to the corresponding margin requirement is done in real time.

The risk of valuing collateral based on previous business day's prices is mitigated by setting conservative haircuts on the collateral. If Clearing Risk Management considers it necessary, collateral prices can be updated intraday and also manually entered into the systems if required. Nasdaq Clearing can monitor posted collateral and any surpluses/deficits in real time and can easily and quickly make changes to the set-up in terms of limits and haircuts.

Haircuts are applied according to Nasdaq Clearing's Collateral List (Appendix 14 to Nasdaq FIN R&R and Appendix 10 of Nasdaq COM R&R). The haircuts are designed

to ensure that the net liquidation value of the assets is equal to or exceeds the margin required between the last valuation and liquidation. The individual haircut parameter for each security is based on an analysis of the volatility of historical prices for a specified look back period. The haircuts are validated regularly under assumptions of severe (extreme but plausible) market stress. Nasdaq Clearing uses a sufficiently long look-back period to ensure that periods of stress are included in the data sample, at a high confidence level. This approach reduces the need for pro-cyclical adjustments of the haircuts. Nasdaq Clearing runs daily price checks of collateral securities to verify that market movements does not exceed certain predefined thresholds (in line with the applicable haircuts).

Nasdaq Clearing handles concentration risk by applying limits based on the observed risk of the posted collateral. The concentration limits used by Nasdaq Clearing are based on an analysis of the accepted collateral. The asset types perceived to have the highest total risk in terms of credit- liquidity- and market risk get a lower concentration limit compared to asset types with a lower total risk. Concentration limits are reviewed at least annually. Concentration limits and haircuts are approved by the Clearing Risk Committee and are included in the collateral list (Appendix 14 of Nasdaq FIN R&R and Appendix 10 of Nasdaq COM R&R). On a clearing house level, Nasdaq Clearing only allows a certain percentage of its total collateral to be guaranteed by a single credit institution. The percentage allowed is in accordance with EMIR.

Nasdaq Clearing has various means and processes in place to mitigate the risks associated with the use of cross border collateral, particularly the risk of conflicts of law issues arising in relation to the realization of cross-border collateral. Nasdaq Clearing's legal opinion program has been established to ensure that the R&Rs are enforceable and sound, to identify and analyze potential conflicts of law issues and to mitigate legal risk resulting from such issues.

The collateral is also held directly in Nasdaq Clearing's accounts with applicable CSD (or if not possible in a custodian institution which fulfills certain predefined requirements). Collateral processing takes place in streamlined processes through standardized and automated interfaces which ensure operational promptness and access in a timely manner.

The overall CMS at Nasdaq Clearing is designed to allow for operational flexibility and effectiveness, including cash optimization and direct debit/credit functionality. The dedicated Clearing Operations team is sufficiently staffed, and has robust BCP plans in place to ensure smooth operations even during times of market stress. Information regarding the collateral management service can be found on Nasdaq Clearing's homepage.

Principle 6: Margin

A CCP should cover its credit exposures to its participants for all products through an effective margin system that is risk-based and regularly reviewed.

Nasdaq Clearing has a margin system that establishes margin levels commensurate with the risks and particular attributes of each product, portfolio, and market it serves. Currently, Nasdaq Clearing runs three different margin models, SPAN® 3 for commodities, OMS2 for equities and CFM for interest rates. Each margin model is tailored for its respective market. All three margin models are parametric, i.e. margins are established through structured simulation of significant risk factors. SPAN is implemented for commodities due to its robustness, its wide acceptance in the market and its capacity to cater for the price dependencies manifested in the commodities markets. OMS2 is chosen for equities primarily due to its capacity to handle options and its robustness. CFM is implemented for interest rates primarily due to its capacity to handle yield curves, and as such capture the natural price dependency between different interest rate products.

Nasdaq Clearing covers its credit exposures to its participants for all products it clears through an effective margin system that is risk-based and with individual risk models per asset class. The margin system calculates accurate and timely risk-based margin requirements for all cleared products on an hourly basis throughout the day as well as end of day.

All open positions in various markets are margined with regards to the specific nature of the risks involved. Nasdaq Clearing calculates margin requirements based on price volatility, price dependence between products in a market as well as price dependence between markets and market liquidity for determination of close-out periods. Individual product characteristics (settlement/delivery cycle, physical delivery/financial settlement) are reflected in the margining parameters and margin models structure. In addition, when evaluating credit exposures, Nasdaq Clearing also takes into account the size and concentration of positions a participant holds. For portfolios of significant size and concentration Nasdaq Clearing applies concentration risk charges.

Nasdaq Clearing has reliable sources of timely price data for its margin system. Nasdaq Clearing primarily uses prices from the markets it clears products from as the main sources for price data in its margining system. For the vast majority of the products cleared by Nasdaq Clearing prices are electronically fed into the margin system. The design and implementation of the system secure that the prices used are appropriate for margin calculations.

Nasdaq Clearing uses either industry standard price models, and/or price models that are agreed with the market participants. Such models are included in the scope

[3] SPAN is a registered trademark of Chicago Mercantile Exchange Inc., used herein under license. Chicago Mercantile Exchange Inc. assumes no liability in connection with the use of SPAN by any person or entity.

of the annual independent model validations.

Nasdaq Clearing has the capacity to manually enter prices into the system used for margin calculations. In such cases prices are either calculated by models or retrieved from a third-party (Reuters, Bloomberg or Market makers). A manual check following the four-eye principle is conducted in those occasions by Clearing Operations.

Nasdaq Clearing has procedures and sound valuation models for addressing circumstances in which pricing data are not readily available or reliable.

Nasdaq Clearing has initial margin models and parameters that are risk-based and generate margin requirements sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default.

Initial margin calculated by Nasdaq Clearing meets an established single-tailed confidence level of at least 99 percent with respect to the estimated distribution of future exposure. Currently 99.2% confidence level or higher is applied by Nasdaq Clearing. Where correlation netting between products are allowed it is ensured that that the confidence level requirement is met for all portfolios.

The models employed uses highly conservatives estimates of the time horizons for the effective hedging or close out of the particular types of products cleared by Nasdaq Clearing (including in stressed market conditions). Nasdaq Clearing considers liquidity, presence of close-out arrangements, hedging possibilities in underlying contracts or equivalent products in other markets, price reliability and required confidence level as the main factors for determination of the size of the liquidation period. Nasdaq Clearing's minimum liquidation period is 2 days for listed derivatives and 5 days for OTC derivatives. The liquidation period is reviewed at least on an annual basis and more often if deemed necessary. Concentration risk which could have an impact on the liquidation period is handled by requiring additional margin for positions in a market segment which poses a concentration risk to the clearing house.

Re-estimation of risk parameters is made at minimum monthly or more frequently in case market conditions are stressed or changed crucially in the opinion of Risk Management.

Nasdaq Clearing has appropriate methods for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products. Nasdaq Clearing estimates parameters to the margin models based on historical prices, market information and the established confidence level. To estimate the parameters, distribution-free or robust estimation methods are applied to address the fact that price changes are not Gaussian distributed.

Nasdaq Clearing limits the need for destabilizing, pro-cyclical changes. Nasdaq Clearing uses margin parameter floors to mitigate tail risks and make the margin system more robust with respect to the systemic risks, originated from unexpected events influencing the markets Nasdaq Clearing are involved in. This helps to avoid

destabilizing changes in margin requirements in times of market stress. The margin parameter floors are based on estimations with a ten year sample period or a buffer of 25% on the normal parameter estimation that is based on a one or two year lookback period.

Nasdaq Clearing marks participant positions to market and collect variation margin at least daily to limit the build-up of current exposures.

Nasdaq Clearing has the authority and operational capacity to make intraday margin calls and payments, both scheduled and unscheduled, to participants. Nasdaq Clearing has decided on an intra-day margin policy, and immediately calls for more margin in case pre-defined collateral deficit limits are breached. For some markets, pre-novation collateral checks are utilized, i.e. trades reported for clearing are only novated in case there are sufficient collateral in place.

In calculating margin requirements, Nasdaq Clearing allows offsets or reductions in required margin across products that it clears, if the risk of one product is significantly and reliably correlated with the risk of the other product. Nasdaq Clearing uses a highly conservative approach when estimating offset levels taking into account the established confidence level for its margin system. Margin offset is only provided in case correlation between products historically has been high and stable. By choosing a sufficiently long sample period for historical data when estimating correlation, Nasdaq Clearing accounts for variability of price dependence with overall market conditions.

Nasdaq Clearing has implemented a comprehensive model validation framework for its margin models. The framework is governed by a number of policies approved by the Board of Directors and/or the Clearing Risk Committee and entail governance in relation to back-testing, sensitivity testing and validation.

Nasdaq Clearing performs daily testing of its margin models by conducting several back-tests. These are done both on an enterprise level, where actual changes in portfolios' market valuation are tested against required margin under applicable time horizon, and on individual risk parameters (which are monitored against actual movement to determine that the parameter holds up to the expected levels).

On a monthly basis, a thorough analysis of all back-testing results on various levels of portfolios and sub-portfolios are conducted and reviewed. Moreover, model tests and sensitivity analyses are conducted on the margin models where main risk factors are stressed in order to detect any weaknesses in the models. In conducting sensitivity analysis of the models' coverage, Nasdaq Clearing takes into account a wide range of parameters and assumptions that reflect possible market conditions, including the most-volatile periods that have been experienced by the markets it serves and extreme changes in the correlations between prices. The model behavior in market scenarios far worse than Nasdaq Clearing has ever experienced, is also examined. The Clearing Risk Committee reviews the results of the margin model validation tests, including ex-post margin coverage back-testing of all portfolios and all cleared products, ex-ante back-testing on margin model level and other model specific validation tests.

Results on the back-testing are presented to the Member Risk Committee and the Board in the ongoing risk reporting. Moreover, back-testing results are also made publically available on the website of Nasdaq Clearing.

On an annual basis Nasdaq Clearing performs a thorough review and validation of its margin system. The review is initiated and governed by the Clearing Risk Committee in accordance with the Model Validation Policy. The review of the margin methodology ensures that the applicable valuation and margin models, fit their purpose and market conditions. The review is based on the results of the back-testing and sensitivity analysis performed by Nasdaq Clearing. The review further aims to identify if new models have been developed within the industry, and, if so, consider if these could be more appropriate for Nasdaq Clearing than the existing models. An independent validation of the theoretical and empirical properties of the margin model is included in the annual review.

The models used are well documented and the documentation is available on the website[4].

Principle 7: Liquidity risk

An FMI should effectively measure, monitor, and manage its liquidity risk. An FMI should maintain sufficient liquid resources in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would generate the largest aggregate liquidity obligation for the FMI in extreme but plausible market conditions.

Nasdaq Clearing has developed a robust framework to identify measure and manage its liquidity risks. The framework is primarily focused on the potential stressed liquidity needs in conjunction with its clearing operations and its role as clearinghouse.

The various sources of liquidity risk that arise in Nasdaq Clearing are 1) default of a member (including its affiliates and all its customer positions); 2) operational problems in a settlement bank; 3) liquidity need due to delivery failures; and 4) outflows in terms of cash call backs. These liquidity risks can occur in the currencies in which Nasdaq Clearing's cleared contracts are denominated. The framework identifies the maximum total need for liquidity across all currencies as well as maximum liquidity need in each applicable currency. Generally, the liquidity need in SEK is significantly larger than other currencies since the majority of Nasdaq Clearing's contracts are denominated in SEK and daily cash settled products with

[4] http://www.nasdaqomx.com/europeanclearing/risk-management

higher volumes are primarily SEK-contracts.

Nasdaq Clearing's liquidity model **("LaR")** is a robust framework for liquidity risk management which measures and monitors, on an daily basis, the Minimum Requirements **("MR")** and Additional Requirements **("AR")** in all relevant currencies (both total cross-currency need and in each applicable currency). The liquidity requirements are calculated based on rigorous stress testing using a wide range of relevant scenarios, including the default of the two participants and their affiliates that would generate the largest aggregate payment obligation to Nasdaq Clearing in extreme but plausible market conditions.

Nasdaq Clearing maintains sufficient Qualifying Liquid Resources **("QLR")**, Additional Liquid Resources **("ALR")** and other liquid resources to meet the total liquidity requirements with a significant excess. Nasdaq Clearing measures the MR and the AR as well as the size of QLR and ALR on a daily basis in each currency. Finally, Nasdaq Clearing has established rules and procedures and suitable governance arrangements to enable it to affect same-day or intraday and multiday settlement of payment obligations on time following any default of its participant(s).

In SEK the QLR is composed of: (i) committed credit facilities among four liquidity providers; (ii) cash and cash equivalent and (iii) highly liquid Swedish government bonds. The securities are all eligible as collateral in the Central Bank of Sweden and the most liquid and credit worthy instruments in the Swedish financial market. Securities defined as QLR can, according to the Nasdaq's Liquidity Policy maximum amount to 50% of QLR for all currencies. QLR in DKK, NOK and GBP are composed of (i) committed multi-currency credit facilities; which enable a very quick utilization with minimal time delay and direct liquidity supply in the applicable currency and (ii) cash and cash equivalent. QLR for EUR and USD is composed of (i) committed credit facilities; (ii) cash and cash equivalent and (iii) highly liquid securities issued or explicitly guaranteed by government, central bank or supranational. All securities are available to sell or repo, under prearranged Global Master Repurchase Agreement (GMRA), with same day value.

Moreover, the providers of the QLR are three Nordic banks as credit facility providers with direct access to the Central Bank of Sweden and also access to central banks in almost all of the other applicable currencies. Their status as approved counterparties in the Swedish Central Bank's monetary policy operation forms the basis for the assessment that they understand and can manage their liquidity risk. A fourth credit facility provider is an international bank which also provides a multicurrency credit facility. In the currencies the bank does not have direct central bank access several options are available. The Nasdaq Clearing Liquidity Policy stipulates a lowest credit rating threshold for Nasdaq Clearing's liquidity providers. Since the credit facilities providers also are settlement banks of Nasdaq Clearing, the clearing house performs ongoing monitoring of these entities as service providers. Nasdaq Clearing ensures that all credit facilities are utilized minimum once a year.

In addition to QLR, Nasdaq Clearing has ALR in the form of highly liquid investments in securities issued or explicitly guaranteed by government, central bank or

supranational. The securities are highly liquid and credit worthy securities denominated in each currency. The available QLR and ALR, shall always be sufficient to meet the MR respectively AR with minimum 10 percent buffer which is according to Nasdaq Clearing Liquidity Policy, both in total and in each individual currency.

The process to establish the MR and AR includes a daily report which is run by Nasdaq Clearing. The report identifies the estimated liquidity requirement based on current positions and various default assumptions in a range of stressed market scenarios. This process includes a check on whether a new historic "High Point" has occurred.

The stress model is based upon a variety of scenarios where the main markets (Fixed Income, Equity, Commodity and Seafood, per currency) are fully uncorrelated and can move either in same or opposite market direction. A combination of peak historic price volatilities shifts in other market factors such as price determinants and yield curves are captured. Nasdaq Clearing utilizes a 12 month look-back period to determine the "High Point".

Other types of liquidity risks, deliveries, settlement amounts and cash outflows in terms of cash callbacks are assessed based on maximum historical values.

The liquidity model is based on rigorous stress testing and the results are presented and used in a predetermined process according to the Nasdaq Clearing Liquidity Policy. Nasdaq Clearing´s Treasury department should ensure and verify that the total available liquidity resources exceed the AR on a daily basis. In the event a new High Point has occurred, when there is still sufficient available resources the Risk Manager should inform Treasury. If the buffer in QLR or ALR is utilized (due to either new High Point or decrease in QLR and/or ALR) the Treasury department should escalate and inform the Chief Risk Officer and the Chief Risk Officer shall convene a Clearing Risk Committee meeting. The Clearing Risk Committee should determine how the liquidity resources should be increased in order to retain the buffer. If a new High Point exceeds the available liquid resources the Chief Risk Officer should immediately communicate the results and the remediation plans to Nasdaq Clearing Board of Directors and the Chief Compliance Officer should communicate results and remediation plans to the Swedish FSA. Measures to remedy the liquidity readiness shortfall should be implemented immediately. The Chief Risk Officer should inform the Board of Directors and the Chief Compliance Officer should inform the Swedish FSA when the measures have been implemented.

Nasdaq Clearing has documented its Liquidity method in the Nasdaq Clearing AB Liquidity Policy and Liquidity at Risk Stress Test Policy. The Liquidity Policy is subject for approval by the Nasdaq Clearing Board of Directors and is reviewed annually. Nasdaq Clearing Risk Committee approves Liquidity at Risk Stress Test Policy and will review it annually. If deemed necessary, both policies can be reviewed more frequently due to change in risk exposure for Nasdaq Clearing.

Nasdaq Clearing utilizes central bank services in SEK and DKK, where intra-day liquidity is also obtained. The services consist of accounts and payments. For EUR and GBP the Bank of Finland respectively the Bank of England provide central bank

services, however, intra-day liquidity is not obtained.

Most of the liquidity recourses are replenished automatically. For instance, collateral held but not yet realized would, when realized replenish the utilized liquidity resources.

If liquidity is utilized and it corresponds to capital losses such funds will not be automatically replenished. In such circumstances, the default fund rules stipulate that members must replenish the default fund within 10 days. Moreover, Nasdaq Clearing holds substantial buffer in non-regulatory tangible equity according to its Regulatory Capital Policy, which means that those financial resources backing this buffer in equity could within a short period of time replenish any used QLR or ALR. The replenishment rules are explicitly specified in the default fund rules.

Principle 8: Settlement finality

An FMI should provide clear and certain final settlement, at a minimum by the end of the value date. Where necessary or preferable, an FMI should provide final settlement intraday or in real time.

By registration of a contract a participant is obliged to perform liabilities consistent with the contract specifications as specified in the R&Rs and the participant shall accordingly complete settlement on the date specified by Nasdaq Clearing. Other than as set forth in the R&Rs regarding protest, the obligations in the contracts are binding and the settlement instructions shall prevail. Any late payments or deliveries are considered a breach of R&Rs.

Nasdaq Financial

A transfer order under the Nasdaq FIN R&R has the same definition as under Article 2 (i) of the Settlement Finality Directive and shall therefore be deemed to include every express or automated instruction that results in the registration of a contract and every express or automated instruction intended for settlement of a contract. Section 2.9.30 of the Nasdaq FIN R&R stipulates that a transfer order with respect to cash settlement or delivery shall be deemed to have been placed in the clearing system upon receipt of a request by Nasdaq Financial or when the clearing system, without such a request, generates a final settlement report in accordance with section 2.11.8 of the Nasdaq FIN R&R. Other than as set out in section 2.10 of the Nasdaq FIN R&R regarding protests, transfer orders may not be revoked after receipt of such settlement basis by Nasdaq Financial. As per section 2.10 of the Nasdaq FIN R&R, clearing members shall continuously assist in reconciliation of transactions registered during the day and shall submit to the clearing house any protests attributable to registrations or failures to register or in the event that discrepancies exist compared with the members' own records. Members shall also, within the times stated in the Nasdaq FIN R&R, submit protests against transactions that are erroneously executed or have failed to be executed, exercised or cash settled.

Protests submitted at times later than stated in section 2.10 of the Nasdaq FIN R&R shall be invalid.

Settlement banks and Central Banks engaged by Nasdaq Financial are domiciled in countries which have implemented the Settlement Finality Directive. i.e. a transfer order entered by a participant of a settlement system to place an amount of money by means of book entry in the account of a credit institution (or Central Bank) are covered by the Settlement Finality Directive (c.f. Settlement Finality Directive Article 2 (i)). Hence transfer orders regarding cash settlement via a credit institution (as well as via a Central Bank) may not be revoked in the event of a participant's default (including insolvency) and the insolvency of a participant may not have retroactive effect. The effect of this is that transfer of funds by participants in accordance with transfer orders under the Nasdaq FIN R&R (see section 2.9.30 of the Nasdaq FIN R&R) are final once the transfer of funds have been completed by way of book entries to Nasdaq Clearing's accounts with the applicable credit institutions/Central Banks.

Nasdaq Commodities

Section 4.1.1 of the Nasdaq COM R&R stipulates that a clearing transaction shall be deemed entered into the Securities Settlement System when it has been created and may not be revoked, other than as set forth in Nasdaq COM R&R Section 4.6 and in Clearing Appendix 4 OTC Clearing Procedures section 6. According to section 7.1 of the Nasdaq COM R&R, each account holder warrants to the clearing house on each date on which a transaction is registered for clearing that its obligations under each clearing transaction and the clearing rules constitute legal, valid and binding obligations.

Cash settlement shall be performed in accordance with section 6.2.5 of the Nasdaq COM R&R and is final by way of book entries to Nasdaq Clearing's accounts and binding on all parties except as explicitly set out in the Nasdaq COM R&R regarding settlement errors (section 6.6 of the Nasdaq COM R&R). Settlement banks engaged by Nasdaq Clearing are domiciled in countries which have implemented the Settlement Finality Directive.

Nasdaq Commodities specifies the applicable volume of allowances and electricity certificates due for delivery and a counterparty that has a delivery obligation shall act in accordance with the settlement schedules 3.3.1 and 4.3.1 of Appendix 2 of the Nasdaq COM R&R. A delivery shall be deemed completed when the delivering counterparty has received a confirmation that the relevant deliverables have been deposited to the applicable delivery point of the receiving counterparty without any possibility of revocation by the delivering counterparty (section 6.3.3 of the Nasdaq COM R&R). If the account holder believes that settlement has been carried out incorrectly and submitted the protest in accordance with the timing stipulated by section 6.6 of the Nasdaq COM R&R, the protest shall be deemed valid. The clearing house shall then as soon as possible inform the concerned account holders and perform the corrected settlement. Any correction in accordance with the Nasdaq COM R&R will be binding on all counterparties concerned.

The cash settlement report is provided to the members by the end of the clearing day (21:00 CET) and expected to be paid during the settlement day's cutoff times, i.e. same day value. The payments are managed in the CMS system for automatic handling of cash settlement. The payment instructions are transmitted by Swift and the confirmations are received by Swift, providing real time update on the bookings of the accounts. The payment process is continuously monitored by the Clearing Operation personnel of Nasdaq Clearing.

For equity and debt securities, the deliveries shall be completed on the delivery day and in accordance with the CSDs rules and routines (Nasdaq FIN R&R 2.11). The delivery instructions are generated and sent by the CMS system and the monitoring by the Clearing Operations personnel is performed in the CMS or directly in the CSDs. The Nordic CSDs primarily operate in batches, and before each batch the settlement headroom (the amount constituting the payment capacity of a delivering party in a CSD) must be secured in order for the deliveries to be executed. If the settlement headroom is not updated then the delivery will not be executed in that batch. The instructions will remain the same and the personnel at Nasdaq Clearing will have to wait for the next batch to settle the transactions.

Nasdaq Commodities operates through the Emission Registry for emission allowances and the El-cert Registry for the electricity certificates (jointly referred to as the "**Registries**"). The deliveries are considered final and binding on the members account when the members receive confirmation that the delivery is completed.

If the settlement obligation is not fulfilled on the day specified in the contract specifications, it constitutes a breach of the Nasdaq FIN R&R. The breach of a participant's obligations towards the clearing house is a ground for default. In situations of operational failure, such as late deliveries and delays in confirming margins, the clearing house has the right to declare a participant in default. However, this is not enforced by default and the clearing house may make an exception and accept a later delivery.

If a member at Financial has failed to deliver on the settlement day, Nasdaq Clearing shall send a buy-in notification on the same day as on which the delivery should have been made, if this follows from the relevant contract specification as set out in Chapter 3 of the Nasdaq FIN R&R. When the failing clearing member has been notified, it has as specified in the contract specification a limited number of bank days to fulfill its obligation to deliver before the buy-in notification enters into force. When the buy-in notification enters into force Nasdaq Clearing has the right, on behalf of the failing clearing member, to buy the instrument that the clearing member should have delivered. Once the buy-in notification comes into force and the member has been informed, Nasdaq Clearing will no longer accept delivery from the member. Nasdaq Clearing has facilities in place to buy in shares. As a CCP, Nasdaq Clearing guarantees the completion of all deliveries, independent of the original counterparty's delivery or payment ability. Nasdaq Clearing is able to prolong the collateral requirement during the days of the buy-in. Delay fees are debited in connection with the delayed delivery.

If a member fails to procure an emission allowance or electricity certificate transfer to Nasdaq Clearing with respect to the quantity on the delivery day, and Nasdaq Clearing is unable to meet its obligation to procure a delivery to the buyer despite its best efforts, Nasdaq Clearing may decide that the transaction shall be cash settled. Once the decision is taken, the member can then no longer fulfill the obligation by delivering the instrument. The different alternatives that Nasdaq Clearing can choose from in order to procure the cash settlement is stipulated in section 3.4.4 and 4.4.4 of the Nasdaq COM R&R. Delay fees will be debited in connection with the delayed delivery.

Principle 9: Money settlements

An FMI should conduct its money settlements in central bank money where practical and available. If central bank money is not used, an FMI should minimise and strictly control the credit and liquidity risk arising from the use of commercial bank money.

Nasdaq Clearing monitors the levels of settlement amounts in absolute terms paid to and from the clearing members in the different currencies, and prioritize that central banks are appointed as concentration banks and that the main currencies are settled in central bank money. Nasdaq Clearing currently operates money settlement operations in the Swedish, Finnish, English and Danish Central Bank. For the currencies USD and NOK where the concentration bank is not a central bank due to Nasdaq Clearing not being an US registered bank and has low settlement volumes in NOK, Nasdaq Clearing has parallel bank account arrangements and back-up routines in place.

Approved settlement banks are used in the settlement process. Nasdaq Clearing sends payment instructions to approved settlement banks to debit the clearing members' account and credit Nasdaq Clearing's account in the respective settlement banks. When the settlement banks have confirmed that the payments have been received, Nasdaq Clearing issues payment instructions for exchange of payments between the settlement banks in question in the concentration banks.

Nasdaq Clearing has the CMS system which provides system generated payment instructions, effective monitoring of the accounts and real-time updates on payments. Nasdaq Clearing follows the principle of first receiving the incoming payments and then sending out the payments, in order to limit the amount of funds needed by the clearing house for daily money settlements. If additional funds were to be needed Nasdaq Clearing's accounts are equipped with credit facilities, in order to prevent delays in the payment process.

The money settlement is performed in SEK, DKK, EUR, NOK, USD and GBP. For NOK and USD, commercial banks are appointed as concentration banks and they comply with the same terms as the appointed approved settlement banks. According to the Settlement Bank Agreement the approved settlement banks shall comply with the

technical requirements (Swift, lead times etc.), the support requirement, the credit rating requirements and the operational requirements related to the respective markets. Before being approved, the settlement bank shall participate in tests in order to verify that their payment flows operate in accordance with the Settlement Bank Agreement. When the tests are successfully passed and the Settlement Bank Agreement is signed by the parties, the settlement bank may participate in the daily money settlement process and be appointed as a settlement bank by clearing members.

Nasdaq Clearing uses concentration banks and settlement banks with a minimum rating level, A- (S&P) or A3 (Moody's), in order to ensure the banks' creditworthiness. All banks appointed by Nasdaq Clearing are reviewed and evaluated in accordance with the Credit Risk Policy. Nasdaq Clearing's appointed banks are also subject to the Treasury departments Finance policy (including monitoring of the rating requirements of the settlement banks). The management of the liquidity risks and the mitigations taken by Nasdaq Clearing are described in Nasdaq Clearing's Liquidity Policy and also in more detail in Principle 7.

Nasdaq Clearing has appointed a large number of banks to participate in the settlement, in order to spread the concentration exposure and to ensure that Nasdaq Clearing has parallel arrangements in case of a disruption.

Principle 10: Physical deliveries

An FMI should clearly state its obligations with respect to the delivery of physical instruments or commodities and should identify, monitor, and manage the risks associated with such physical deliveries.

The carbon emission contracts and the electricity certificates contracts have physical delivery. The delivery information needed for a member to fulfill its physical delivery obligation is clearly stated in Nasdaq COM R&R section 6 and appendix 2 part B sections 3 and 4. The physical delivery obligations are further clarified in the guide, "Nasdaq Clearing as a Counterparty".[5]

Before being accepted to trade the participants receive information in relation to delivery and must assure Nasdaq Clearing that they understand the information, are able to comply with physical delivery obligations and have the necessary set up to fulfill the delivery obligation.

The delivery instructions are monitored on a daily basis with intraday updates by Nasdaq Clearing's personnel, to assure that the deliveries are completed on the correct day. A participant can request to pre-deliver a contract and in return receive decreased margin requirement. The pre-delivered allowances or electricity

[5] http://www.nasdaqomx.com/digitalAssets/98/98491_nasdaq-clearing-as-a-counterparty-april-2015.pdf

certificates are all held on Nasdaq Clearings' own accounts. The accounts are reconciled daily and there is no storage cost at the Registries.

The delivery settlement arrangements at Nasdaq Clearing are continuously evaluated in order to provide the best possible delivery solution for Nasdaq Clearing and its participants.

Principle 12: Exchange-of-value settlement systems

If an FMI settles transactions that involve the settlement of two linked obligations (for example, securities or foreign exchange transactions), it should eliminate principal risk by conditioning the final settlement of one obligation upon the final settlement of the other.

The following sections describe the delivery versus payment mechanism implemented for Financial and Commodities respectively. A supporting Physical Delivery Policy is written, particularly with regard to DvP, to ensure that the delivery is at all times processed in accordance with EMIR.

For Financial, deliveries in the Nordic CSDs are always affected in accordance with the principle of DvP (i.e. the settlement obligations payment and delivery are linked together and finalized simultaneously) and the CSDs guarantee that the DvP instructions shall be performed accordingly. The DvP mechanism implies that if deliveries are late no cash is withdrawn, and both the delivering and the paying counterparty will pay an overdue delivery margin to Nasdaq Clearing until delivery is finalized.

The quantities delivered are dependent on the netting process. How the trade registrations are netted depends on the instrument, the account and the contract.

For Commodities, the contracts are registered as DvP transactions in the clearing system, however due to the market structure for the aforementioned contracts, most notably how the Registries function, a DvP settlement mechanism is not technically possible to achieve and instead the cash settlement is performed in the CMS. In order to limit the principal risk, Nasdaq Clearing issues a margin requirement (equal to the contract value) on the final trading day and Nasdaq Clearing receives the collateral on D+1.

The quantities delivered are dependent on the netting process and the derivatives contracts are always netted.

Principle 13: Participant-default rules and procedures

An FMI should have effective and clearly defined rules and procedures to manage a participant default. These rules and procedures should be designed to ensure that the FMI can take timely action to contain losses and liquidity pressures and continue to meet its obligations.

Nasdaq Clearing has default rules and procedures that enable it to continue to meet its obligations in the event of a participant default and to address the replenishment of resources following a default. The R&R clearly states what constitutes a default and the procedures available to Nasdaq Clearing in the event of a default. Nasdaq Clearing has wide discretion as to the actions it may take in the event of a default by a member, with any such discretion being exercised by the Clearing Default Committee.

The Default Policy approved by the Board, and the operational procedures and arrangement in relation to this outline the management of transactions in the different stages of the default process, including the role and obligations of the Clearing Default Committee and non-defaulting members.

In respect of a defaulting participant's customer transactions, Nasdaq Clearing may transfer some or all open positions, pending settlement and collateral provided for such positions to another participant in accordance with the R&R. Should such transfer not be possible Nasdaq Clearing will close out the open positions of the customer. The participant's proprietary positions will be forced closed out in case of a member default.

The order in which the financial resources can be utilized is described in the default rules and on the website.[6] The collateral structure and the liquidity facilities available to Nasdaq Clearing in a pressured liquidity situation provide Nasdaq Clearing with prompt access to liquidity resources (both from the participants in regards of margin, default fund contributions and the assessment power and also Nasdaq Clearing's own capital, outlined in the waterfall). Under the default rules, Nasdaq Clearing is entitled to realize the default fund contributions, including the replenishment, without requiring additional consent from participants. The default rules also stipulate that any realized default fund contributions shall be replenished by new contributions by each non-defaulting default fund participant and Nasdaq Clearing so that the fund requirement is fulfilled within ten (10) business days following a replenishment request. Replenishment refers to the participant's obligation to provide new (pre-funded) default fund contributions to restore the size of the fund in the event the clearing house has had to use any contributions to the default fund.

Instructions to the Clearing Default Committee state that it shall convene when a

[6] http://www.nasdaqomx.com/europeanclearing/risk-management/default-management

default event has occurred or if a default event is likely to occur. The Clearing Default Committee shall be the single decision making authority for all decisions concerning default situations and close-out handling. The Chief Risk Officer of Nasdaq Clearing is the Chairman of the Clearing Default Committee and has power of veto along with the CEO of Nasdaq Clearing in all decision making in the Clearing Default Committee. The mandate and decision making process for the Clearing Default Committee is outlined by the Board in the policy Instruction to the Clearing Default Committee. The overall guideline for how the Clearing Default Committee shall act in case of a default event is documented in the Default Policy, an appendix to the Instruction to the Default Committee. In addition to the policy documents, detailed process and strategy documents exists for each asset class on how to manage the close out process in a default.

Nasdaq Clearing is well prepared to implement its default rules and procedures, including any appropriate discretionary procedures provided for in its rules. The default rules in combination with a robust and pre-defined default management process ensure that Nasdaq Clearing can continue to meet its obligation in the event of a participant default. Nasdaq Clearing's default management process is well documented and includes a transparent default organization with clear mandate and the involvement of participants to secure efficient handling of a default. Product specific default fire drills are conducted on a minimum on an annual basis. For fixed income asset class, default fire drills are conducted semi-annually.

Nasdaq Clearing publicly discloses key aspects of its default rules and procedures. The key aspects of the default structure are made available through the respective R&R, the default rules[7], and through default fund policy papers and the information publicly available on the website[8]. The R&Rs state under which circumstances actions may be taken, i.e. when a default is declared. The default rules further stipulate Nasdaq Clearing's rights to take actions and in what order such actions should be taken. They also include rights for non-defaulting participants to have their claim against a defaulting participant assigned to them and rights to exit the default fund and thereby have a limited exposure towards Nasdaq Clearing. The General Terms for Custody Account[9] forms an integral part of the default structure and discloses Nasdaq Clearing's right to appropriate contributed assets.

Nasdaq Clearing involves its participants and other stakeholders in the testing and review of the FMI's default procedures, including any close-out procedures. Such testing and review is conducted at least annually or following material changes to the rules and procedures to ensure that they are practical and effective. The default management process is tailored for each asset class, driven by the specific market

[7] Nasdaq FIN R&R Appendix 16, Nasdaq COM R&R Appendix 9

[8] http://www.nasdaqomx.com/europeanclearing/nordicclearingtoday/riskanddefaultmanagement/defaultfund/proceduresagreementspolicypapers/ and http://www.nasdaqomx.com/europeanclearing/risk-management/default-management

[9] http://www.nasdaqomx.com/europeanclearing/nordicclearingtoday/riskanddefaultmanagement/defaultfund/proceduresagreementspolicypapers/

characteristic and the product liquidity. This means that Nasdaq Clearing has different arrangement in place for Equity, Fixed Income and Commodities. Default strategy documentations are in place for each specific product class. Default management fire drills are conducted on a minimum on an annual basis (semi-annually for fixed income). The test is conducted according to the product specific guidelines for default management fire drills. The scope of the fire drill will be set by Risk Management and the market participants in beforehand of the fire drill and different scenarios will be tested in each fire drill (inter alia member default, client default, different type of portfolios, etc.). The result of fire drills are documented in a final report and presented to the Clearing Risk Committee, the Member Risk Committee and included in the Board risk report.

Principle 14: Segregation and portability

A CCP should have rules and procedures that enable the segregation and portability of positions of a participant's customers and the collateral provided to the CCP with respect to those positions.

Nasdaq Clearing's rules and procedures enables segregation and portability on client by client level for certain categories of members and members' customers (i.e. so called Direct Pledging Customers, customers with Individual Client Segregated Accounts (ICA) and Clearing Clients). This arrangement offers a high level of protection and a high likelihood of portability for positions and collateral. For members/customers that have chosen other account types than the aforementioned, Nasdaq Clearing offers segregation and portability at client/house level.

With respect to segregation arrangements, Nasdaq Clearing offers a range of account types, both individual and omnibus, to its members and customers with varying degrees of separate identification and treatment.

Independent of which account type the customer has chosen, the clearing system always keeps separate the positions and collateral of participants' customers from the positions and collateral of the participant. Nasdaq Clearing provides a separate account type for participants (i.e. House Accounts) and it is clear from the R&Rs that this account type may only be used by the participant itself and that it is fully segregated from the accounts of its customers.

In addition to the protection of a participant's customer's positions and related collateral from the default or insolvency of the participant, Nasdaq Clearing also offers protection of customer's positions and collateral against default of fellow customers.

The portability arrangements are designed to facilitate a transfer of a customer's positions and collateral from a defaulting participant to another clearing participant. To some extent the likelihood of portability is dependent on the account type the

respective customer has chosen.

With respect to the legal framework, EMIR provides for requirements and support as to, inter alia, the segregation and portability of client positions and assets (collateral) in the event of a clearing member's default. EMIR has direct effect in the member states of the European Union, including Sweden. In DS 2012:39 the Swedish Ministry of Finance has concluded that EMIR and the structures prescribed therein, including segregation and portability, will be enforceable in Sweden without the need for legislative changes.

Nasdaq Clearing's arrangements to protect and transfer the positions and collateral of a participant's customers have been developed to provide legal protection for the customers of participants in accordance and compliance with the requirements set out in the PFMIs as well as EMIR.

In addition, in developing the mechanics for portability Nasdaq Clearing obtained external legal advice to ensure that the regulatory requirements are met as well as ensure enforceability in the relevant jurisdictions. The relevant jurisdictions are the jurisdictions where the collateral and positions are held as well as the jurisdiction which law will apply in connection with the default of a participant.

The arrangements have been calibrated with the ISDA/FOA European Client Clearing Addendum aimed at providing a standardized solution consistent with international best practice.

If the arrangements are provided to members outside of the EEA or a different jurisdiction's legislation is determined to apply in the event of insolvency of a participant, Nasdaq Clearing has a process for verifying the enforceability of the arrangement in relation to such foreign legislation (as described further under Principle 1).

Nasdaq Clearing has an account structure with a range of account types. Please see below for short descriptions of the different account types. Some account types are common for Nasdaq Financial and Nasdaq Commodities, and others are only used within one of the markets. These differences are noted below. Following the list is a description of the level of segregation.

1. House Account (Nasdaq Financial and Nasdaq Commodities): House accounts for clearing members' own positions. Netting of positions within the House Account is possible.

2. Omnibus Account (Nasdaq Financial and Nasdaq Commodities): Several customers per account, netting of customer positions within the Omnibus Account is possible (however subject to the prohibition of netting between the Omnibus Account and any connected Single-client Account, please see below). There is no legal relationship between customers and Nasdaq Clearing.

3. Single-client Account (Nasdaq Financial): The Single-client Account is regarded as a sub-account of an Omnibus Account. One customer per

account, no netting of positions with any other account (including the Omnibus Account to which the Single-client Account is a sub-account). The Single-client Account is normally used by NCMs. There is no legal relationship between the customer and Nasdaq Clearing.

4. Indirect Pledge Account - IDP (Nasdaq Financial): One customer per account, no netting of positions with any other account. The client has a direct legal relationship with Nasdaq Clearing. The clearing member administering the Indirect Pledge Account posts collateral to Nasdaq Clearing on behalf of the customer (Indirect Pledging Customer).

5. Individual Client Segregated Account (Nasdaq Financial and Nasdaq Commodities): One customer per account, no netting of positions with any other account. There is no legal relationship between the customer and Nasdaq Clearing and the clearing member posts collateral directly to Nasdaq Clearing.

6. Clearing Clients (Nasdaq Commodities): One customer per account, no netting of positions with any other account. The customer has a direct legal relationship with Nasdaq Clearing and the customer posts collateral directly to Nasdaq Clearing without passing through the clearing member's books (i.e. books of the clearing member who is representing the Clearing Client).

7. Direct Pledge Account (Nasdaq Financial): One customer per account, no netting of positions with any other account. The customer (a Direct Pledging Customer) has a direct legal relationship with Nasdaq Clearing and posts collateral directly to Nasdaq Clearing, without passing through the clearing member's books.

It should be noted that accounts can have sub-accounts set up in the clearing system. If the clearing members so wish, Nasdaq Clearing can set up a number of sub-accounts, e.g. one for each customer. But this is only for information purposes and the internal use of the participant. The sub-account and the "main account" will be regarded and managed as one account and hence follow the segregation requirements applicable for the main account.

In all account types, positions are always segregated between the participant and its customers (i.e. its customers, Direct Pledging Customers, Indirect Pledging Customers and Clearing Clients), at a minimum. There are no accounts that hold a mix of positions from participants and customers. Further, there are no accounts above that hold any positions of the clearing house.

With regard to segregation of collateral, this is fully achieved for account types 5, 6 and 7. For Clearing Clients and Direct Pledging Customers (6 and 7 above), the customer has a direct legal relationship with Nasdaq Clearing and posts collateral directly to the clearing house. Collateral is held on accounts with an individual customer identifier and is never mixed with the collateral of other customers, the participant, or the clearing house. For customers with Individual Client Segregated

Accounts (5 above), collateral is posted to the participant, rather than directly to the clearing house, but is held on individually segregated accounts at the clearing house, with unique customer identifiers, and is never mixed with the collateral of other customers, the participant, or the clearing house.

For account types 2, 3 and 4 above, Nasdaq Clearing offers the ability to segregate customer collateral from that of the participant. In practice, this is achieved by establishing separate collateral accounts for the participant's house business and for that of its customer(s). Specifically, in relation to the Omnibus Account and the Single-client Account the participant posts collateral to Nasdaq Clearing on an aggregate basis for the Omnibus Account (i.e. net collateral for Omnibus Account plus net collateral for the respective connected Single-client Accounts). In relation to the Indirect Pledge Account collateral is provided to the clearing house on a net basis for all Indirect Pledge Accounts the participant administers. The collateral provided by the participant with respect to these two account types are held in two separate collateral custody accounts at the clearing house.

Nasdaq Clearing does not rely on participants' records in order to ascertain customer's interests held by the clearing house. For customers in omnibus accounts, individual customer interest is only held at participant level and is not known by Nasdaq Clearing (but is not required by the clearing house either).

For customers with account types 5, 6 or 7, positions and margin requirements are calculated for each individual customer account. Customer margin is collected on a gross basis, i.e. customer by customer. Netting is only performed within a customer account. Collateral may only be used to cover losses associated with the default of the customer in question, so customer collateral is not exposed to "fellow-customer risk". Accordingly, account types 5, 6 and 7 fulfill the segregation requirements in Article 39.3 of EMIR, i.e. individual client segregation.

For customers with account types 3 and 4 (Single-client Account and Indirect Pledge Account), each customer has individual accounts and positions and margin requirements are calculated for each customer account. Customer margin is collected on a gross basis, i.e. customer by customer. Netting is only performed within a customer account. The difference compared to account types 5, 6 and 7 is that Nasdaq Clearing will aggregate the margin figures for all accounts under the participant (types 2, 3 and 4 above – the participant's house account is not included in this aggregation) and collateral is held on a single custody account. But again, netting is only performed within a customer account, not between customer accounts.

In case of a default of an Indirect Pledging Customer, with account type 4 (Indirect Pledge Account), Nasdaq Clearing has the right to use any collateral held on the account for the defaulting customer, the collateral held to cover the positions of the participant, and also collateral held to cover positions of other Indirect Pledging Customers of the same clearing member, but no collateral held to cover positions of any other customer. Customer collateral cannot be used to cover a shortfall resulting from the participant's default either. So the customer in an Indirect Pledge Account

is not protected from "fellow-Indirect Pledging Customer risk".

For customers that use Omnibus Accounts (account type 2), Nasdaq Clearing does not generally have information on the customers in this account. Netting of margin requirements is performed within the omnibus account, i.e. between customers in the account, subject to the prohibition of netting with any connected Single-client Account (however, please note that there is no netting of positions on the Omnibus Account). Margin is thus obtained on an aggregate net basis for the Omnibus Account and the Single-client Account, but no netting is done between different Omnibus Accounts. Customers in an Omnibus Account, including those customers that have a Single-client Account within the Omnibus Account, may be exposed to "fellow-customer risk", as collateral posted can be used by Nasdaq Clearing to cover losses on the account, irrespective of which customer has caused the loss.

Accordingly, account types 2, 3 and 4 fulfill the segregation requirements in Article 39.2 of EMIR, i.e. omnibus client segregation.

Nasdaq Clearing has arrangements in place to enable porting of a customer's positions and collateral in the event of a participant's default. Porting is possible for all different account types even though the likelihood of porting for Direct Pledging Customers, Clearing Clients and customers having an Individual Client Segregated Account is slightly higher as such porting is only subject to the customer's and the back-up clearing member's consent.

For customers in an Omnibus Account or in an Indirect Pledge Account, portability can be achieved if the customers agree on the same back up participant and if such back up participant is willing to accept all positions and collateral belonging to the Omnibus Account and, with respect to the Indirect Pledging Account, all positions and collateral belonging to all Indirect Pledging Accounts administered by the defaulting participant.

In all cases above, portability is dependent on the customer having a backup participant on standby or the customer being able to find a back-up participant that is willing to receive the positions and collateral of the customer.

The R&Rs include provisions regarding the porting of participants' customers' positions and collateral to a back-up participant. The R&Rs specify that Nasdaq Clearing shall in the first instance attempt to port the customer's positions and collateral to another participant, rather than forcibly settling the customer's positions.

It is the responsibility of the customer to initiate the porting of positions and collateral to a back-up participant. It is up to the customer to find a back-up participant, if the customer hasn't already a back-up participant on stand-by. When the customer has requested the clearing house to initiate the porting the clearing house is required to take certain actions to start the porting. The process for this is detailed in the R&Rs. However, it is never the responsibility of Nasdaq Clearing to find a back-up participant or obtain the consent of the back-up participant.

Nasdaq Clearing has actual experience from performing the transfer of customer

positions and collateral from a defaulting participant to an alternative participant.

Nasdaq Clearing's segregation and portability arrangements are disclosed in its R&Rs. In addition, segregation and portability arrangements are described in the brochure "Nasdaq as a counterparty" which can be found on the website.

A participant's customer can establish whether its collateral is protected on an individual or omnibus basis through the type of account it has chosen and the type of agreement it has signed, in addition to asking its clearing participant to explain the level of segregation is being provided.

Customers that have not signed specific agreements with Nasdaq Clearing do not have a legal relationship with Nasdaq Clearing and must rely on the information provided by the participant to determine what level of protection they have. Provided the customer has information about the type of account being used, the customer can refer to the Nasdaq Clearing website to read more about the level of protection that is provided for each account type.

The risks, costs and uncertainties associated with Nasdaq Clearing's segregation and portability arrangements are identified in an "Investor Risk Document" published on Nasdaq Clearing's website.[10]

Principle 15: General business risk

An FMI should identify, monitor, and manage its general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that it can continue operations and services as a going concern if those losses materialise. Further, liquid net assets should at all times be sufficient to ensure a recovery or orderly wind-down of critical operations and services.

Nasdaq Clearing has an overall Enterprise Risk Management ("**ERM**") framework, which involves identifying and assessing all risks in terms of probability and potential impact, as well as deciding on action plans to mitigate the risks. Scenarios considered posing a risk to the clearing house ´s critical operations and services are to be identified through the RSA process. This is done on a yearly basis as a minimum, but also in connection to major changes or whenever deemed necessary. Normally a large review is done at least twice a year. Significant risks should always be added to this process (whenever identified) and well documented. Through this work-shop based process involving a large number of people from all relevant departments (generally department heads and senior staff), risks are identified, discussed and allocated a mitigation plan. These are then monitored by the Enterprise Risk Manager and by the Group Risk Management department.

The RSA framework consists of the following:

[10] http://www.nasdaqomx.com/europeanclearing/accounts

- Identify and document essential risks
- Assess risks by evaluating impact and probability
- Decide on mitigating strategy and assign responsibilities
- Assess/document existing controls and decide on due dates for actions
- Manage and control
- Review

In addition to this, the quarterly Local Risk Management Forum is designed to take all risks into consideration and when deemed critical escalate to the Board. In this forum major changes to products and services are discussed as well as existing operations and general business risks. Also in the capital calculation, different scenarios are also defined in relation to the business risk, which are assessed which impact such scenarios could give rise to and whether they could jeopardize Nasdaq Clearing´s ability to perform its critical services.

Moreover, Nasdaq Clearing has established BCPs, in which scenarios are identified in relation to critical processes / functions (e.g. disturbances / close down of IT systems) which potentially could prevent Nasdaq Clearing to carry out its services. For the defined scenarios, mitigating actions have been set up in the BCP.

Nasdaq Clearing has a RRP that has been approved by the Board of Directors (23 September, 2015). The RRP describes the Recovery process for the clearing house. This includes stress scenarios where the "business as usual" procedures are not sufficient to cover losses encountered by the clearing house. The Recovery procedure also includes early warnings and triggers, defining when the clearing house should consider enter into Recovery and the decision making process in these events. Further, the RRP sets out proposed Recovery tools that can be used to restore Nasdaq Clearing in such a way that it can continue to perform its responsibilities as a clearing house. Orderly wind-down of the clearing house is also covered in the final section of the RRP. A separate Resolution plan is to be maintained by a Resolution Authority (to be appointed). The RRP will be reviewed on an annual basis or more often if deemed necessary due to, inter alia, major changes in recommendations and/or regulations or the operations of Nasdaq Clearing.

Nasdaq Clearing will ensure it holds sufficient capital at all times to cover for general business risk and the potential losses from an orderly wind-down. The capital is fully funded by shareholders' equity. According to Nasdaq Clearing´s investment policy the capital shall be invested in highly liquid securities in SEK only. The method for assessing the quality and liquidity of the net assets is fully integrated in Nasdaq Clearing´s other investment operations i.e. an ongoing monitoring of the credit quality of the investments and the annual review of the investment policy. These funds are held in addition to the Waterfall and are consequently held outside the resources of the Waterfall.

In addition to the regulatory capital, Nasdaq Clearing holds a buffer in non-

regulatory tangible equity equal to 33% of regulatory capital. In the event that the buffer (or any additional tangible equity) is not sufficient to meet additional equity requirements, the plan entails requesting further capital from Nasdaq Clearing's parent company. As Nasdaq Clearing is owned by a single entity, this process can be achieved within a very short timeframe, if needed.

The plan for increasing the regulatory capital is set out in the Regulatory Capital Policy and reviewed and updated if deemed necessary by the Board on an annual basis.

Principle 16: Custody and investment risks

An FMI should safeguard its own and its participants' assets and minimise the risk of loss on and delay in access to these assets. An FMI's investments should be in instruments with minimal credit, market, and liquidity risks.

The majority of assets that are used by Nasdaq Clearing to support its regulatory capital or that have been provided by members to secure their obligations to Nasdaq Clearing are all held with CSDs in Nasdaq Clearing's own name (own account or nominee account). This ensures a limited exposure towards a single custodian and also a quick access to the securities if needed.

To mitigate the custody risk in relation to member's contributions to the default fund, or posted collateral, all securities held with CSD's are held on segregated nominee accounts and can never be co-mingled with the CSD's own assets.

In those cases where it is not possible for Nasdaq Clearing to hold assets directly with a CSD, e g Nasdaq Clearing does not have direct access to the CSD or the local security settlement system, Nasdaq Clearing will hold the assets with a custodian institution.

A custodian institution must fulfill Nasdaq Clearing´s requirements of minimum restricted equity capital and minimum rating in order to be eligible as a custodian institution. To become a custodian institution the institution must be approved by the Clearing Risk Committee. The Clearing Risk Committee is presented with an analysis where the custodian institution is assessed. The assessment is based on a due diligence questionnaire, due diligence into its financial requirements, credit rating, supervisory authority, organization, ownership structure and legal analysis.

Custodian institutions are monitored by Nasdaq Clearing, with specific regards to the custodian institution´s rating and financial requirements.

Nasdaq Clearing measures continuously the exposure towards custodian institutions. Moreover, the entities which have multiple roles with Nasdaq Clearing are monitored and the risks in terms of custody service and liquidity provider, is measured on a daily basis The total risk towards entities with multiple roles is reported quarterly to the Board of Directors.

Assets that are used by Nasdaq Clearing to support its regulatory capital or that have been provided by members to secure their obligations to Nasdaq Clearing are all secured by or are claims on high quality obligors as stipulated in Nasdaq Clearing's Investment Policy. The credit quality is ensured by strict rating requirements on eligible investments.

The investment policy is processed by the Clearing Risk Committee and approved by the Board which ensures that it is aligned with Nasdaq Clearing's overall risk management strategy.

Nasdaq Clearing has limits on how large the exposure towards an individual counterparty or towards a type of counterparty may be. The size of the limit is determined by the counterparty's credit rating and investment type. All investments except exposures towards AAA-rated government bonds are subject to limits, controlled by Treasury Risk Management on a daily basis. Nasdaq Clearing does not invest in participants' own securities or those of its affiliates.

All Nasdaq Clearing's investments are either highly liquid securities and/or have a short term maturity which ensures a quick liquidation. Nasdaq Clearing invests in assets with a maximum average maturity of two (2) years. This limitation on the maturity risk in the portfolio ensures that no significant adverse price effect can arise in the portfolio in the event a defaulting party has long positions in fixed income products. Furthermore, due to the limitations in its investment policy Nasdaq Clearing cannot invest in other underlying instruments to the derivative contracts cleared by Nasdaq Clearing, or invest in securities issued by any participants (or its affiliates), which ensures that Nasdaq Clearing's investments are exposed to little, if any, adverse price effects.

Nasdaq Clearing discloses a summary of its investment policy on its website[11].

Principle 17: Operational risk

An FMI should identify the plausible sources of operational risk, both internal and external, and mitigate their impact through the use of appropriate systems, policies, procedures, and controls. Systems should be designed to ensure a high degree of security and operational reliability and should have adequate, scalable capacity. Business continuity management should aim for timely recovery of operations and fulfilment of the FMI's obligations, including in the event of a wide-scale or major disruption.

Operational risks are identified, monitored and managed through the RSA procedure. This is carried out as an integral part of an overall ERM approach in alignment with the COSO ERM Framework which involves identifying and assessing

[11] http://www.nasdaqomx.com/europeanclearing/risk-management/investment-policy

all risks in terms of probability and potential impact, as well as deciding on action plans to mitigate the risks. The ERM approach covers all types of risks; i.e. strategic-, commercial-, operational- and financial risks (including counterparty related risks). The RSA is conducted at least annually on operational and legal entity level and the result is regularly updated, planned actions followed up, and subsequently reviewed by management.

The sources of operational risks are the risk events which have been defined by Nasdaq Global Risk Management in the template document used to create the clearing house's BCPs. The risk events are: Ordinary office premises become inaccessible, Outage in the regular power supply, Technical breakdown of the public (or internal) telephone network, Disturbance in telecommunication services and primary telecommunication links are down, Communication over Internet unavailable or extremely unstable, Business critical system unavailable due to technical disturbances, and 40% of total staff unable to perform work for 2-3 weeks.

On an annual basis, Nasdaq Clearing identifies a list of positions that are considered to be risk takers in accordance with Nasdaq Clearing's Remuneration Policy. These positions/names are reviewed and approved by the Board. Nasdaq Clearing defers variable remuneration for these risk takers in accordance with relevant laws and regulation and the remuneration policy. Nasdaq uses compensation programs like the Corporate Incentive Program to ensure that merit and equity programs are tied to performance. The performance appraisal process includes two annual opportunities where employees and managers meet to evaluate performance against the corporate goals and personal goals, at mid-year and year-end.

Fraud prevention is embedded in the corporate policy framework, i.e. no specific fraud prevention policy exists. Fraud prevention is addressed from different angles in Ethics & Compliance-, Information Security-, Accounting-, Finance-, Legal Review- and SOX Compliance Policies.

Nasdaq Clearing has implemented a Change Management Policy to ensure control over the changes that are made in its environments, minimize risks and prevent errors, and to assure that the right people are informed about the changes and have formally approved them. Changes are implemented using a Product Development Life Cycle (PDLC) policy and process.

Nasdaq Clearing applies an ITIL based Incident Management policy and process for resolving incidents in its IT systems. The clearing house manages the business implications of Major Incidents through its own incident management organization, and the Emergency Response Team. The Emergency Response Team is responsible for taking all business related decisions and works closely together with the technical Incident Management organization to restore services back to normal operation.

The Board has adopted working procedures to execute oversight and control of information security related issues. These procedures outline reporting requirements to support the Board when assessing the risk exposure and when evaluating the adequacy of and adherence to the Information Security Policy and related standards. It also establishes critical decision points for the Board during the

annual cycle.

Operational management; the CEO, the CRO and the CTO, of the clearing house are responsible for making sure there are independent controls of operational procedures. Management is supported in its responsibilities to identify, evaluate and control risks in their respective areas, supported by the Enterprise Risk Manager and by risk- and security professionals from Nasdaq Group level.

The Internal Audit function of the parent company of Nasdaq Clearing is responsible for making independent reviews of the adequacy of operational risk controls, reporting to the Nasdaq Group Inc.'s Audit Committee. The members of the Audit Committee are appointed by the Board of Directors of Nasdaq Group Inc. Internal Audit is governed by an annually approved charter. The Internal Audit function performs continuous reviews of the adequacy of operational risk controls based on an annual audit plan.

The Internal Audit function reviews systems, operational policies, procedures and controls as well as operational risk management based on risks and in accordance with Internal Audit's annual planning. Procedures covered by SOX requirements for Nasdaq Clearing's operational and system related controls are part of both Internal Audit and External Audit annual testing.

Manual as well as automated control procedures have been built into the day-to-day clearing and settlement process to reveal any operational risk issues at an early stage. These procedures are reviewed on a continuous basis by the clearing house. All significant deviations from normal operations are registered in a system for follow-up and resolution.

Operation objectives are defined in the service agreement between Nasdaq Clearing and the IT service provider within Nasdaq. The current system uptime objective of the central clearing system is at least 99.90%, and at least 98.50% for the custody and settlement system. To achieve this, the clearing house's systems are designed to be fault tolerant and with fail over capabilities to at least one, and sometimes two, standby instances. The system uptime is measured and calculated monthly as a percentage value of the time the system was available compared to the expected time during the availability hours for the respective month. In addition, the services agreement contains quantitative service levels such as service desk response time, incident management priority levels, volumetric parameters, hours of operations and load profile parameters. Qualitative service levels include adherence to internal policies such as the Code of Ethics and the Information Security Policy.

Reports on the IT service are produced on a monthly basis. Technical operational meetings take place every second week, in which performance issues can be brought up if needed. Quarterly Service Level Review meetings are held by the outsourcing supplier. Outsourcing objectives are audited through Internal Audit procedures according to the annual audit plan.

In the service agreement the minimum capacity demands on all key systems are clearly defined. In order to make sure that these demands are met, tests are

performed where also the maximum capacity is tested. In case of a major system update or platform change, these capacity tests are also performed with simulated loads to secure that the requirements can be met.

As a baseline, the clearing systems have undergone thorough performance and capacity tests as part of the pre-production integration tests. The tests have been done on the actual hardware and software configuration that was later launched as production systems. Load tests are also executed due to architectural changes in the systems. To ensure that new hardware and network solutions comply with the requirements, benchmark tests are performed. These are typically done every 18-24 months.

Operational service level adherence, performance and capacity and other operational aspects are reported on a monthly basis and again followed up on in operational meetings and in the quarterly Service Level Review meetings. Capacity and performance is monitored closely on a daily basis. If a service level parameter is near or exceeds its stated limit, the situation is analyzed.

The clearing house has adopted Information Security Policies and Standards which are designed to maintain the confidentiality, integrity and availability of information and which applies to development, maintenance and production of systems within the clearing house as well as to outsourcing partners and third party vendors.

Detailed standards and procedures have also been established in many IT security related areas such as firewall management, Internet access, intrusion detection, password management and remote access.

The clearing house follows industry best practices with regards to policies, processes, controls and security auditing. The clearing house's datacenters are SSAE16-certified and the clearing house's Information Security professionals hold the industry relevant certifications such as CISSP, CISA, ISSAP, CISM, and GIAC.

Deviations from the Information Security Policies are handled through time-limited deviation requests. Deviation requests are divided into a tiered model of rigor of levels high, medium and low risk requiring different levels of management approval. Ultimately the deviation process is managed by the Nasdaq Information Security Risk Committee. The NISRC is co-headed by the Nasdaq CIO and the Chief Information Security Officer (CISO).

Nasdaq Clearing has established BCPs, describing the management objectives and procedures for how to achieve continuity of the business, its key operations and processes in the event of a disruption. The plan includes a strategic and operational framework to secure the clearing house's resilience to disruption, interruption or loss, in supplying its products and services. It also describes the process for how to prioritize, organize and manage the business operations to secure our service offering in case of a disruptive event or other serious situation, in order to fulfill our obligations towards customers, regulators and other stakeholders and minimize any negative consequences. This involves both a proactive planning element and reactive measures to be taken when an incident occurs.

Nasdaq Clearing's systems are designed to recover and resume business critical operations within 2 hours of a critical event, including a complete loss of the primary data center or an evacuation of the Nasdaq Clearing offices.

The clearing house's BCPs address situations where the operations could become severely disrupted. Formal incident response procedures have been developed and are tested on a regular basis and carried out with different scenarios. Scenarios of large scale disasters, typically complete outage of the primary site, are tested on a yearly basis. Failover procedures are performed in the production system and members are offered to test their connectivity to the secondary site and perform basic business queries. Verification of connectivity from the secondary site to CSDs and SwiftNet is included in the yearly testing.

The clearing house's systems are designed and tested to provide full redundancy and fail-over functionality including maintaining transaction integrity. Failover for individual components is also available. The access network allows participants to connect to either or both of the primary and secondary sites, thus being able to reduce their risk and lessen the impact of a system disturbance affecting one site. In the event of a serious system disturbance, making the primary site unable to continue operating, system operation will fail-over to the secondary site, which is located approximately 20 km from the Nasdaq main office in Stockholm.

There is a back-up site for business operations available at all time. All operational procedures can be executed from the contingency office, using separate equipment located there. Procedures for relocating the staff are tested regularly, with a full scale test every second year, and critical operation every second month.

Backup routines, partly manual, are established for all time critical activities.

The clearing house conducts quarterly reviews of its BCPs, or more often if necessary. The BCPs are approved by the board. The BCPs are also submitted to an independent review bi-annually, and the result reported to the board.

In the event that situations arise in which the clearing house could be subjected to highly significant or serious damage, the Crisis Management Team shall be summoned without delay. The Crisis Management Team is a virtual "task force" assigned to manage any type of crisis events. The Crisis Management Team coordinates activities on a Business Area and Regional level in order to secure a capacity to maintain critical functions, to minimize any damage and to reduce the time during which the organization is subjected to the crisis. Subordinated to the Crisis Management Team, one or several Emergency Response Teams may be operating to support the Crisis Management Team on the tactical level, aiming at quickly restoring normal operations. The Crisis Management Team shall maintain a high degree of readiness to handle internal and external communication. This supporting role is generally performed by Nasdaq Corporate Communications. External information shall be elevated to, and managed by, the Crisis Management Team in order to provide consistent and accurate information.

Operational risks posed by external parties such as key participants, FMIs and service

and utility providers are managed in several ways. Operational risks from participant connections are controlled by secure interfaces providing reliable and secure information. All internal communication in the platform is based on reliable messaging technologies to ensure consistent and accurate transactions within the systems. The messaging system is designed to handle both software and hardware failures without effect on the business operation. All external access to the clearing platform is done via well defined, documented, and supported APIs and protocols. The clearing house is dependent on electronic communications and ensures the integrity of messages by using reliable networks and procedures to transmit data. External applications are subjected to a certification process before being permitted to connect to the production system. The certification process is aimed at securing that connecting application behaves correctly and doesn't generate any unwanted activity, such as excessive transaction rates or erroneously formatted transactions. Connectivity is provided by approved and certified service providers that offer dedicated or VPN based communication lines. Two-factor authentication is used for access directly via Internet. Finally, information transmitted within the clearing house is protected by IT security processes and controls as outlined in the Information Security Policy.

None of the clearing house's operations are subject to external outsourcing. The clearing house has outsourced parts of the IT responsibilities to the internal Nasdaq IT services provider.

The risks posed by central banks and CSDs are issues in the settlement process, such as erroneous or delayed settlement. Risks are managed through real time monitoring of settlement flows and BCPs. Risks are mitigated through the collection of detailed statistics from which issues are identified and addressed.

Risks that the clearing house may pose to Central Banks and CSDs are managed in the BCPs. The clearing house ensures that the operational and technical requirements for connecting to Central Banks and CSDs are met. In addition, the clearing house takes part in the planning and execution of industry wide crisis exercises arranged by FSPOS, "Finansiella Sektorns Privat-Offentliga Samverkan", an organization for private-public co-operation in the financial sector.

The clearing house adheres to the business continuity planning requirements with the Central Banks and CSDs set by FSPOS, and participates in the exercises arranged by them. Issues that impact the business continuity planning are identified and changes are introduced in the documentation through regular revisions. The clearing house keeps itself informed about testing arranged by central banks and CSDs via newsletters and participation in meetings for this purpose.

Principle 18: Access and participation requirements

An FMI should have objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access.

Nasdaq Clearing has an objective, risk-based, and publicly disclosed criteria for participation, and provides fair and open access to its services. All participants are subject to the same access criteria, which are set out to maintain acceptable risk controls while ensuring that they have the least restrictive access that circumstances permit.

Nasdaq Clearing publicly discloses all rules, procedures, and criteria for participation, on its websites. Members and potential members and other participants can thereby access information about the risk, cost and requirements to participate in clearing through Nasdaq Clearing. The detailed and publically available rules in relation to membership requirements ensure non- discriminatory enforcement of the rules.

To the extent there are any participation requirements stipulated in applicable law, such requirements have been incorporated in the R&Rs and procedures. Examples of such statutory participation requirements relate to e.g. capital requirements, risk management routines and that the participant is considered as appropriate to participate in the clearing. The participation requirements included in the R&Rs are regularly reviewed and updated if deemed necessary.

Nasdaq Clearing offers the following direct participation types:

Clearing Members:

a) Direct clearing member ("**DCM**"), who may participate in clearing activities of Nasdaq Clearing on its own behalf and on behalf of clients.
b) General clearing member ("**GCM**"), who may participate in the clearing activities of Nasdaq Clearing on its own behalf, on behalf of clients and on behalf of Non Clearing Members ("**NCM**"s.

Direct client clearing:

a) Direct Pledging Customers ("**DP**") (only Nasdaq Clearing Financial) who trades through one or several trading administrator(s) and clears through a clearing administrator. The counterparty risk of Nasdaq Clearing is towards the DP customer with some joint liability with the clearing and trading administrator(s) respectively.
b) Clearing clients ("**CC**") (only Nasdaq Clearing Commodities) who may register clearing transactions in their own name and account, but only through a client representative ("**CR**") (only a clearing member can act as client representative if approved by Nasdaq Clearing).

The requirements for Nasdaq Clearing Financial participants can be found in the Nasdaq FIN R&R (GCM 2.2.1, DCM 2.2.2, and DP Customers 1.3.12).

The requirements for Nasdaq Clearing Commodities participants can be found in the Nasdaq COM R&R (3.1).

Nasdaq Clearing has a dedicated Member Service team that handles all applications from prospective members and direct clearing clients. The Member Service team reviews all applications and assesses together with the Legal Department, the Surveillance team and Clearing Risk Management whether the applicant has the necessary operational capability, meets Nasdaq Clearing's technical standards and financial requirements, and otherwise deemed to be fit and proper for the intended membership- or direct clearing client category.

Members and direct clearing clients are monitored by Clearing Risk Management and Clearing Operations, with support from the Legal Department, in order to ensure that the membership or direct clearing client requirements are fulfilled at all times.

In the default procedures of Nasdaq Clearing, the process and actions to be taken if a participant does not fulfill the participation requirements are described. The default procedures are publically available on the website. If a member no longer fulfills the membership requirements, Nasdaq Clearing may terminate the membership agreement. Such termination right is provided for in the respective R&R. Furthermore, if a member no longer fulfills the requirements stipulated in the R&Rs, and no exemption has been made by the Clearing Risk Committee for such member, the Clearing Default Committee will assemble and take a decision to temporary suspend or declare the participant into default. The Clearing Operations Department will execute the suspension in the system if requested by the Clearing Default Committee. This can be done with immediate effect.

Principle 19: Tiered participation arrangements

An FMI should identify, monitor, and manage the material risks to the FMI arising from tiered participation arrangements.

Nasdaq Clearing offers both agency and member clearing to its participants. Within these two clearing structures different types of tiered participation exists, with different liabilities and obligations between Nasdaq Clearing, the direct participant and the indirect participants. The right to gather information on indirect participants is included in the R&Rs of Nasdaq Clearing.

Nasdaq Clearing has identified the following risks from tiered participation arrangements:

1. Counterparty risk, i.e. the risk that a default of an indirect participant would spill over and lead to a default of the direct participant.
2. Settlement risk, i.e. the risk that a failure in settlement (payment or delivery) of an indirect participant will not be managed by the direct participant and hence disturb the general settlement process.

Most of the tiered participants are set up with individual accounts or sub accounts in

the clearing system. Nasdaq Clearing manages and mitigates the tiered counterparty risk by:

- calculating margins on individual account level (including sub accounts),
- define concentration limits on individual account level, and
- issue extraordinary/intraday margin calls on an individual account level.

In respect of the tiered settlement risk, Nasdaq Clearing has sufficient arrangement in place, such as liquidity resources and security lending, to mitigate the impact if a failure by an indirect participant would lead to disturbance for the direct participants.

Nasdaq Clearing has identified the following tiered participation arrangements on Nasdaq Commodities and Nasdaq Financial; (i) Non Clearing Members (NCM), (ii) Omnibus clients, (iii) Individual Client Segregated Account (ICA) clients, and (iv) Indirect Pledging Customers (IDP). In terms of NCM, ICA and IDP, the identities of these clients are known to Nasdaq Clearing. For Omnibus clients, the identities are unknown. Information regarding anonymity of clients can be found in the R&Rs of Nasdaq Clearing. Nasdaq Clearing does not request or gather credit information on a regular basis in respect of these participants, but has, according to the R&R, the right to require different information from the clearing members regarding the indirect participants.

Market information such as positions and exposures are generated and reviewed in real time through Nasdaq Clearing's systems. Hence, Nasdaq Clearing has the full capacity to analyze the market risk in real time for these indirect participants and the impact that may have on the direct participant. Limits can be set on indirect participants' portion of the exposures of direct participants and in case there is a limit breach, the indirect participants can be scrutinized in terms of their credit worthiness and the direct clearing member can be asked for its risk management procedures with regards to the relevant indirect participant.

In offering both agency and member clearing, Nasdaq Clearing has implemented an IT structure and operational procedure that provides Nasdaq Clearing and its direct participants with information and tools to manage the risk of the indirect participants. Nasdaq Clearing continuously monitors the positions and exposure of indirect participants and the tiered participants through its proprietary risk systems.

Principle 20: FMI links

An FMI that establishes a link with one or more FMIs should identify, monitor, and manage link-related risks.

Nasdaq Clearing has processes in place to evaluate both the risks associated with prospective FMI links as well as already established FMI links. Nasdaq Clearing performs a thorough analysis of a prospective linked FMI before any link is

established. For example, Nasdaq Clearing reviews the CSD arrangements in order to ensure that the DvP requirement for deliveries can be fulfilled by the CSDs. Nasdaq Clearing further verifies that liquidity can be sent into the CSDs (the settlement headroom) in a secure and efficient way by evaluating a good liquidity provider for the respective CSD.

Nasdaq Clearing also verifies that the technical requirements imposed on the CSDs in order to ensure a good and efficient CMS system for management of the deliveries are fulfilled. Such verification is made through different performance tests. All performance tests shall be successfully completed before the final implementation of the link and production use.

After the establishment of the link, Nasdaq Clearing continuously evaluates and monitors the linked FMIs and the risks associated with such links.

Nasdaq Clearing has established links with CSDs in Sweden (Euroclear Sweden), Finland (Euroclear Finland), Belgium (Euroclear Bank), Denmark (VP Securities), Norway (VPS) and Luxembourg (Clearstream Bank). All linked FMIs (i.e. CSDs) are licensed and supervised by Financial Supervisory Authorities and/or Central Banks. Also, all linked CSDs are located within the EEA, which ensures that the CSDs' activities are governed by local laws which have implemented relevant EU legislation and that the CSDs are obliged to comply with international standards and recommendations for securities settlement systems. By only establishing links with CSDs that fulfills the above, Nasdaq Clearing ensures that the links have a well-founded legal basis which provides adequate protection for the parties involved.

The relevant legal frameworks that form the legal basis for the links are local laws (which have implemented EU legislation) including international standards and participant agreements.

Principle 21: Efficiency and effectiveness

An FMI should be efficient and effective in meeting the requirements of its participants and the markets it serves.

The design of Nasdaq Clearing has been done with high attention to achieving efficiency and effectiveness in relation to inter alia margin models, cash settlement, securities settlement, account structure and technology.

Nasdaq Clearing is an international clearing house in a competitive landscape. It is of utmost importance to the clearing house to constantly keep in touch with market developments, competitors' movements and participants' views and requirements with regard to new developments and the efficiency of the clearing services offered.

With regard to participants' views, there are a number of ways in which Nasdaq Clearing organizes the collection of these. These include regular meetings with the

Securities Dealers Associations in key countries, the establishment of Clearing Councils in key locations and in some cases for specific asset classes, wider Clearing Forums and IT forums, in addition to numerous bilateral meetings with both members and customers. The organization has dedicated resources that follow market and regulatory developments.

There are goals with regard to operational effectiveness and the goals are regularly measured and analyzed. These goals include operational effectiveness and customer focus.

Nasdaq Clearing regularly reviews its efficiency and effectiveness. Metrics are gathered daily and monthly reports are analyzed by management. Annual customer surveys are also performed. In addition, input on efficiency and effectiveness is also received from i.a. Internal Audit reviews and Risk Self-Assessments which are both conducted at regular intervals.

Principle 22: Communication procedures and standards

An FMI should use, or at a minimum accommodate, relevant internationally accepted communication procedures and standards in order to facilitate efficient payment, clearing, settlement, and recording.

The clearing information is visible to members via graphical user interfaces (GUIs) and via communication protocols, the later enabling members to access the clearing information via third party applications.

The GUIs available for members are the following: Genium INET Clearing Workstation 1, Genium INET Clearing Workstation 2 and CMS Web. The communication protocols available are: FIX, FPML, OMnet API and Swift.

Clearing information is also available for members via reports, available via SFTP and through the GUIs, in CSV, Excel and PDF format.

Nasdaq Clearing is continuously working on improving the clearing functionality of the FIX protocol as the FIX standards becomes defined and implemented. Settlement instructions follows internationally accepted standards such as ISO and Swift messaging.

Principle 23: Disclosure of rules, key procedures, and market data

An FMI should have clear and comprehensive rules and procedures and should provide sufficient information to enable participants to have an accurate understanding of the risks, fees, and other material costs they incur by participating in the FMI. All relevant rules and key procedures should be publicly disclosed.

Nasdaq Clearing has developed and publicly disclosed information on the systems rules and procedures and is continuously taking steps to enhance the member's knowledge of the system. This is done through a website designated for clearing participants, including the respective R&R, the Investor Risks document, Nasdaq Clearing as a Counterparty and other various documents provide support for the participants to understand the rules, risks and procedures they face from participation. Fees and other material costs are publicly disclosed and changes are notified well in advance, if such change is not made as a discretionary decision due to extraordinary circumstances. Fees are separated into two different areas; business related fees and technical fees. The fees are specified per individual service offered and any discounts are made publicly available in the respective fee list. Nasdaq Clearing offer volume discounts on participant level, transaction level, participant type level, and account level where aggregated monthly or yearly volume is considered. These discounts apply equally for all participants. Services that are free of charge are not listed in price lists.

Nasdaq Clearing's respective R&R underpins the various stages of derivatives clearing. The R&Rs provide instructions regarding risk management policy and security policy, if and when Nasdaq Clearing assumes counterparty risks, the rights and obligations of Nasdaq Clearing and dealing with the parties involved in a default situation.

Specific information about risk management is also displayed on the Nasdaq Clearing website – this includes back test and stress test results and information on the different margin models as well as external validation reports, default management procedures, parameter and collateral lists and details of the investment policy and default fund. As well as information on risk management the website includes information regarding Nasdaq Clearing's corporate governance, strategy, BCPs, remuneration, accounts, collateral management, settlement, the clearing system and latest news. Related policies, strategies and margin models are also available.

Should a member request additional information on the systems rules, procedures, technology or operations, Nasdaq Clearing can provide specific training and education in that area.

Nasdaq Clearing has a structure for facilitating the participants understanding of the procedures and risks, and members have, in a vast majority, expressed that they are content with the information provided by Nasdaq Clearing.

The CPMI-IOSCO Quantitative Disclosure is publicly available on the website and updated quarterly as of the beginning of 2016. Nasdaq Clearing intends to meet the

disclosure requirements found in the CPMI-IOSCO disclosure framework for financial market infrastructures and other relevant regulations, now and in the future.

V. List of publicly available resources

Public information related to Nasdaq Clearing can be found on the company website www.nasdaqomx.com/transactions/posttrade/clearing/europeanclearing

From this page interested parties can navigate to detailed information about

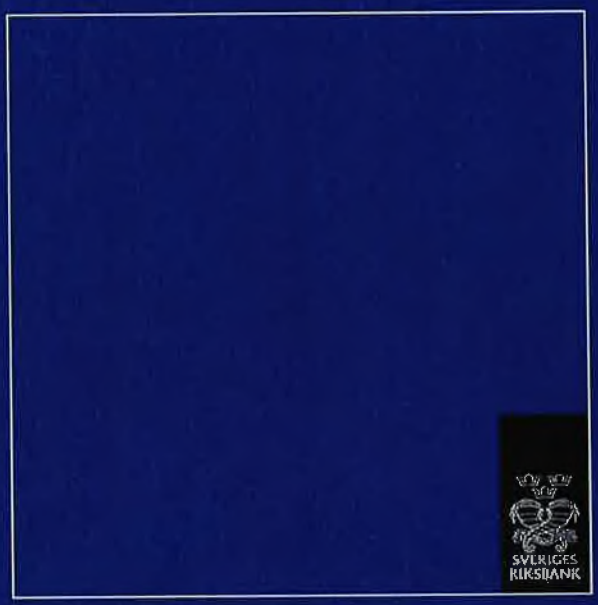
- Governance and strategy
- Products cleared
- R&Rs
- Systems
- Risk Management, including risk models, stress tests and default management
- Collateral management, settlement and TR reporting

This is not an exhaustive list.

An overview of the CCP can be found in the document titled "Nasdaq Clearing as a Counterparty" which can also be accessed from the Nasdaq Clearing front page (link above).

Rules and Regulations of Nasdaq Financial
http://business.nasdaq.com/list/Rules-and-Regulations/European-rules/common/derivatives-rules/index.html

Rules and Regulations of Nasdaq Commodities
http://business.nasdaq.com/list/Rules-and-Regulations/European-rules/Nasdaq-Commodities/index.html



Riksbankslagen
Lag (1988:1385) om Sveriges riksbank

I DESS LYDELSE FRÅN 1 JULI 2008

The Sveriges Riksbank Act
Lag (1988:1385) om Sveriges riksbank

AS FROM 1 JULY 2008

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Riksbanken har elva fullmäktige, som väljs av riksdagen. Riksbanken leds av en direktion, som utses av fullmäktige.

Riksdagen prövar om ledamöterna i fullmäktige och direktionen skall beviljas ansvarsfrihet. Om riksdagen vägrar en fullmäktig ansvarsfrihet är han därmed skild från sitt uppdrag. Fullmäktige får skilja en ledamot av direktionen från hans anställning endast om han inte längre uppfyller de krav som ställs för att han skall kunna utföra sina uppgifter eller om han gjort sig skyldig till allvarlig försummelse.

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Lag (1998:1404) om valutapolitik

1§ Regeringen har enligt 9 kap. 12 § regeringsformen ansvaret för övergripande valutapolitiska frågor.

2§ Regeringen skall besluta om det system som skall gälla för att fastställa kronans värde i förhållande till utländska valutor (växelkurssystem).

3§ Riksbanken får hos regeringen hemställa att regeringen skall fatta beslut om växelkurssystem. En sådan hemställan skall regeringen behandla skyndsamt.

4§ Regeringen skall innan den beslutar om växelkurssystem samråda med Riksbanken.

Lag (1988:1385) om Sveriges riksbank

I DESS LYDELSE DEN 1 JULI 2008

1 KAP. VERKSAMHETSMÅL OCH LEDNING

1 § Riksbanken, som enligt 9 kap. 13 § regeringsformen är rikets centralbank och en myndighet under riksdagen, får endast bedriva eller ta del i sådan verksamhet som enligt lag ankommer på Riksbanken.

2 § Riksbanken har enligt 9 kap. 13 § regeringsformen ansvaret för penningpolitiken.

Målet för Riksbankens verksamhet skall vara att upprätthålla ett fast penningvärde.

Riksbanken skall också främja ett säkert och effektivt betalningsväsende.

Riksbanken får meddela föreskrifter inom ramen för sitt ansvar för penningpolitiken. Riksbanken får även meddela föreskrifter såvitt avser verksamhet med anknytning till Riksbankens betalningssystem eller kontantförsörjningsuppdrag.

3 § Enligt 9 kap. 13 § regeringsformen har Riksbanken elva fullmäktige, som väljs av riksdagen.

Fullmäktige väljer inom sig en ordförande samt en vice ordförande.

4 § Enligt 9 kap. 13 § regeringsformen leds Riksbanken av en direktion, som utses av fullmäktige. Direktionen består av sex ledamöter som utses för en tid av fem eller sex år. Fullmäktige utser ordförande i direktionen, som samtidigt skall vara chef för Riksbanken, och minst en vice ordförande, som samtidigt skall vara vice riksbankschef.

Fullmäktige skall när det behövs bestämma i vilken inbördes ordning vice riksbankschefer skall tjänstgöra i riksbankschefens ställe när riksbankschefen har förhinder.

5 § Ärenden som inte skall avgöras av fullmäktige avgörs av direktionen. Direktionen kan besluta att ärenden får avgöras av riksbankschefen eller någon annan tjänsteman i Riksbanken.

2 KAP. FULLMÄKTIGE

1 § Ledamöter av fullmäktige får inte

1. vara statsråd,
2. vara ledamot av Riksbankens direktion,
3. vara ledamot eller suppleant i styrelsen för en bank eller ett annat företag som står under Finansinspektionens tillsyn eller
4. inneha en annan anställning eller ett annat uppdrag som gör dem olämpliga för uppdraget som fullmäktig.

Ledamöterna får inte heller vara underåriga, i konkurs, underkastade näringsförbud eller ha förvaltare enligt 11 kap. 7 § föräldrabalken.

Om en ledamot tar en sådan anställning eller ett sådant uppdrag som kan strida mot bestämmelserna i första stycket, skall riksdagen på förslag av finansutskottet entlediga ledamoten från uppdraget i fullmäktige. De anställningar eller uppdrag som en ledamot tar skall anmälas till riksdagen.

Denna bestämmelse finns i tilläggsbestämmelsen 8.7.1 till riksdagsordningen.

2 § Fullmäktiges rätt att skilja en ledamot av direktionen från hans anställning följer av 9 kap. 13 § regeringsformen.

Talan mot beslut om skiljande från anställning skall ske inom två månader från delgivning av beslutet. Riksbankschefen får föra talan vid EG-domstolen. Övriga ledamöter får väcka talan i Högsta domstolen.

Högsta domstolen får förklara ett beslut om skiljande från anställning ogiltigt.

Väcks inte talan inom den tid som föreskrivs i andra stycket har parten förlorat sin talan.

3 § Vid fullmäktiges sammanträden skall protokoll föras.

Fullmäktige är beslutföra när minst åtta av ledamöterna är närvarande. Varje ledamot som deltar i den slutliga handläggning är skyldig att delta även i avgörandet. Ingen är dock skyldig att rösta för mer än ett förslag. Ett beslut om att skilja en ledamot av direktionen från hans anställning förutsätter att minst åtta av fullmäktiges ledamöter är ense om beslutet.

4 § Fullmäktige får för Riksbankens räkning lämna remissyttranden inom sitt verksamhetsområde.

3 KAP. DIREKTIONEN

1 § Ledamöter av direktionen får inte

1. vara ledamot av riksdagen,
2. vara statsråd,
3. vara anställd i Regeringskansliet,
4. vara anställd centralt av ett politiskt parti,
5. vara ledamot eller suppleant i styrelsen för en bank eller annat företag som står under Finansinspektionens tillsyn, eller
6. inneha annan anställning eller annat uppdrag som gör dem olämpliga att vara direktionsledamot.

Ledamöterna får inte heller vara underåriga, i konkurs, underkastade näringsförbud eller ha förvaltare enligt 11 kap. 7 § föräldrabalken.

Om en ledamot tar en sådan anställning eller ett sådant uppdrag som kan strida mot bestämmelserna i första stycket skall ledamoten genast anmäla det till fullmäktige.

Under ett år efter det att en ledamots anställning har upphört får ledamoten inte utan fullmäktiges medgivande inneha sådan anställning eller sådant uppdrag som avses i första stycket 5 och 6.

2 § Ledamöter av direktionen får inte söka eller ta emot instruktioner när de fullgör penningpolitiska uppgifter.

3 § Vid direktionens sammanträden skall protokoll föras.

Direktionen är beslutför när minst hälften av ledamöterna är närvarande. Ärenden som kräver ett

skyndsamt beslut får dock avgöras av två ledamöter, om de är ense om beslutet. Varje ledamot som deltar i den slutliga handläggningen av ett ärende är skyldig att delta även i avgörandet. Ingen är dock skyldig att rösta för mer än ett förslag.

Ordföranden och vice ordföranden i fullmäktige har rätt att närvara vid direktionens sammanträden med yttranderätt men utan förslags- och rösträtt.

4 KAP. GEMENSAMMA BESTÄMMELSER FÖR FULLMÄKTIGE OCH DIREKTIONEN

1 § Uppkommer i Riksbankens verksamhet anledning att väcka en fråga om författningsändring eller någon annan åtgärd från statens sida, får fullmäktige eller direktionen inom sitt respektive ansvarsområde göra framställning i ämnet till riksdagen enligt tilläggsbestämmelsen 3.8.3 till riksdagsordningen eller till regeringen.

Innan en framställning till riksdagen eller regeringen görs skall fullmäktige och direktionen samråda med varandra.

2 § I skrivelser som fullmäktige eller direktionen avger till riksdagen eller regeringen skall det anges vilka ledamöter som deltagit i beslutet och vem som varit föredragande. Har skiljaktig mening anmälts i ärendet, skall den anges i skrivelsen eller framgå av bifogat protokollsutdrag.

3 § I viktigare frågor som har samband med betalningssystemets stabilitet eller berör Finansinspektionens tillsynsverksamhet skall Riksbanken samråda med inspektionen. Vid ett sådant samråd skall Riksbanken lämna Finansinspektionen de uppgifter som behövs.

4 § Ordföranden och vice ordföranden i fullmäktige samt ledamöterna i direktionen skall till riksdagen skriftligen anmäla

1. innehav av finansiella instrument som anges i 1 kap. 1 § lagen (1991:980) om handel med finansiella instrument,
2. innehav av andel i ett handelsbolag eller en ekonomisk förening utom bostadsrättsförening samt andel i en motsvarande utländsk juridisk person,
3. ägande, helt eller delvis, av näringsfastighet enligt 2 kap. 14 § inkomstskattelagen (1999:1229),
4. avtal av ekonomisk karaktär med tidigare arbetsgivare, såsom avtal om löne- eller pensionsförmån som lämnas under den tid som omfattas av uppdraget i fullmäktige eller anställningen i direktionen, och
5. krediter eller andra skulder samt villkoren för dessa.

Anmälan av tillgångar och avtal enligt första stycket 2-4 behöver inte göras om dessa tillsammans understiger ett marknadsvärde på 500 000 kronor. Detsamma gäller krediter och andra skulder enligt första stycket 5 om dessa tillsammans understiger 500 000 kronor.

Anmälan enligt första stycket skall göras när uppdraget eller anställningen påbörjas. Behöver enligt

andra stycket tillgångar och avtal eller krediter och andra skulder inte anmälas vid denna tidpunkt skall anmälan ske senast inom fyra veckor från det att den i andra stycket angivna gränsen uppnåtts.

Anmälan skall därefter göras av förändring som innebär att

1. tillgång som avses i första stycket 1 förvärvas,
2. det sammanlagda värdet av tillgångar och avtal enligt första stycket 2-4 eller det sammanlagda beloppet av krediter och andra skulder enligt första stycket 5 förändrats med mer än 100 000 kronor sedan anmälan senast gjordes, under förutsättning att det sammanlagda värdet eller beloppet efter förändringen inte understiger 500 000 kronor eller
3. villkorsändring sker beträffande krediter och andra skulder som har anmälts.

Anmälan av sådana förändringar som avses i fjärde stycket skall göras senast fyra veckor från det att förändringen inträffade.

5 § Bestämmelser om ersättning till ledamöter och suppleanter i fullmäktige finns i lagen (1989:185) om arvoden m.m. för uppdrag inom riksdagen, dess myndigheter och organ.

Lön och andra anställningsförmåner för ledamöter i direktionen fastställs av fullmäktige.

6 § Fullmäktige och direktionen får inte sammanträda på ett område som är ockuperat av främmande makt.

5 KAP. SEDLAR OCH MYNT

1 § Enligt 9 kap. 14 § regeringsformen har Riksbanken ensam rätt att ge ut sedlar och mynt. Fullmäktige skall bestämma utformningen av de sedlar och mynt som banken ger ut.

Sedlar och mynt som ges ut av Riksbanken är lagliga betalningsmedel.

Penningenheten i Sverige kallas krona. Kronan delas i etthundra öre.

2 § Sedlar får ges ut med valörerna tjugo, femtio, etthundra, femhundra och ettusen kronor.

Mynt får ges ut med valörerna femtio öre, en krona, fem kronor och tio kronor.

Dessutom får minnes- och jubileumsmynt med andra valörer ges ut.

3 § Riksbanken skall svara för landets försörjning med sedlar och mynt.

Verksamhet som avses i första stycket får Riksbanken bedriva i samarbete med annan.

I syfte att effektivisera kontantcirkulationen får Riksbanken utge ersättning eller ge räntefri kredit till företag som avskilt och lagrat sedlar och mynt enligt Riksbankens anvisningar.

4 § Sedlar och mynt som är skadade eller förslitna får lösas in av Riksbanken. För sedlar som blivit helt förstörda får Riksbanken betala ersättning.

Om särskilda skäl finns, får Riksbanken lösa in sedlar och mynt som upphört att vara lagliga betalningsmedel.

5 § Sedlar och mynt som förändrats eller bearbetats får inte spridas.

6 KAP. PENNINGPOLITIK OCH BETALNINGSSYSTEM

1 § Med bankinstitut förstås i denna lag bankaktiebolag, sparbanker, medlemsbanker och utländska bankföretag som med stöd av 4 kap. 1 eller 4 § lagen (2004:297) om bank- och finansieringsrörelse driver bankrörelse från filial här i landet.

Med finansinstitut förstås bankinstitut, kreditmarknadsföretag, värdepappersinstitut, Första - Fjärde AP-fonderna enligt lagen (2000:192)om allmänna pensionsfonder (AP-fonder), Sjätte AP-fonden enligt lagen (2000:193) om Sjätte AP-fonden, försäkringsföretag med svensk koncession, landshypoteksinstitutionen, Svenska skeppshypotekskassan samt utländska företag som med stöd av 4 kap. 1,3 eller 4 § lagen (2004:297) om bank- och finansieringsrörelse driver verksamhet från filial i Sverige.

2 § Riksbanken skall följa utvecklingen på valuta- och kreditmarknaderna samt vidta erforderliga penningpolitiska åtgärder.

3 § Riksbanken skall inför alla viktiga penningpolitiska beslut informera det statsråd som regeringen utser.

4 § Riksbanken skall minst två gånger om året lämna en skriftlig redogörelse till riksdagens finansutskott om penningpolitiken.

Riksbanken skall löpande offentliggöra statistiska uppgifter om valuta- och kreditförhållanden.

5 § Riksbanken får i penningpolitiskt syfte

1. bevilja kredit mot betryggande säkerhet och ta emot inlåning,
2. köpa, sälja och förmedla värdepapper, valuta samt rättigheter och skyldigheter som anknyter till sådana tillgångar,
3. ge ut egna skuldebrev.

Allmänt gällande räntevillkor för Riksbankens in- och utlåning enligt första stycket 1 skall offentliggöras.

6 § Riksbanken får i penningpolitiskt syfte uppställa kassakrav gentemot finansinstitut.

Med kassakrav avses att viss andel, högst femton procent, av finansinstitutets placeringar eller förbindelser, beräknade på det sätt Riksbanken bestämmer, skall under angiven tid motsvaras av medel som med eller utan räntegottgörelse skall innestå på räkning för institutet i Riksbanken. I den utsträckning Riksbanken bestämmer likställs med sådana medel det finansinstitutets inneliggande kassa.

För ett utländskt finansinstitut som har rätt att driva verksamhet från filial här i landet beräknas kassakravet på filialens placeringar eller förbindelser.

7 § Riksbanken får tillhandahålla system för avveckling av betalningar och på annat sätt medverka i betalningsavveckling.

För att främja betalningssystemets funktion får Riksbanken bevilja deltagarna i systemet kredit under dagen. Kredit får endast beviljas mot betryggande säkerhet. Staten behöver inte ställa säkerhet.

8 § Om det finns synnerliga skäl får Riksbanken i likviditetsstödjande syfte på särskilda vilikor bevilja kredit eller lämna garanti till sådana bankinstitut och svenska företag som står under tillsyn av Finansinspektionen.

9 § Efter anmodan av Riksbanken skall ett finansinstitut eller annat företag som står under tillsyn av Finansinspektionen till Riksbanken lämna de uppgifter som Riksbanken anser nödvändiga för att

1. följa utvecklingen på valuta- och kreditmarknaderna,
2. övervaka betalningssystemets stabilitet.

Den som för egen eller annans räkning har utfört transaktioner med utländsk motpart eller hållit tillgångar och skulder med utlandsanknytning är skyldig att till Riksbanken lämna de uppgifter som behövs som underlag för Riksbankens betalningsbalansstatistik och för statistik över utlandsställningen.

Riksbanken får utfärda närmare föreskrifter om uppgiftsskyldigheten enligt första och andra stycket.

7 KAP. VALUTAPOLITIK

1 § Riksbanken skall besluta om tillämpningen av det växelkurssystem som regeringen beslutat om.

2 § Det ankommer på Riksbanken att i valutapolitiskt syfte hålla tillgångar i utländsk valuta, utländska fordringar och guld.

3 § I valutapolitiskt syfte får Riksbanken

1. köpa, sälja och förmedla utländsk valuta, utländska statspapper, andra lätt omsättningsbara skuldebrev i utländsk valuta och guld samt rättigheter och skyldigheter som anknyter till nämnda tillgångar,
2. ge ut egna skuldebrev i utländsk valuta för de ändamål som avses i 1 § andra stycket lagen (1988:1387) om statens upplåning och skuldförvaltning.

4 § I valutapolitiskt syfte får Riksbanken ta upp utländsk kredit och kredit i utländsk valuta, bevilja kredit till annan centralbank, bevilja kredit inom ramen för verksamheten i Banken för internationell betalningsutjämning samt bevilja kredit för Europeiska unionens system för medelfristigt finansiellt stöd.

Efter medgivande av riksdagen får Riksbanken i valutapolitiskt syfte bevilja kredit till andra internationella finansorgan som Sverige är medlem i och sluta avtal med annan än centralbank om långsiktiga internationella låneåtaganden.

Riksbanken får efter medgivande av riksdagen av egna medel tillskjuta insatskapital i Internationella valutafonden.

Riksbanken får efter medgivande av riksdagen också på annat sätt än som anges i andra och tredje styckena delta i finansiering inom ramen för Internationella valutafondens verksamhet. Något medgivande behövs dock inte om finansieringen har ett valutapolitiskt syfte eller om det finns särskilda skäl.

5 § Riksbanken får förvärva de särskilda dragningsrätter som tillkommer Sverige genom deltagandet i Internationella valutafonden. Det åligger vidare Riksbanken att fullgöra de skyldigheter som följer av Sveriges deltagande i detta system.

6 § Riksbanken får verka som förbindelseorgan i förhållande till internationella finansorgan som Sverige är medlem i.

7 § Riksbanken får med eller utan räntegottgörelse ta emot insättningar i valuta eller guld från, och göra sådana insättningar hos, banker, utländska bankföretag, centralbanker, kreditmarknadsföretag, utländska kreditföretag, Banken för internationell betalningsutjämning (BIS) och Internationella återuppbyggnads- och utvecklingsbanken (IBRD). Riksbanken får även ta emot sådana insättningar från andra stater och mellanstatliga organ.

Riksbanken får även ingå avtal om skyldigheter och rättigheter som anknyter till de insättningar som anges i första stycket.

8 KAP. ÖVRIGA UPPGIFTER

1 § Riksbanken skall ta emot betalningar till och göra utbetalningar för staten.

Riksbanken får ta emot inlåning från staten.

Riksbanken får inte bevilja kredit till eller förvärva skuldförbindelse direkt från staten, annat offentligt organ eller institution inom Europeiska unionen.

Riksbanken får dock enligt 6 kap. 7 § andra stycket bevilja kredit till staten under dagen. Riksbanken får också inom ramen för övriga bestämmelser i denna lag bevilja kredit till och förvärva skuldförbindelse från finansinstitut som ägs av staten eller annat offentligt organ.

2 § Inom ramen för Riksbankens uppgifter som centralbank får Riksbanken förvärva aktier, andelar i ekonomiska föreningar och liknande rättigheter och ta på sig de förpliktelser som är förenade med dessa rättigheter.

Riksbanken får inte utan riksdagens bemyndigande göra sådant förvärv eller ingå sådan förpliktelse som avses i första stycket om det sker för att fullgöra andra uppgifter än Riksbankens uppgifter som centralbank.

2a § Riksbanken får besluta om försäljning av aktier, andelar i ekonomiska föreningar och liknande rättigheter.

Om försäljningen sker för att fullgöra andra uppgifter än Riksbankens uppgifter som centralbank krävs dock riksdagens bemyndigande i de fall försäljningen innebär en minskning av statens ägarandel i företag där staten har minst hälften av rösterna eller om försäljningen har ett betydande samhällsintresse.

3 § Riksbanken får själv eller genom bolag som ägs av banken bedriva tryckerirörelse, papperstillverkning och tillverkning av sedlar samt tillverkning av mynt, medaljer och liknande föremål.

4 § Riksbanken får förvärva och sälja fastigheter och inventarier som är avsedda för den verksamhet som banken bedriver eller har del i.

Om förvärvet eller försäljningen sker för att fullgöra andra uppgifter än Riksbankens uppgifter som centralbank krävs riksdagens bemyndigande i de fall värdet av fast egendom överstiger 20 miljoner kronor.

För att skydda en fordran får Riksbanken förvärva varje slag av egendom. Sådan egendom skall avyttras så snart det är lämpligt och senast när det kan ske utan förlust.

5 § Riksbanken får mot betalning utföra tjänster som har anknytning till bankens verksamhet som centralbank.

6 § Riksbanken får efter prövning i varje enskilt fall medge ackord samt besluta om avskrivning, nedsättning eller eftergift av fordran som banken har.

9 KAP. ADMINISTRATIVA BESTÄMMELSER

1 § Riksbanken bedriver verksamhet vid ett huvudkontor i Stockholm, där också fullmäktige och direktionen har sitt säte.

Riksbanken får dessutom bedriva verksamhet vid riksbankskontor till det antal och på de orter som Riksbanken bestämmer.

2 § Vid huvudkontoret skall det finnas en revisionsenhet samt de övriga enheter som Riksbanken beslutar.

Verksamheten vid revisionsenheten leds av fullmäktige.

Fördelningen av ärenden mellan enheterna skall framgå av den arbetsordning som avses i 4 §.

2a § Verksamhet vid revisionsenheten skall avse självständig granskning av Riksbankens interna styrning och kontroll och hur Riksbanken fullgör sina ekonomiska redovisningsskyldigheter. Revisionen skall bedrivas i enlighet med god sed för internrevision.

Riksbanken fastställer revisionsplan för sin verksamhet efter samråd med Riksrevisionen.

3 § Enligt förutsättningar som anges i 6 § punkterna 2 och 3 lagen (1994:260) om offentlig anställning får Riksbanken i särskilda fall besluta att endast svenska medborgare får vara anställda inom Riksbanken.

4 § Fullmäktige beslutar om arbetsordning i Riksbanken. Riksbanken beslutar i övrigt i enskilda fall i frågor

som rör anställda och uppdragstagare hos banken, om inte annat följer av lag eller beslut av riksdagen eller av riksdagsförvaltningen.

5 § Ledamöter i fullmäktige samt sådana anställda och uppdragstagare hos Riksbanken som Riksbanken bestämmer skall skriftligen anmäla sitt innehav av finansiella instrument som anges i 1 kap. 1 § lagen (1991:980) om handel med finansiella instrument till Riksbanken. Detsamma gäller ändringar i innehavet. Anmälningsskyldigheten enligt denna paragraf gäller dock inte för ordföranden och vice ordföranden i fullmäktige samt ledamöter i direktionen.

6 § Hos Riksbanken skall det finnas en personalansvarsnämnd med riksbankschefen som ordförande. Nämnden skall därutöver bestå av, förutom personalföreträdarna, de ledamöter som Riksbanken utser. Följande frågor skall, om de rör andra än ledamöter av direktionen, prövas av ansvarsnämnden:

1. skiljande från anställning på grund av personliga förhållanden, dock inte i fråga om provanställning,
2. disciplinansvar,
3. åtalsanmälan,
4 avstängning.

Personalansvarsnämnden är beslutför när ordföranden och minst hälften av de andra ledamöterna är närvarande.

7 § Vid planeringen och genomförandet av Riksbankens verksamhet i fred skall de krav beaktas som totalförsvaret ställer.

Vid beredskapsplaneringen skall Riksbanken samråda med Finansinspektionen i frågor om finansiella tjänster och med Kommerskollegium i frågor som har samband med utrikeshandeln.

8 § Riksbanken har rätt till kompensation för belopp, motsvarande ingående skatt enligt mervärdesskattelagen (1994:200), som hänför sig till verksamheten.

Riksbanken har dock inte rätt till kompensation om den ingående skatten omfattas av begränsningar i avdragsrätten enligt 8 kap. 9, 10, 15 eller 16 § mervärdesskattelagen.

9 § Riksbanken får ta ut avgifter för kopior, avskrifter och utskrifter av allmänna handlingar. Avgifterna skall bestämmas med ledning av de regler som gäller för myndigheter under regeringen.

10 KAP. BUDGET, VINSTDISPOSITION OCH ANSVARSFRIHET

1 § Riksbanken skall ha en grundfond som uppgår till ett tusen miljoner kronor, en reservfond som uppgår till femhundra miljoner kronor samt en dispositionsfond.

1a § I Riksbankens verksamhet skall hög effektivitet eftersträvas och god hushållning iakttas.

2 § Riksbankens räkenskapsår är kalenderår.

Varje år före utgången av december månad skall direktionen fastställa en budget för Riksbankens för-

valtningsverksamhet under det följande räkenskapsåret. Direktionen skall lämna budgeten till riksdagens finansutskott, Riksrevisionen och fullmäktige för kännedom.

3 § Riksbanken är bokföringsskyldig. Bokföringsskyldigheten skall fullgöras i enlighet med god redovisningssed.Därvid skall i tillämpliga delar Europeiska centralbankens riktlinje om den rättsliga ramen för redovisning och finansiell rapportering inom Europeiska centralbankssystemet tillämpas.

Varje år före den 15 februari skall direktionen till riksdagen, Riksrevisionen och fullmäktige avge redovisning för det föregående räkenskapsåret. Fullmäktige skall till riksdagen och Riksrevisionen lämna förslag till disposition av Riksbankens vinst. Redovisningen skall omfatta resultaträkning, balansräkning, förvaltningsberättelse och en redogörelse för penning- och valutapolitiken samt för hur Riksbanken har främjat ett säkert och effektivt betalningsväsende.

4 § Riksbankens resultaträkning och balansräkning fastställs av riksdagen, som också beslutar hur bankens vinst skall disponeras. Har reservfonden gått ned under femhundra miljoner kronor skall minst tio procent av årets vinst avsättas till reservfonden tills denna åter nått upp till detta belopp.

Riksdagen beslutar om ansvarsfrihet för fullmäktige för dess verksamhet och för direktionen för förvaltningen av Riksbanken. Ansvarsfrihet får vägras endast om det finns skäl att föra talan om ekono-

miskt ansvar mot en ledamot av fullmäktige eller direktionen eller om ledamoten bör åtalas för brottsligt förfarande i samband med sitt uppdrag eller sin anställning.

5 § Riksbanken skall årligen redovisa för riksdagen vilka åtgärder banken har vidtagit med anledning av Riksrevisionens iakttagelser.

11 KAP. AVGIFTER, VITE M.M.

1 § Ett finansinstitut som inte uppfyller uppställda kassakrav skall betala särskild avgift till staten.

Frågan om särskild avgift prövas av Riksbanken.

2 § Den särskilda avgiften enligt 1 § skall svara mot en ränta på underskottet för varje dag som uppgår till två gånger den utlåningsränta som Riksbanken tillämpar vid beviljande av kredit enligt 6 kap. 5 §.

Om det finns särskilda skäl, får avgiften sättas ned helt eller delvis.

2a § Riksbanken får meddela föreläggande eller förbud som behövs för att bestämmelsen i 5 kap. 5 § eller föreskrifter som meddelats enligt 1 kap. 2 § eller 6 kap. 9 § skall efterlevas. I beslut om föreläggande eller förbud får Riksbanken utsätta vite.

I fall som avses i 5 kap. 5 § får förbudet meddelas var och en som väsentligt har bidragit till spridningen

och som därvid varit medveten om att sedlarna eller mynten har förändrats eller bearbetats.

3 § Den som inte fullgör sin skyldighet enligt 6 kap. 9 § att lämna uppgifter eller visa upp handlingar eller som lämnar oriktig uppgift när skyldigheten fullgörs skall dömas till böter, om gärningen inte är belagd med straff i brottsbalken. Om ett vite har förelagts med stöd av 11 kap. 2a § får dock inte dömas till straff för gärning som omfattas av föreläggandet.

I ringa fall skall inte dömas till ansvar.

4 § Riksbanken skall utan hinder av vad som föreskrivs i 8 kap. 8 § sekretesslagen (1980:100) underrätta polismyndighet eller åklagarmyndighet om det i verksamhet som avses i dessa bestämmelser framkommer uppgifter som ger anledning att anta att ett brott har begåtts.

Om det finns särskilda skäl får Riksbanken underlåta att lämna sådan underrättelse.

5 § Hur talan förs mot fullmäktiges beslut om skiljande av en ledamot av direktionen från hans anställning regleras i 2 kap. 2 §.

Riksbankens beslut enligt 2a § får överklagas hos länsrätten.

Riksbankens beslut i övrigt enligt denna lag får överklagas endast i den utsträckning och i den ordning

som sägs i lagen (1989:186) om överklagande av administrativa beslut av riksdagsförvaltningen och riksdagens myndigheter.

The Instrument of Government

(UNAUTHORIZED TRANSLATION)

CHAPTER 9

ART. 12 The Government is responsible for general currency policy questions. Other provisions concerning currency policy shall be laid down in an act of law.

ART. 13 The Riksbank is the central bank of the Realm and an authority under the Riksdag. The Riksbank is responsible for monetary policy. No public authority may determine how the Riksbank shall decide in matters of monetary policy.

The Riksbank shall have a General Council comprising eleven members, who shall be elected by the Riksdag. The Riksbank shall be managed by an Executive Board appointed by the General Council.

The Riksdag considers whether the members of the General Council and the Executive Board shall be granted discharge of responsibility. If the Riksdag refuses a member of the General Council discharge of responsibility he shall be severed thereby from his appointment. The General Council may sever a member of the Executive Board from his appointment only provided he no longer fulfils the requirements laid down for performing his duties or if he has been guilty of gross negligence.

Rules concerning elections for the General Council and concerning the management and activities of the Riksbanks hall be laid down in an act of law.

ART. 14 The Riksbank alone shall have the right to issue coins and banknotes. Further rules concerning the monetary and payments system shall be laid down in an act of law.

The Currency Rate Policy Act (1998:1404)

(UNAUTHORIZED TRANSLATION)

ART. 1 The Government is responsible for general currency policy issues pursuant to Chapter 9, Article 12, of the Instrument of Government.

ART. 2 The Government shall decide on the system that is to apply for establishing the value of the krona in relation to foreign currencies (the exchange rate system).

ART. 3 The Riksbank may request the Government to make a decision on the exchange rate system. Such a request shall be swiftly dealt with by the Government.

ART. 4 The Government shall consult the Riksbank before making decisions on the exchange rate system.

The Sveriges Riksbank Act

Lag (1988:1385) om Sveriges riksbank

AS FROM 1 JULY 2008
(UNAUTHORIZED TRANSLATION)

CHAPTER 1 OBJECTIVE AND GOVERNANCE

ART. 1. The Riksbank (the Swedish central bank), which pursuant to Chapter 9, Article 13 of the Instrument of Government is the country's central bank and a public authority under the Riksdag (the Swedish Parliament), may only conduct, or participate in, such activities for which it has been authorised by Swedish law.

ART. 2. Pursuant to Chapter 9, Article 13 of the Instrument of Government, the Riksbank is responsible for monetary policy.

The objective of the Riksbank's activities shall be to maintain price stability.

The Riksbank shall also promote a safe and efficient payments system.

The Riksbank may issue regulations within the scope of its responsibility for monetary policy. The Riksbank may also issue regulations that concern activities connected with the Riksbank's payment system or cash-provision mandate.

ART. 3. Pursuant to Chapter 9, Article 13 of the Instrument of Government, the Riksbank has a General Council of eleven members, appointed by the Riksdag.

A Chairman and a Vice-Chairman are appointed by the members among themselves.

ART. **4.** Pursuant to Chapter 9, Article 13 of the Instrument of Government, the activities of the Riksbank are managed by an Executive Board, consisting of six members, who are appointed by the General Council for a period of five or six years. The General Council appoints the Chairman of the Executive Board, who at the same time shall be the Governor of the Riksbank, and at least one Vice-Chairman, who at the same time shall serve as Deputy Governor of the Riksbank.

When required, in the absence or incapacity of the Governor, the General Council shall determine in which order the Deputy Governors shall serve in his place.

ART. **5.** Matters which are not to be decided by the General Council are determined by the Executive Board. The Executive Board may decide that matters may be determined by the Governor of the Riksbank or by another official at the Riksbank.

CHAPTER 2 THE GENERAL COUNCIL

ART. **1.** A member of the General Council may not

1. be a Cabinet minister,
2. be a member of the Riksbank's Executive Board,
3. be a member or deputy of a board of directors of a bank or any other company subject to supervision by the Financial Supervisory Authority, or
4. hold any other employment or assignment which makes him unsuitable as a member of the General Council.

Nor may a member of the General Council be a minor, or a declared bankrupt, or be subject to a prohibition against carrying on a business, or have a trustee in accordance with Chapter 11, Article 7, of the Code relating to Parents, Guardians and Children.

If a member takes an employment or assignment that may come into conflict with the provisions of the first paragraph, the Riksdag shall, on a proposal by the Riksdag Committee on Finance sever the member from the assignment as member of the General Council. Any employment or assignment taken up by a member shall be reported to the Riksdag.

This provision is included in the supplementary rule 8.7.1 of the Riksdag Act.

ART. 2. The right of the General Council to sever a member of the Executive Board from his employment follows from Chapter 9, Article 13, of the Instrument of Government.

An appeal against a decision on severance from the employment shall be made within two months of the decision being served. The Governor of the Riksbank may bring a case before the European Court of Justice. Other members of the Executive Board may appeal at the Supreme Court.

The Supreme Court may annul a decision on severance from employment.

If an appeal is not made within the time prescribed in the second paragraph, the party has lost the right to appeal.

ART. 3. Minutes shall be taken at meetings of the General Council.

The General Council has a quorum when not less than eight members are present. Each member who takes part in the final handling of a matter is obliged to also take part in the decision. However, no member is obliged to vote for more than one proposal. In decisions on severing a member of the Executive Board from his employment, at least eight of the members of the General Council shall agree on the decision.

ART. 4. The General Council may submit consultation opinions on behalf of the Riksbank within its area of competence.

CHAPTER 3 THE EXECUTIVE BOARD

ART. 1. A member of the Executive Board may not

1. be a member of the Riksdag,
2. be a Cabinet minister,
3. be employed at the Government Offices,
4. be employed by the central administration of a political party,
5. be a member or deputy member of a board of directors of a bank or any other company subject to supervision by the Financial Supervisory Authority, or,
6. hold any other employment or assignment which makes him unsuitable as member of the Executive Board.

Nor may a member of the Executive Board be a minor, or a declared bankrupt, or be subject to a prohibition against carrying on a business, or have a trustee in accordance with Chapter 11, Article 7, of the Code relating to Parents, Guardians and Children.

If a member takes an employment or assignment which can come into conflict with the provisions of the first paragraph, he shall immediately notify the General Council.

For a period of one year after a member has ceased to serve on the Executive Board, he may not hold such employment or carry out such assignments as are referred to in the first paragraph, 5 and 6, without the consent of the General Council.

ART. **2.** Members of the Executive Board may neither seek nor take instructions when fulfilling their monetary policy duties.

ART. **3.** Minutes shall be taken at meetings of the Executive Board.

The Executive Board has a quorum when at least half of its members are present. However, matters that require urgent treatment may be decided upon by two members if they are in agreement. Each member who takes part in the final treatment of an item shall also take part in the decision. However, no member is obliged to vote for more than one proposal.

The Chairman and Vice-Chairman of the General Council have the right to be present at the Executive Board's meetings with the right to speak, but without the right to make proposals and vote.

CHAPTER 4 COMMON PROVISIONS FOR THE GENERAL COUNCIL AND THE EXECUTIVE BOARD

ART. 1. If the Riksbank's activities give rise to a question of statutory amendment or any other governmental measure, the General Council or the Executive Board may within their respective area of competence make a proposal concerning the matter to the Riksdag, in accordance with the supplementary rule 3.8.3 in the Riksdag Act or to the Government.

Before making a proposal to the Riksdag or the Government, the General Council and the Executive Board shall consult one another.

ART. 2. Communications issued by the General Council or the Executive Board to the Riksdag or the Government must include information detailing the members who have taken part in the decision and the person who has submitted the facts of the matter. If a dissenting vote is given in the matter, this shall be indicated in the communication or be evident from an appended extract from the minutes of the meeting.

ART. 3. In matters of major importance connected with the stability of the payments system or involving the supervisory activities of the Financial Supervisory Aut-

hority, the Riksbank shall consult with the Authority. In such a consultation, the Riksbank shall provide the Financial Supervisory Authority with the necessary information.

ART. 4. The Chairman and the Vice-Chairman of the General Council and the members of the Executive Board shall notify the Riksdag in writing

1. holdings of financial instruments as stipulated in Chapter 1, Article 1, of the Financial Instruments Trading Act (1991:980),
2. holdings of shares in a partnership or an economic association except tenant-ownership associations, and shares in similar foreign legal entities,
3. ownership, wholly or partly, of business premises pursuant to Chapter 2, Article 14, of the Income Tax Act (1999:1229),
4. agreements of a financial nature with previous employers, such as agreements on wage and pension benefits, which are paid during the period covered by the assignment on the General Council or the employment on the Executive Board, and
5. credits and other liabilities and the conditions for these.

Notification of assets and agreements according to the first paragraph 2-4 need not be made if they together do not exceed a market value of SEK 500,000. The same applies to credits and other liabilities according to the first paragraph 5 if these together are less than SEK 500,000.

Notification according to the first paragraph shall be made when the assignment or employment is

commenced. If, according to the second paragraph, notification of assets and agreements or credits and other liabilities needs not be made at this time, notification shall be made at the latest within four weeks of exceeding the threshold stipulated in the second paragraph.

Notification shall thereafter be made for every change that entails that

1. an asset as stipulated in the first paragraph 1 has been acquired,
2. the total value of assets and agreements pursuant to the first paragraph 2-4 or the total value of credits and other liabilities pursuant to the first paragraph 5 has changed by more than SEK 100,000 since notification was last made on condition that the total value or amount after the change is not less than SEK 500,000, or
3. a change in conditions has taken place with respect to credits and other liabilities that have been notified.

Notification of such changes as stipulated in the fourth paragraph shall be made no later than four weeks after the change has taken place.

ART. 5. Stipulations governing the remuneration to members and deputy members of the General Council are contained in the Act (1989:185) on Fees, etc. for Assignments within the Riksdag, its Authorities and Bodies.

Salaries and other employment benefits for members of the Executive Board are established by the General Council.

ART. 6. The General Council and the Executive Board may not convene in a region occupied by a foreign power.

CHAPTER 5 NOTES AND COINS

ART. 1. Pursuant to Chapter 9, Article 14, of the Instrument of Government, the Riksbank has the exclusive right to issue banknotes and coins. The General Council shall determine the design of the banknotes and coins which the Riksbank issues.

Banknotes and coins issued by the Riksbank are legal tender.

Sweden's monetary unit is the krona. The krona is divided into one hundred öre.

ART. 2. Banknotes may be issued in denominations of twenty, fifty, one hundred, five hundred and one thousand kronor.

Coins may be issued in denominations of fifty öre, one krona, five kronor and ten kronor.

Furthermore, commemorative and jubilee coins may be issued in other denominations.

ART. 3. The Riksbank shall be responsible for the provision of Sweden's banknotes and coins.

The Riksbank may conduct the operations referred to in Article 1 together with another party.

For the purpose of improving efficiency in cash management, the Riksbank may provide remuneration or interest-free credit to companies that have separated and stored banknotes and coins according to the Riksbank's instructions.

ART. 4. Banknotes and coins that are damaged or worn may be redeemed by the Riksbank. The Riksbank may pay compensation for banknotes that are completely spoiled.

in special circumstances, the Riksbank may redeem banknotes and coins that have ceased to be legal tender.

ART. 5. Banknotes and coins that have been altered or manipulated must not be circulated.

CHAPTER 6 MONETARY POLICY AND THE PAYMENT SYSTEM

ART. 1. Banking institutions, as referred to in this Act, are commercial banks, savings banks, co-operative banks, and foreign banking companies which, pursuant to Chapter 4, Article 1 or 4 of the act on banking and financing business (lagen (2004:297) om bank- och finansieringsrörelse), conduct banking activities from a branch registered in Sweden.

Financial institutions, as referred to in this Act, are banking institutions, credit market companies, securities institutions, the First to Fourth National Swedish Pension Funds according to the National Swedish Pension Funds Act (2000:192), the Sixth National Swedish Pension Fund according to the Sixth National Swedish Pension Fund Act (2000:193), insurance companies with Swedish licences, the rural mortgage institution, Swedish Ships' Mortgage Bank and foreign companies which, pursuant to Chapter 4, Article 1,3 or 4 of the Act on banking and financing business (lagen (2004:297) om bank- och finansieringsrörelse), conduct business activities from a branch registered in Sweden.

ART. 2. The Riksbank shall follow developments on the foreign exchange and credit markets and implement necessary monetary policy measures.

ART. 3. Prior to the Riksbank making a monetary policy decision of major importance, the minister appointed by the Government shall be informed.

ART. 4. The Riksbank shall submit a written report on monetary policy to the Riksdag Committee on Finance at least twice a year.

The Riksbank shall make public statistical data concerning foreign exchange and credit conditions on a continual basis.

ART. 5. In pursuance of its monetary policy, the Riksbank may

1. grant credit against adequate collateral and receive deposits,
2. purchase, sell and mediate securities, foreign exchange and rights and obligations linked to such assets,
3. issue its own instruments of debt.

Generally applicable interest terms for such lending and borrowing according to the first paragraph 1, shall be made public.

ART. **6.** In pursuance of its monetary policy, the Riksbank may decide to impose minimum reserve requirements on financial institutions.

Minimum reserve requirement means that a certain share, not exceeding fifteen per cent of the financial institution's investments or liabilities, calculated in a manner stipulated by the Riksbank, shall for a specific period be covered by funds of a corresponding value that, with or without interest compensation, shall be deposited in a Riksbank account on behalf of the institution concerned. To an extent determined by the Riksbank the financial institution's cash holdings, shall be equal to such funds.

For foreign financial institutions that are entitled to conduct business activities from a branch registered in Sweden, the minimum reserve requirement is calculated on the basis of the investments or liabilities of the particular branch.

ART. 7. The Riksbank may make available systems for settlement of payments and participate in other ways in the settlement of payments.

In order to promote the function of the payment system, the Riksbank may grant intraday credit to participants in the system. Credit may only be granted against adequate collateral. The State does not need to provide collateral.

ART. 8. In exceptional circumstances, the Riksbank may, with the aim of supporting liquidity, grant credits or provide guarantees on special terms to banking institutions and Swedish companies subject to the supervision of the Financial Supervisory Authority.

ART. 9. Upon the request of the Riksbank, a credit institution or another company which is subject to the supervision of the Financial Supervisory Authority shall provide the Riksbank with such information as the Riksbank considers necessary to

1. follow developments in foreign exchange and credit markets,
2. oversee the stability of the payments system.

The performer of a currency transaction with a foreign counterpart or the holder of assets and liabilities with a foreign connection, whether on behalf of another party or on own account has an obligation to provide the Riksbank with such information and to present the Riksbank with such documents concerning the transaction as are needed as a basis

for the Riksbank's balance of payments statistics and international investment position statistics.

More detailed regulations concerning the reporting obligation under the first and second paragraphs may be issued by the Riksbank.

CHAPTER 7 FOREIGN EXCHANGE POLICY

ART. 1. The Riksbank shall decide on the application of the foreign exchange rate system decided upon by the Government.

ART. 2. In pursuance of its foreign exchange policy, the Riksbank is to hold assets in foreign currencies, foreign claims and gold.

ART. 3. In pursuance of its foreign exchange policy, the Riksbank may

1. purchase, sell and mediate foreign currencies, foreign government securities, other liquid debt instruments in foreign currency and gold, as well as rights and obligations linked to such assets,
2. issue its own debt instruments denominated in foreign currency for the purposes referred to in the second paragraph of Article 1 of the Act on State Borrowings (1988:1387).

ART. 4. In pursuance of its foreign exchange policy, the Riksbank may obtain foreign credit and credit in foreign currency, grant credit to other central banks, grant credit within the framework of activities at the Bank

for International Settlements and grant credit for the European Union's Medium-Term Financial Assistance for Member States' Balances of Payments.

In pursuance of its foreign exchange policy, the Riksbank may, subject to authorization from the Riksdag, grant credit to other international financial bodies of which Sweden is a member and reach agreements with non-central-bank parties concerning long-term international borrowing arrangements.

Subject to authorization from the Riksdag, the Riksbank may make capital contributions from its own funds to the International Monetary Fund.

Subject to authorization from the Riksdag, the Riksbank may also participate, in other ways than those stated in Articles 2 and 3, in funding within the framework of the International Monetary Fund's activities. However, no authorization is necessary if the funding is for foreign exchange policy purposes or if there are special circumstances.

ART. **5.** The Riksbank may acquire the Special Drawing Rights resulting from Sweden's participation in the International Monetary Fund. In addition, it is the responsibility of the Riksbank to fulfil obligations resulting from Sweden's participation in this system.

ART. **6.** The Riksbank may serve as a liaison body in relation to international financial institutions of which Sweden is a member.

ART. 7. The Riksbank may, with or without interest compensation, receive deposits in foreign currency or gold from, and make such deposits with, banks, foreign bank companies, central banks, credit market companies, foreign credit institutions, the Bank for International Settlements and the International Bank for Reconstruction and Development. The Riksbank may also receive such deposits from other sovereign states and intergovernmental bodies.

The Riksbank may also reach agreements with respect to obligations and rights that are linked to the deposits described in the preceding paragraph.

CHAPTER 8 OTHER TASKS

ART. 1. The Riksbank shall accept payments to and make disbursements for the state.

The Riksbank may accept deposits from the state.

The Riksbank shall not extend credit to or purchase debt instruments directly from the state, another public body or an institution of the European Union.

The Riksbank may, however, pursuant to Chapter 6, Article 7 paragraph 2, grant intraday credit to the state. Subject to other provisions in this Act, the Riksbank may also grant credit to and purchase debt instruments from financial institutions owned by the state or another public body.

ART. 2. Within the framework of the Riksbank's tasks as central bank, the Riksbank may purchase equity,

shares in economic associations and similar rights and assume the obligations linked to such rights.

The Riksbank may not, without authorisation from the Riksdag make such acquisitions or enter into such obligations as referred to in the first paragraph if this is done to fulfil other tasks than the Riksbank's tasks as central bank.

ART. **2a.** The Riksbank may decide to sell equity, shares in economic associations and similar rights.

If these sales are made to fulfil other tasks than the Riksbank's tasks as central bank, however, the Riksdag must give authorisation in cases where the sale entails a reduction in the state's ownership of companies where the state has at least half of the votes or if the sale is of significant public interest.

ART. **3.** The Riksbank may, itself or through a company owned by the Riksbank, conduct printing operations, paper manufacture and the production of bank-notes as well as the manufacture of coins, medals and similar objects.

ART. **4.** The Riksbank may acquire and sell premises and equipment intended for activities which are conducted by the Riksbank or in which it takes part.

If the acquisition or sale is made to fulfil other tasks than the Riksbank's tasks as central bank, the Riksdag must give authorisation in cases where the value of property exceeds SEK 20 million.

To protect a claim, the Riksbank may acquire all types of property. Such property shall be sold as soon as is appropriate and not later than when it can be done without incurring a loss.

ART. 5. The Riksbank may conduct services, against payment, linked to its activities as a central bank.

ART. 6. The Riksbank may, following individual reviews, agree to a composition and make decisions concerning the write-off, write-down or remission of its claim.

CHAPTER 9 ADMINISTRATIVE PROVISIONS

ART. 1. The Riksbank conducts its activities at a head office in Stockholm, where the General Council and the Executive Board also have their seat.

The Riksbank may also conduct activities at branch offices, in that number and at those locations which are determined by the Riksbank.

ART. 2. The Head Office shall have an Audit Unit and other units decided by the Riksbank.

Operations of the Audit Unit are governed by the General Council.

The distribution of business between different units shall be made clear in the rules of procedure as referred to in Article 4.

ART. 2a. The activities of the Audit Unit shall concern independent examination of the Riksbank's internal governance and control and how the Riksbank meets its financial accounting obligations. The audit shall follow generally accepted principles for internal auditing.

The Riksbank shall adopt an audit plan for its activities following consultation with the Swedish National Audit Office.

ART. 3. Pursuant to the conditions contained in Article 6 (2) and (3) of the Public Employment Act (1994:260), the Riksbank may, in special circumstances, decide that only Swedish nationals may be employed by the Riksbank.

ART. 4. The General Council decides the Rules of Procedure for the Riksbank.

In addition, the Riksbank makes decisions on an individual basis in matters concerning personnel and persons appointed for specific assignments at the Riksbank, to the extent that such matters are not governed by legislation or decisions of the Riksdag or the Riksdag Administration.

ART. 5. The members of the General Council and such personnel and persons appointed for specific assignments at the Riksbank as determined by the Riksbank shall submit to the Riksbank a written report of their holdings of financial instruments and of changes in such holdings as stipulated in Chapter 1, Article 1, of the Financial Instruments Trading Act (1991:980).

The same applies to changes in such holdings. The reporting obligation according to this Article does not, however, apply to the Chairman and Vice-Chairman of the General Council and the members of the Executive Board.

ART. 6. The Riksbank shall have a Staff Disciplinary Board, chaired by the Governor of the Riksbank. In addition to personnel representatives, the other members of the Disciplinary Board shall be appointed by the Riksbank. The following matters, which concern others than members of the Executive Board, shall be decided upon by the Disciplinary Board:

1. dismissal from employment on account of personal circumstances, though not concerning probationary appointments,
2. disciplinary measures,
3. notification of prosecution,
4. suspension.

The Staff Disciplinary Board has a quorum when the chairman and at least half of the other members are present.

ART. 7. In the planning and implementation of its peacetime activities, the Riksbank must adhere to the demands made by the national defence requirements.

In defence planning, the Riksbank shall consult with the Financial Supervisory Authority on matters concerning financial services and with the National Board of Trade on matters relating to foreign trade.

ART. 8. The Riksbank has the right to compensation for amounts, corresponding to input tax in accordance with the Value Added Tax Act (mervärdesskattelagen 1994:200), which are attributable to its activities.

However, the Riksbank does not have the right to compensation if the input tax is covered by limitations in the right to deduction in accordance with Chapter 8, Articles 9, 10, 15 or 16 of the Value Added Tax Act.

ART. 9. The Riksbank may make charges for copies, duplicates and printouts of public documents. These charges shall be determined under the guidance of the regulations applying to authorities under the Government.

CHAPTER 10 BUDGET, ALLOCATION OF PROFIT AND DISCHARGE FROM LIABILITY

ART. 1. The Riksbank shall have capital in an amount of one thousand million kronor, a reserve fund of 500 million kronor and a contingency fund.

ART. 1a. The Riksbank's activities shall endeavour to attain a high level of efficiency and good economy.

ART. 2. The Riksbank's accounting year is the calendar year.

Each year before the end of December, the Executive Board shall draft a budget for the Riksbank's administrative activities during the following accounting year. The Executive Board shall submit

the budget to the Riksdag Committee on Finance and the Swedish National Audit Office as well as the General Council for information.

ART. 3. The Riksbank is required to keep accounts. This requirement shall be met in accordance with generally accepted accounting principles. In addition, the European Central Bank's guidelines on the legal framework for accounting and financial reporting within the European System of Central Banks shall be applied.

Each year, before 15 February, the Executive Board shall submit an Annual Report of the Riksbank's activities during the preceding accounting year to the Riksdag, the Swedish National Audit Office and the General Council. The General Council shall make proposals to the Riksdag and the Swedish National Audit Office on the allocation of the profit of the Riksbank. The Annual Report shall comprise a Profit and Loss Account, a Balance Sheet, a Directors' Report and an account of foreign exchange and monetary policies and on how the Riksbank has promoted a safe and efficient payments system.

ART. 4. The Riksbank's Profit and Loss Account and Balance Sheet are approved by the Riksdag, which also determines the allocation of the Riksbank's profit. If the value of the reserve fund has declined to less than SEK 500 million, at least ten per cent of the profit for the year shall be allocated to the reserve fund until it has retained a level of this amount.

The Riksdag determines whether the General Council shall be discharged from liability for its activities and the Executive Board for its management of the Riksbank. Discharge from liability may only be denied if there are reasons to make claims of financial liability against a member of the General Council or the Executive Board, or if the member should be prosecuted for criminal actions in connection with his assignment or employment.

ART. 5. The Riksbank shall annually report to the Riksdag what measures the Bank has taken in view of the Swedish National Audit Office's observations.

CHAPTER 11 FEES, PENALTIES, ETC.

ART. 1. A financial institution that does not fulfil its established minimum reserve requirement shall pay a special fee to the State.

The Riksbank rules in matters concerning such special fees.

ART. 2. The special fee pursuant to Article 1 shall correspond to the daily interest on the deficit, amounting to twice the lending rate that the Riksbank is implementing on credit granted to banking institutions in accordance with Chapter 6, Article 5. In special circumstances, the fee may be reduced totally or partly.

ART. 2a. The Riksbank may issue injunctions or prohibitions as necessary to ensure that the provision in Chapter 5,

Article 5, or regulations issued pursuant to Chapter 1, Article 2 or Chapter 6, Article 9 are observed. In decisions on injunctions or prohibitions the Riksbank may set a penalty.

In cases such as those referred to in Chapter 5, Article 5, the prohibition may be communicated to each party that has significantly contributed to the circulation and in so doing has been aware that the banknotes or coins have been altered or manipulated.

ART. 3. Any person failing to fulfil an obligation pursuant to Chapter 6, Article 9, to provide information or present documents, or who provides incorrect information when the obligation is fulfilled, shall be sentenced to a fine, unless the offence is subject to punishment under the Penal Code. If a penalty has been imposed pursuant to Chapter 11, Article 2a, however, punishment may not be exacted for actions covered by the penalty.

Minor infringements shall not be penalised.

ART. 4. The Riksbank shall, without prejudice to the stipulations laid down in Chapter 8, Article 8, and Chapter 9, Article 4, of the Secrecy Act (1980:100), notify the police or the public prosecution authority if information emerges in its activities, as referred to in these stipulations, that gives cause to assume that a crime has been committed.

In special circumstances, the Riksbank may refrain from submitting such information.

ART. 5. The procedure for appealing against a decision by the General Council to sever a member of the Executive Board from his or her appointment is regulated in Chapter 2, Article 2.

Decisions made by the Riksbank in accordance with Article 2a can be appealed to the county administrative court.

Other decisions made by the Riksbank in accordance with this Act may only be appealed to the extent and in the order stipulated in the act concerning appeals against administrative decisions made by the Riksdag Administration and the Riksdag's agencies (lagen (1989:186) om överklagande av administrativa beslut av riksdagsförvaltningen och riksdagens myndigheter).

(Note: Where the Swedish name of an act is given in brackets, no English translation is available at present.)

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