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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	ANNEX to the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, and (EU) 2015/2365

Delegations will find attached document COM(2016) 856 final ANNEX 1.

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ANNEX 1

ANNEX

to the Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**on a framework for the recovery and resolution of central counterparties and amending
Regulations (EU) No 1095/2010, (EU) No 648/2012, and (EU) 2015/2365**

{SWD(2016) 368 final}

{SWD(2016) 369 final}

ANNEX

SECTION A REQUIREMENTS FOR RECOVERY PLANS

1. The recovery plan shall:
 - (1) not assume any access to or receipt of extraordinary public financial support;
 - (2) consider the interests of all stakeholders that are likely to be affected by that plan;
 - (3) ensure that clearing members do not have unlimited exposures toward the CCP.

The CCP shall develop adequate mechanisms to involve linked FMIs and stakeholders which would bear losses, incur costs or contribute to cover liquidity shortfalls in the event that the recovery plan was implemented in the process of drawing-up of that plan.

2. The recovery plan shall include the following items:
 - (1) a summary of the key elements of the plan and a summary of overall recovery capacity;
 - (2) a summary of the material changes to the CCP since the most recently filed recovery plan;
 - (3) a communication and disclosure plan outlining how the CCP intends to manage any potentially negative market reactions;
 - (4) a comprehensive range of capital, loss allocation and liquidity actions required to maintain or restore the viability and financial position of the CCP including to restore its matched book and capital, and replenish pre-funded resources which are necessary for the CCP to maintain its viability as a going concern and to continue providing its critical services in accordance with Article 1(2) of Commission Delegated Regulation (EU) No 152/2013 and Articles 32(2) and 32(3) of Commission Delegated Regulation (EU) No 153/2013;
 - (5) appropriate conditions and procedures to ensure the timely implementation of recovery actions, as well as a wide range of recovery options, including an estimation of the timeframe for executing each material aspect of the plan;
 - (6) a detailed description of any material impediment to the effective and timely execution of the plan, including consideration of the impact on clearing members and clients including in cases where clearing members are likely to take measures in accordance with their recovery plans as referred to in Articles 5 and 7 of Directive 2014/59/EU, and where appropriate on the rest of the group;
 - (7) identification of critical functions;

- (8) a detailed description of the processes for determining the value and marketability of the core business lines, operations and assets of the CCP;
- (9) a detailed description of how recovery planning is integrated into the corporate governance structure of the CCP, how it forms part of the operating rules of the CCP agreed to by clearing members, as well as the policies and procedures governing the approval of the recovery plan and identification of the persons in the organisation responsible for preparing and implementing the plan;
- (10) arrangements and measures incentivising non-defaulting clearing members to bid competitively in auctions of a defaulted members' positions;
- (11) arrangements and measures to ensure that the CCP has adequate access to contingency funding sources, including potential liquidity sources, an assessment of available collateral and an assessment of the possibility to transfer resources or liquidity across business lines, to ensure that it can continue to carry out its operations and meet its obligations as they fall due;
- (12) arrangements and measures:
 - (a) to reduce risk;
 - (b) to restructure contracts, rights, assets and liabilities;
 - (c) to restructure business lines;
 - (d) necessary to maintain continuous access to financial markets infrastructures;
 - (e) necessary to maintain the continuous functioning of the CCP's operational processes, including infrastructure and IT services;
 - (f) preparatory arrangements to facilitate the sale of assets or business lines in a timeframe appropriate for the restoration of financial soundness;
 - (g) other management actions or strategies to restore financial soundness and the anticipated financial effect of those actions or strategies;
 - (h) preparatory measures that the CCP has taken or plans to take in order to facilitate the implementation of the recovery plan, including those necessary to enable the timely recapitalisation of the CCP, restoring its matched book and replenishment of its pre-funded resources as well as its enforceability across borders;
 - (i) a framework of indicators which identifies the points at which appropriate actions referred to in the plan may be taken.
 - (j) where applicable, an analysis of how and when the CCP may apply, in the conditions addressed in the plan, for the use of central bank facilities and identify those assets that would be expected to qualify as collateral under the terms of the central bank facility;

- (k) taking into account the provisions of Article 49(1) of Regulation (EU) 648/2012, a range of extreme scenarios of stress relevant to the CCP's specific conditions, including system-wide events and stress specific to the legal entity and any group to which it belongs and specific stress to the individual clearing members of the CCP or, where appropriate, a linked FMI;
- (l) taking into account the provisions of Article 34 and Article 49(1) of Regulation (EU) 648/2012, scenarios caused both by the stress or default of one or more of its members and by other reasons including losses from the CCP's investment activities or from operational problems (including severe external threats to a CCP's operations due to an external disruption, shock or cyber-related incident);

SECTION B
INFORMATION THAT RESOLUTION AUTHORITIES MAY REQUEST CCPs
TO PROVIDE FOR THE PURPOSES OF DRAWING UP AND
MAINTAINING RESOLUTION PLANS

Resolution authorities may request institutions to provide for the purposes of drawing up and maintaining resolution plans at least the following information:

- (1) a detailed description of the CCP's organisational structure including a list of all legal persons;
- (2) identification of the direct holders and the percentage of voting and non-voting rights of each legal person;
- (3) the location, jurisdiction of incorporation, licensing and key management associated with each legal person;
- (4) a mapping of the CCP's critical operations and core business lines including balance sheet details of such operations and business lines, by reference to legal persons;
- (5) a detailed description of the components of the CCP's and all its legal entities' business activities, separating, at a minimum by types of services and respective amounts of cleared volumes, open interest, initial margin, variation margin flows, default funds and any associated assessment rights or other recovery actions pertaining to such business lines;
- (6) details of capital and debt instruments issued by the CCP and its legal entities;
- (7) an identification of from whom the CCP has received collateral and in what form (title transfer or security interest), and to whom it has pledged collateral and in what form and the person that holds the collateral, and in both cases the jurisdiction in which the collateral is located;
- (8) a description of the off balance sheet exposures of the CCP and its legal entities, including a mapping to its critical operations and core business lines;
- (9) the material hedges of the CCP including a mapping to legal persons;

- (10) identification of the relative exposures and importance of clearing members of the CCP as well as an analysis of the impact of the failure of major clearing members on the CCP;
- (11) each system on which the CCP conducts a material number or value amount of trades, including a mapping to the CCP's legal persons, critical operations and core business lines;
- (12) each payment, clearing or settlement system of which the CCP is directly or indirectly a member, including a mapping to the CCP's legal persons, critical operations and core business lines;
- (13) a detailed inventory and description of the key management information systems, including those for risk management, accounting and financial and regulatory reporting used by the CCP including a mapping to the CCP's legal persons, critical operations and core business lines;
- (14) an identification of the owners of the systems identified in point (13), service level agreements related thereto, and any software and systems or licenses, including a mapping to their legal entities, critical operations and core business lines;
- (15) an identification and mapping of the legal persons and the interconnections and interdependencies among the different legal persons such as:
 - common or shared personnel, facilities and systems;
 - capital, funding or liquidity arrangements;
 - existing or contingent credit exposures;
 - cross guarantee agreements, cross-collateral arrangements, cross-default provisions and cross-affiliate netting arrangements;
 - risks transfers and back-to-back trading arrangements; service level agreements;
- (16) the competent and resolution authority for each legal person, if different to those designated under Article 22 of Regulation (EU) No 648/2012 and under Article 3 of this Regulation;
- (17) the member of the board responsible for providing the information necessary to prepare the resolution plan of the CCP as well as those responsible, if different, for the different legal persons, critical operations and core business lines;
- (18) a description of the arrangements that the CCP has in place to ensure that, in the event of resolution, the resolution authority will have all the necessary information, as determined by the resolution authority, for applying the resolution tools and powers;
- (19) all the agreements entered into by the CCP and their legal entities with third parties the termination of which may be triggered by a decision of the authorities to apply a

resolution tool and whether the consequences of termination may affect the application of the resolution tool;

(20) a description of possible liquidity sources for supporting resolution;

(21) information on asset encumbrance, liquid assets, off-balance sheet activities, hedging strategies and booking practices.

SECTION C
MATTERS THAT THE RESOLUTION AUTHORITY IS TO CONSIDER
WHEN ASSESSING THE RESOLVABILITY OF A CCP

When assessing the resolvability of a CCP, the resolution authority shall consider the following:

- (1) the extent to which the CCP is able to map core business lines and critical operations to legal persons;
- (2) the extent to which legal and corporate structures are aligned with core business lines and critical operations;
- (3) the extent to which there are arrangements in place to provide for essential staff, infrastructure, funding, liquidity and capital to support and maintain the core business lines and the critical operations;
- (4) the extent to which the service agreements that the CCP maintains are fully enforceable in the event of resolution of the CCP;
- (5) the extent to which the governance structure of the CCP is adequate for managing and ensuring compliance with the CCP's internal policies with respect to its service level agreements;
- (6) the extent to which the CCP has a process for transitioning the services provided under service level agreements to third parties in the event of the separation of critical functions or of core business lines;
- (7) the extent to which there are contingency plans and measures in place to ensure continuity in access to payment and settlement systems;
- (8) the adequacy of the management information systems in ensuring that the resolution authorities are able to gather accurate and complete information regarding the core business lines and critical operations so as to facilitate rapid decision making;
- (9) the capacity of the management information systems to provide the information essential for the effective resolution of the CCP at all times even under rapidly changing conditions;
- (10) the extent to which the CCP has tested its management information systems under stress scenarios as defined by the resolution authority;
- (11) the extent to which the CCP can ensure the continuity of its management information systems both for the affected CCP and the new CCP in the case that the critical operations and core business lines are separated from the rest of the operations and business lines;

- (12) where the CCP benefits or is exposed to any intra-group guarantees, the extent to which those guarantees are provided at market conditions and the risk management systems concerning those guarantees are robust;
- (13) where the CCP engages in back-to-back transactions, the extent to which those transactions are performed at market conditions and the risk management systems concerning those transactions practices are robust;
- (14) the extent to which the use of any intra-group guarantees or back-to-back booking transactions increases contagion across the group;
- (15) the extent to which the legal structure of the CCP inhibits the application of the resolution tools as a result of the number of legal persons, the complexity of the group structure or the difficulty in aligning business lines to group entities;
- (16) the extent to which the resolution of the CCP could have a negative impact on another part of its group, where applicable;
- (17) the existence and robustness of service level agreements;
- (18) whether third-country authorities have the resolution tools necessary to support resolution actions by Union resolution authorities, and the scope for coordinated action between Union and third-country authorities;
- (19) the feasibility of using resolution tools in such a way which meets the resolution objectives, given the tools available and the CCP's structure;
- (20) any specific requirements needed to issue new instruments of ownership as referred to in Article 33(1);
- (21) the arrangements and means through which resolution could be hampered in the cases of CCP that have clearing members or collateral arrangements established in different jurisdictions;
- (22) the credibility of using resolution tools in such a way which meets the resolution objectives, given possible impacts on clearing participants, other counterparties and employees and possible actions that third-country authorities may take;
- (23) the extent to which the impact of the CCP's resolution on the financial system and on financial market's confidence can be adequately evaluated;
- (24) the extent to which the resolution of the CCP could have a significant direct or indirect adverse effect on the financial system, market confidence or the economy;
- (25) the extent to which contagion to other CCPs or to the financial markets could be contained through the application of the resolution tools and powers;
- (26) the extent to which the resolution of the CCP could have a significant effect on the operation of payment and settlement systems.