

EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (EUROPEAN MARKET INFRASTRUCTURE) (AMENDMENT ETC.) (EU EXIT) (No. 1) INSTRUMENT 2019

Powers exercised

- A. The Bank of England (“the Bank”), being the appropriate regulator within the meaning of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (“the Regulations”), with the approval of the Treasury, makes this instrument in exercise of the power conferred by regulation 3 of the Regulations:

Pre-conditions to making

- B. The Bank is the appropriate regulator for the specified EU Regulations in Part 3 of the Schedule to the Regulations.
- C. The Bank has consulted the Prudential Regulation Authority (“the PRA”) and the Financial Conduct Authority (“the FCA”) in accordance with regulation 5 of the Regulations.
- D. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

Interpretation

- E. In this instrument –
- (a) “the Act” means the European Union (Withdrawal) Act 2018;
 - (b) “exit day” has the meaning given in the Act; and
 - (c) “specified EU Regulations” has the meaning given in regulation 2(l) of the Regulations.
- F. Any reference in this instrument to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

Modifications

- G. The Bank makes the modifications contained in the Annex listed in column (2) below to the corresponding specified EU Regulation (or part thereof) listed in column (1) below.

| (1) | (2) |
|---|-----|
| Commission Delegated Regulation (EU) No 1249/2012 | A |
| Commission Delegated Regulation (EU) No 152/2013 | B |
| Commission Delegated Regulation (EU) No 153/2013 | C |
| Commission Delegated Regulation (EU) No 484/2014 | D |

Deletions

- H. The specified EU Regulation listed in Annex E is deleted.

Commencement

- I. This instrument comes into force on exit day.

Thursday 28 February: This document is near-final. The final version will be made and published close to exit day.
We expect that the made instrument will be materially similar to this version.
For more information, see: <https://www.bankofengland.co.uk/eu-withdrawal/transitioning-to-post-exit-rules-and-standards>.

Citation

J. This instrument may be cited as the Technical Standards (European Market Infrastructure) (Amendment etc.) (EU Exit) (No. 1) Instrument 2019.

By order of the Bank of England

[•] 2019

Annex A

Format of Records Maintained by CCPs

1 MODIFICATIONS TO SPECIFIED ARTICLES OF COMMISSION DELEGATED REGULATION (EU) NO 1249/2012

- 1.1 In this Annex new text is underlined and deleted text is struck through.
- 1.2 Commission Implementing Regulation (EU) No 1249/2012 of 19 December 2012 laying down implementing technical standards with regard to the format of the records to be maintained by central counterparties according to Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories, as it forms part of domestic law by virtue of section 3 of the Act, is modified as follows:

Article 2

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.~~

ANNEX

Tables of fields to be recorded as referred to in Article 1

Table 1

Records of transactions processed

| | Field | Format | Description |
|--|-------|--------|-------------|
|--|-------|--------|-------------|

Details on the original terms of the contracts cleared, to be provided to the extent they are applicable

...

| | | | |
|----|------------|--|---|
| 22 | Underlying | <i>A unique product identifier, ISIN (12 alphanumerical digits and CFI (6 alphanumerical digits). Legal Entity Identifier (LEI) (20 alphanumerical digits), interim entity identifier (20 alphanumerical digits), B= Basket, or I=Index.</i> | The instrument identification applicable to the security that is the underlying asset in a derivative contract as well as the transferable security falling within Article 4(1)(18)(c)2(1)(24)(c) of Directive <u>2004/39/EC Regulation (EU) No 600/2014</u> . |
|----|------------|--|---|

...

| | | | |
|----|--|----------------------|--|
| 24 | Inclusion of the instrument in the BankESMA register of contracts subject to the clearing obligation (in case of derivative contract) | <i>Y=Yes / N=No.</i> | |
|----|--|----------------------|--|

Table 3

Thursday 28 February: This document is near-final. The final version will be made and published close to exit day.
 We expect that the made instrument will be materially similar to this version.
 For more information, see: <https://www.bankofengland.co.uk/eu-withdrawal/transitioning-to-post-exit-rules-and-standards>.

Business records

| | Field | Format | Description |
|--|-------|--------|-------------|
|--|-------|--------|-------------|

...

| Shareholders or members that have qualifying holdings (fields to be added for each of the relevant shareholder/member) | | | |
|--|---|------------------|--|
| 17 | Written communications with competent Authorities, ESMA and the relevant members of the ESCB | <i>Documents</i> | |

Annex B

Capital Requirements for Central Counterparties

2 MODIFICATIONS TO SPECIFIED ARTICLES OF COMMISSION DELEGATED REGULATION (EU) NO 152/2013

- 2.1 In this Annex new text is underlined and deleted text is struck through.
- 2.2 Commission Delegated Regulation (EU) No 152/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on capital requirements for central counterparties as it forms part of domestic law by virtue of section 3 of the Act, is modified as follows:

Article 2

Capital requirements for winding down or restructuring

...

4. For the purposes of this Article, operational expenses shall be considered in accordance with:

(a) UK-adopted international accounting standards as defined in section 474(1) of the Companies Act 2006 ~~International Financial Reporting Standards (IFRS) adopted pursuant to Regulation (EC) No 1606/2002 or, in accordance with:~~

(b) the law of the United Kingdom (or any part of it) which immediately before exit day implemented Council Directives 78/660/EEC, 83/349/EEC and 86/635/EEC and their implementing measures, as that law has effect on exit day; or

~~(c), in accordance with~~ generally accepted accounting principles of a third country determined to be equivalent to:

(i) ~~IFRS~~ International Financial Reporting Standards by the Commission before exit day in accordance with Commission 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

(ii) UK-adopted international accounting standards as defined in section 474(1) of the Companies Act 2006 in accordance with regulations made by the Treasury after exit day under Commission Regulation (EC) No 1569/2007 or in accordance with a direction under regulation 2 of the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019;

as applicable. CCPs shall use the most recent audited information from their annual financial statement.

Article 3

Capital requirements for operational and legal risks

1. A CCP shall calculate its capital requirements for operational — including legal — risk referred to in Article 1 using either the Basic Indicator Approach or Advanced Measurement Approaches as provided in ~~Directive 2006/48/EC~~ Regulation (EU) No 575/2013 subject to the restrictions provided in paragraphs 2 to 7.

2. A CCP may use the basic indicator approach in order to calculate its capital requirements for operational risk in accordance with ~~Article 103 of Directive 2006/48/EC~~ Article 315 of Regulation (EU) No 575/2013.

...

6. A CCP may also apply to its competent authority for permission to use Advanced Measurement Approaches. The competent authority may grant the CCP the permission to use Advanced Measurement Approaches based on its own operational risk measurement systems in accordance with ~~Article 105 of Directive 2006/48/EC~~ Article 312 of Regulation (EU) No 575/2013.

...

Article 4

Capital requirements for credit risk, counterparty credit risk and market risk which are not already covered by specific financial resources as referred to in Articles 41 to 44 of Regulation (EU) No 648/2012

1. A CCP shall calculate its capital requirements referred to in Article 1 as the sum of 8 % of its risk-weighted exposure amounts for credit and counterparty credit risk and its capital requirements for market risk calculated in accordance with ~~Directives 2006/48/EC and 2006/49/EC~~ Regulation (EU) No 575/2013, subject to the restrictions provided in paragraphs 2 to 5.

2. For the calculation of capital requirements for market risk which is not already covered by specific financial resources as referred to in Articles 41 to 44 of Regulation (EU) No 648/2012, a CCP shall use the methods provided for in ~~Annexes I to IV to Directive 2006/49/EC~~ Articles 327 to 378 of Regulation (EU) No 575/2013.

3. For the calculation of the risk-weighted exposure amounts for credit risk which is not already covered by specific financial resources as referred to in Articles 41 to 44 of Regulation (EU) No 648/2012, a CCP shall apply the Standardised Approach for credit risk provided for in ~~Articles 78 to 83 of Directive 2006/48/EC~~ Articles 111 to 141 Regulation (EU) No 575/2013.

4. For the calculation of the risk-weighted exposure amounts for counterparty credit risk which is not already covered by specific financial resources as referred to in Articles 41 to 44 of Regulation (EU) No 648/2012, a CCP shall use the Mark-to-market Method provided for in ~~Annex III, part 3 to Directive 2006/48/EC~~ Article 274 Regulation (EU) No 575/2013 and the Financial Collateral Comprehensive Method applying supervisory volatility adjustments provided for in ~~Annex VIII, Part 3 to Directive 2006/48/EC~~ Articles 218 to 236 Regulation (EU) No 575/2013.

...

Article 6

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.~~

Annex C

Requirements for Central Counterparties

3 MODIFICATIONS TO SPECIFIED ARTICLES OF COMMISSION DELEGATED REGULATION (EU) NO 153/2013

- 3.1 In this Annex new text is underlined and deleted text is struck through.
- 3.2 Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on requirements for central counterparties as it forms part of domestic law by virtue of section 3 of the Act, is modified as follows:

Article 2

Information to be provided to ~~ESMA~~the Bank of England for the recognition of a CCP

An application for recognition submitted by a CCP established in a third country shall contain at least the following information:

...

~~(e) a list of the Member States in which it intends to provide services~~

...

(e) details to be included in the ~~ESMA~~Bank of England website in accordance with Article 88(1)(e) of Regulation (EU) No 648/2012;

...

(i) a breakdown of values, in prospective form if needed, cleared by the applying CCP ~~by each Union currency cleared~~ in sterling;

...

Article 4

Risk management and internal control mechanisms

...

8. A CCP's financial statement shall be prepared on an annual basis and be audited by statutory auditors or audit firms within the meaning of the law of the United Kingdom (or any part of it) which, immediately before exit day, implemented Directive 2006/43/EC of the European Parliament and of the Council, and its implementing measures, as that law has effect on exit day.

...

Article 12

General requirements

1. A CCP shall keep records in a durable medium that allows information to be provided to the competent authorities, ~~ESMA and relevant European System of Central Banks (ESCB) members~~, and in such a form and manner that the following conditions are met:

...

4. Where the records processed by the CCP contain personal data CCPs shall have regard to their obligations under Regulation (EU) No 2016/679~~Directive 95/46/EC~~ of the European Parliament and of the Council⁽⁶⁾ and Regulation (EC) No 45/2001 of the European Parliament and of the Council⁽⁷⁾.

5. Where a CCP maintains records outside the United Kingdom~~Union~~, it shall ensure that the competent authority is, ~~ESMA and the relevant members of the ESCB~~ are able to access the records to the same extent and within the same periods as if they were maintained within the United Kingdom~~Union~~.

...

Article 15

Business records

2. The records referred to in paragraph 1 shall be made each time a material change in the relevant documents occurs and shall include at least:

...

(n) written communications with competent authorities, ~~ESMA and the relevant members of the ESCB~~;

...

Article 24

Percentage

...

4. Where a CCP clears OTC derivatives that have the same risk characteristics as derivatives executed on UK regulated markets or an equivalent third country market, on the basis of an assessment of the risk factors set out in paragraph 2, the CCP may use an alternative confidence interval of at least 99 % for those contracts if the risks of OTC derivatives contracts it clears are appropriately mitigated using such confidence interval and the conditions in paragraph 2 are respected.

...

Article 26

Time horizons for the liquidation period

...

4. Where a CCP clears OTC derivatives that have the same risk characteristics as derivatives executed on UK regulated markets or an equivalent third country market, it may use a time horizon for the liquidation period different from the one specified in paragraph 1, provided that it can demonstrate to its competent authority that:

...

Article 44

Highly secured arrangements for the deposit of financial instruments

1. If a CCP is unable to deposit the financial instruments referred to in Article 45 or those posted to it as margins, default fund contributions or contributions to other financial resources, both by way of title transfer and security interest, with the operator of a securities settlement system that ensures the full protection of those instruments then such financial instruments shall be deposited with any of the following:

...

(b) an authorised credit institution as defined in Article 4(1)(1) of Regulation (EU) No 575/2013~~under Directive 2006/48/EC of the European Parliament and of the Council~~⁽⁹⁾ that ensures the full segregation and protection of those instruments, enables the CCP prompt access to the financial instruments when required and that the CCP can demonstrate has low credit risk based upon an internal assessment by the CCP. In performing such an assessment, the CCP shall employ a defined and objective methodology that shall not fully rely on external opinions and that takes into consideration the risk arising from the establishment of the issuer in a particular country;

(c) a third country financial institution that is subject to and complies with prudential rules considered by the relevant competent authorities to be at least as stringent as those laid down in Regulation (EU) No 575/2013 and those imposed in a law of the United Kingdom (or any part of it) which, immediately before exit day, implemented Directive 2013/36/EU~~Directive 2006/48/EC, and its implementing measures, as that law has effect on exit day,~~ and which has robust accounting practices, safekeeping procedures, and internal controls and that ensures the full segregation and protection of those instruments, enables the CCP prompt access to the financial instruments when required and that the CCP can demonstrate to have low credit risk based upon an internal assessment by the CCP. In performing such an assessment, the CCP shall employ a defined and objective methodology that shall not fully rely on external opinions and that takes into consideration the risk arising from the establishment of the issuer in a particular country.

...

Article 45

Highly secured arrangements maintaining cash

1. For the purposes of Article 47(4) of Regulation (EU) No 648/2012, where cash is deposited other than with a central bank then such deposit shall meet each of the following conditions:

...

(b) the deposit shall be placed with one of the following entities:

(i) an authorised credit institution as defined in Article 4(1)(1) of Regulation (EU) No 575/2013 ~~under Directive 2006/48/EC~~ that the CCP can demonstrate to have low credit risk based upon an internal assessment by the CCP. In performing such assessment the CCP shall employ a defined and objective methodology that shall not fully rely on external opinions and that takes into consideration the risk arising from the establishment of the issuer in a particular country;

(ii) a third country financial institution that is subject to and complies with prudential rules considered by the competent authorities to be at least as stringent as those laid down in Regulation (EU) No 575/2013 and those imposed in a law of the United Kingdom (or any part of it) which, immediately before exit day, implemented Directive 2013/36/EU, and its implementing measures, as that law has effect on exit day ~~Directive 2006/48/EC~~ and which has robust accounting practices, safekeeping procedures, and internal controls and that the CCP can demonstrate to have low credit risk based upon an internal based upon an internal assessment by the CCP. In performing such assessment the CCP shall employ a defined and objective methodology that shall not fully rely on external opinions and that takes into consideration the risk arising from the establishment of the issuer in a particular country.

...

Article 62

Entry into force and application

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

Point (h) Section 2 of Annex I shall apply from three years after the date of entry into force of this Regulation in respect of transactions on derivatives, as referred to in points (b) and (d) of Article 2(4) of Regulation (EU) No 1227/2011 of the European Parliament and of the Council⁽⁴⁰⁾.

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

ANNEX I

Conditions applicable to financial instruments, bank guarantees and gold considered as highly liquid collateral

SECTION 1

Financial instruments

...

For the purposes of Article 46(1) of Regulation (EU) No 648/2012, highly liquid collateral in the form of financial instruments shall be financial instruments meeting the conditions provided for in point 1 of Annex II to this Regulation or transferable securities and money-market instruments which meet each of the following conditions:

...

(g) they are not issued by:

...

(iii) an entity whose business involves providing services critical to the functioning of the CCP, unless that entity is the Bank of England~~an EEA central bank~~ or a central bank of issue of a currency in which the CCP has exposures;

...

SECTION 2

Bank guarantees

1. A commercial bank guarantee, subject to limits agreed with the competent authority, shall meet the following conditions to be accepted as collateral under Article 46(1) of Regulation (EU) No 648/2012:

...

(f) it is not issued by:

...

(ii) an entity whose business involves providing services critical to functioning of the CCP, unless that entity is the Bank of England~~an EEA central bank~~ or a central bank of issue of a currency in which the CCP has exposures;

2. A bank guarantee issued by a central bank shall meet the following conditions to be accepted as collateral under Article 46(1) of Regulation (EU) No 648/2012:

(a) it is issued by the Bank of England~~an EEA central bank~~ or a central bank of issue of a currency in which the CCP has exposures;

SECTION 3

Gold

Gold shall be allocated pure gold bullion of recognised good delivery and meet the following conditions to be accepted as collateral under Article 46(1) of Regulation (EU) No 648/2012:

...

(b) it is deposited with ~~the Bank of England~~~~an EEA central bank~~ or a central bank of issue of a currency in which the CCP has exposures that has adequate arrangements so as to safeguard clearing member or clients' ownership rights to the gold and enables the CCP prompt access to the gold when required;

(c) it is deposited with an authorised credit institution as defined in point 1 of Article 4(1) of Regulation (EU) No 575/2013~~under Directive 2006/48/EC~~ that has adequate arrangements so as to safeguard clearing member or clients' ownership rights to the gold, enables the CCP prompt access to the gold when required and the CCP can demonstrate to the competent authority that it has low credit risk based upon an adequate internal assessment by the CCP. In performing such an assessment, the CCP shall employ a defined and objective methodology that shall not fully rely on external opinions and that takes into consideration the risk arising from the establishment of the credit institution in a particular country;

(d) it is deposited with a third country credit institution that is subject to and complies with prudential rules considered by the competent authorities to be at least as stringent as those laid down in Regulation (EU) No 575/2013 and those imposed in a law of the United Kingdom (or any part of it) which, immediately before exit day, implemented Directive 2013/36/EU, and its implementing measures, as that law has effect on exit day~~Directive 2006/48/EC~~ and which has robust accounting practices, safekeeping procedures and internal controls and that has adequate arrangements so as to safeguard clearing member or clients' ownership rights to the gold, enables the CCP prompt access to the gold when required and CCP can demonstrate to the competent authority that it has low credit risk based upon an internal assessment by the CCP. In performing such an assessment, the CCP shall employ a defined and objective methodology that shall not fully rely on external opinions and that takes into consideration the risk arising from the establishment of the credit institution in a particular country.

ANNEX II

Conditions applicable to highly liquid financial instruments

1. For the purposes of Article 47(1) of Regulation (EU) No 648/2012, financial instruments can be considered highly liquid financial instruments, bearing minimal credit and market risk if they are debt instruments meeting each of the following conditions:

(a) they are issued or explicitly guaranteed by:

...

(iii) a multilateral development bank as listed under ~~Section 4.2 of Part 1 of Annex VI to Directive 2006/48/EC~~ Article 117 of Regulation (EU) No 575/2013;

Annex D

Hypothetical Capital of a Central Counterparty

4 MODIFICATIONS TO SPECIFIED ARTICLES OF COMMISSION DELEGATED REGULATION (EU) NO 484/2014

- 4.1 In this Annex new text is underlined and deleted text is struck through.
- 4.2 Commission Delegated Regulation (EU) No 484/2014 of 12 May 2014 laying down implementing technical standards with regards to the hypothetical capital of a central counterparty as it forms part of domestic law by virtue of section 3 of the Act, is modified as follows:

Article 2

Frequency, dates and uniform format of the reporting required by Articles 50c(2) and 89(5a) of Regulation (EU) No 648/2012

1. The frequency of the reporting required by Article 50c(2) of Regulation (EU) No 648/2012 and, where applicable, by the ~~third~~second subparagraph of Article 89(5a) of Regulation (EU) No 648/2012 shall be monthly, except where the discretion provided for in Article 3(1) of this Regulation is exercised, in which case the frequency shall be either weekly or daily.

...

Article 4

~~Transitional provision~~

~~By way of derogation from Article 2(2), during the period from the date of application of this Regulation until 31 December 2014, CCPs shall report the information referred to in that paragraph at the latest by fifteen working days after the reference day, or earlier where possible.~~

Article 5

Entry into force and date of application

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

It shall apply from 2 June 2014, except for Article 1(3), Article 2(3) and Article 3, which apply from 1 January 2015.

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

ANNEX I

Information related to hypothetical capital

| ID | Item | Legal references | Amount |
|----|--------------------------------|---|--------|
| 90 | Total amount of initial margin | Art. 89(5a) third <u>second</u> subparagraph, Regulation (EU) 648/2012 | |

ANNEX II

Instructions for reporting information related to hypothetical capital

...

| Template ID | Instructions | |
|-------------|---------------------------------------|--|
| 90 | Total amount of initial margin | |
| | Legal references | Third <u>Second</u> subparagraph of Article 89(5a) of Regulation (EU) No 648/2012. |
| | Calculation | The total initial margin received by the CCP from its clearing members shall be calculated as required in Articles 24 to 27 of the Delegated Regulation (EU) No 153/2013. |
| | Instructions | This information shall be reported only where applicable. The reporting currency shall be identified using ISO 4217 currency code followed by a space and the amount. Figures can be rounded with a rounding error smaller than 1 %. |
| | Format | ISO-Code amount |

Annex E

Deletions

5 DELETIONS OF SPECIFIED EU REGULATIONS

- 5.1 The following specified EU Regulation, as it forms part of domestic law by virtue of section 3 of the Act, is deleted:
 - 5.1.1 Commission Delegated Regulation (EU) No 876/2013 of 28 May 2013 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on colleges for central counterparties Text with EEA relevance.