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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	ANNEXES to the COMMISSION DELEGATED REGULATION (EU) .../... of XXX supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to the minimum elements to be assessed by ESMA when assessing third-country CCPs' requests for comparable compliance and the modalities and conditions of that assessment (Text with EEA relevance)

Delegations will find attached document C (2020) 4895 ANNEXES 1 to 2.

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Brussels, 14.7.2020
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ANNEXES 1 to 2

ANNEXES

to the

COMMISSION DELEGATED REGULATION (EU) .../...

of XXX

supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to the minimum elements to be assessed by ESMA when assessing third-country CCPs' requests for comparable compliance and the modalities and conditions of that assessment

(Text with EEA relevance)

[...]

ANNEX I

ELEMENTS REFERRED TO IN ARTICLE 3(1)

Provision of Union law	Elements referred to in Article 3(1)
Chapter 1: Organisational requirements	
General provisions Article 26(1) of Regulation (EU) No 648/2012	The third-country CCP has: (a) robust governance arrangements, including a clear organisational structure with well-defined, transparent and consistent lines of responsibility; (b) effective processes to identify, manage, monitor and report the risks to which it is or might be exposed; (c) adequate internal control mechanisms, including sound administrative and accounting procedures.
Article 26(2) of Regulation (EU) No 648/2012	The third-country CCP has established policies and procedures which are sufficiently effective so as to ensure compliance with the relevant third-country framework, including compliance with that framework by its managers and employees.
Article 26(3) and (4) of Regulation (EU) No 648/2012	The third-country CCP: (a) maintains and operates an organisational structure that ensures continuity and orderly functioning in the performance of its services and activities; (b) employs appropriate and proportionate systems, resources and procedures; (c) maintains a clear separation between the reporting lines for risk management and those for the other operations of the CCP.
Article 26(5) of Regulation (EU) No 648/2012	The third-country CCP implements and maintains a remuneration policy which promotes sound and effective risk management and which does not create incentives to relax risk standards.
Paragraphs 6, 7 and 8 of Article 26 of Regulation (EU) No 648/2012	The third-country CCP: (a) maintains 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; (b) makes available publicly its governance arrangements, the rules governing the CCP, and its admission criteria for clearing membership; (c) is subject to frequent and independent audits, the results of which are communicated to its board and made available to its competent authority.
Senior management and the board	The senior management of a third-country CCP is of sufficiently good repute and has sufficient experience to ensure the sound and prudent management of the CCP.

Article 27(1) of Regulation (EU) No 648/2012	
Paragraphs 2 and 3 of Article 27 of Regulation (EU) No 648/2012	The third-country CCP has a board with a sufficient number of independent members that have clear roles and responsibilities, an adequate representation of clearing members and clients, and mechanisms to address any potential conflicts of interest within the CCP to ensure sound and prudent management of the CCP.
Risk Committee Article 28 of Regulation (EU) No 648/2012	The third-country CCP: (a) maintains a body to advise the board, independently of any direct influence by the management of that CCP, on developments impacting the risk management of the CCP, ensuring the representation of its clearing members, independent members of the board and representatives of its clients; (b) has mechanisms in place to promptly inform the relevant competent authority of the third country of any decision in which the board decides not to follow the advice of that body.
Record Keeping Article 29(1) of Regulation (EU) No 648/2012	The third-country CCP maintains, for a period of at least 10 years, all the records on the services and activity provided so as to enable its competent authority to monitor its compliance with the relevant third-country framework.
Article 29(2) of Regulation (EU) No 648/2012	The third-country CCP maintains, for a period of at least 10 years following the termination of a contract, all information on all contracts it has processed to enable the identification of the original terms of a transaction before clearing by that CCP.
Article 29(3) of Regulation (EU) No 648/2012	The third-country CCP makes available to any relevant third-country authority, upon request, the records on the services and activity provided, the information on all contracts it has processed and all information on the positions of cleared contracts, irrespective of the venue where the transactions were executed.
Shareholders and members with qualifying holdings Article 30(1) of Regulation (EU) No 648/2012	The third-country CCP informs its competent authority of the identities of the shareholders or members that have qualifying holdings and of the amounts of those holdings.
Paragraphs 2 and 4 of Article 30 of Regulation (EU) No 648/2012	The shareholders or members that have qualifying holdings in a third-country CCP: (a) are suitable, taking into account the need to ensure the sound and prudent management of that CCP;

	(b) do not exercise an influence that is likely to be prejudicial to the sound and prudent management of the CCP.
Article 30(3) of Regulation (EU) No 648/2012	Close links between the third-country CCP and other natural or legal persons do not prevent the effective exercise of the supervisory functions of the competent authority of the third country.
Article 30(5) of Regulation (EU) No 648/2012	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, do not prevent the effective exercise of the supervisory functions of the competent authority.
Article 31(1) of Regulation (EU) No 648/2012	The third-country CCP notifies its competent authority of any changes to its management and the third-country framework ensures that appropriate measures are taken where the conduct of a member of the board of a third-country CCP is likely to be prejudicial to the sound and prudent management of the CCP.,.
Conflict of Interest Article 33(1) of Regulation (EU) No 648/2012	The third-country CCP maintains and operates effective arrangements to identify, manage and resolve 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.
Article 33(2) of Regulation (EU) No 648/2012	Where the arrangements of the third-country 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, , that CCP discloses to clearing members and, where clients are known to that CCP, to those clients, the general nature or sources of conflicts of interest before accepting new transactions from those clearing members.
Article 33(3) of Regulation (EU) No 648/2012	Where the third-country CCP is a parent undertaking or a subsidiary, , that CCP's arrangements to manage conflicts of interest take into account any circumstances of which the CCP is or should be aware which may give rise to a conflict of interest due to the structure and business activities of other undertakings of which it is a parent or a subsidiary.
Article 33(5) of Regulation (EU) No 648/2012	The third-country CCP takes all reasonable steps to prevent any misuse of information held in its systems and prevents the use of that information for other business activities.
Business Continuity Article 34(1) of Regulation (EU) No 648/2012	The third-country CCP implements and maintains an adequate business continuity policy and disaster recovery plan aimed at ensuring the preservation of its functions, the timely recovery of operations and the fulfilment of the CCP's obligations, including the recovery of all transactions at the time of disruption to enable the CCP to continue to operate with certainty and to complete settlement on the scheduled date.
Article 34(2) of	The third-country CCP implements and maintains an adequate procedure ensuring the timely and orderly settlement or transfer of the assets and

Regulation (EU) No 648/2012	positions of clients and clearing members in the event of a withdrawal of authorisation.
Outsourcing Article 35 of Regulation (EU) No 648/2012	When outsourcing operational functions, services or activities, the third-country CCP ensures that, at all times: (a) outsourcing does not result in the delegation of its responsibility; (b) the relationship and obligations of that CCP towards its clearing members or, where relevant, towards their clients are not altered; (c) outsourcing does not prevent the exercise of supervisory and oversight functions; (d) outsourcing does not result in depriving the CCP from the necessary systems and controls to manage the risks it faces; (e) the service provider implements equivalent business continuity requirements to those that the CCP must fulfil; (f) 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; (g) the CCP has direct access to the relevant information of the outsourced functions; (h) the service provider protects any confidential information relating to the CCP and its clearing members and clients.
Chapter 2: Conduct of business rules	
General provisions Article 36(1) of Regulation (EU) No 648/2012	The third-country CCP, when providing services to its clearing members, and where relevant, to their clients, acts fairly and professionally in accordance with the best interests of such clearing members and clients and sound risk management.
Article 36(2) of Regulation (EU) No 648/2012	The third-country CCP has accessible, transparent and fair rules for the prompt handling of complaints.
Participation requirements Paragraphs 1 and 2 of Article 37 of Regulation (EU) No 648/2012	The third-country CCP establishes categories of admissible clearing members and non-discriminatory, transparent and objective admission criteria to ensure fair and open access to the CCP and sufficient financial resources and operational capacity of clearing members, enabling the CCP to control the risk it is exposed to, and monitors on an ongoing basis that those criteria are met.
Article 37(3) of Regulation (EU)	The third-country CCP's rules for clearing members enables it to gather relevant basic information to identify, monitor and manage relevant

No 648/2012	concentrations of risk relating to the provision of services to clients.
Paragraphs 4 and 5 of Article 37 of Regulation (EU) No 648/2012	The third-country CCP has objective and transparent procedures for the suspension and orderly exit of clearing members that no longer meet the admission criteria and can only deny access to clearing members meeting the admission criteria where duly justified in writing and based on a comprehensive risk analysis.
Article 37(6) of Regulation (EU) No 648/2012	Specific additional obligations on clearing members, such as the participation in auctions of a defaulting clearing member's position, are proportional to the risk brought by the clearing member and do not restrict participation to certain categories of clearing members.
Transparency Article 38(1) of Regulation (EU) No 648/2012	The third-country CCP publicly discloses the prices and fees associated with each service provided, including discounts and rebates and the conditions to benefit from those reductions, and allows its clearing members and, where relevant, their clients, separate access to the specific services provided.
Article 38(2) of Regulation (EU) No 648/2012	The third-country CCP discloses to clearing members and clients the risks associated with the services provided.
Article 38(3) of Regulation (EU) No 648/2012	The third-country CCP discloses to its clearing members the price information used to calculate its end-of-day exposures to its clearing members, and publicly discloses the volumes of the cleared transactions for each class of instruments cleared by the CCP on an aggregated basis.
Article 38(4) of Regulation (EU) No 648/2012	The third-country CCP publicly discloses 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 related to access of trading venues to the CCP.
Paragraphs 6 and 7 of Article 38 of Regulation (EU) No 648/2012	The third-country CCP provides its clearing members with information on the initial margin models it uses, explaining how the models operate and describing the key assumptions and limitations of those models.
Segregation and Portability Article 39 of Regulation (EU) No 648/2012	The third-country CCP keeps separate records and accounts for each clearing member, segregates the assets and positions of the clearing member from the assets and positions of the clients of the clearing member, and provides sufficient protection for the assets and positions of each clearing member and each client, as well as a choice of segregation of positions and assets and of options of portability to each client, including individual client segregation.
Chapter 3: Prudential requirements	
Exposure management Article 40 of	The third-country CCP maintains appropriate policies and mechanisms to manage, on a near to real time basis, intra-day exposures to sudden changes in market conditions and in positions.

Regulation (EU) No 648/2012	
Margin requirements Article 41(1) of Regulation (EU) No 648/2012	The third-country CCP imposes, calls and collects margins to limit its credit exposures from its clearing members and, where relevant, from CCPs with which it has interoperability arrangements, and that CCP regularly monitors and, if necessary, revises the level of its margins to reflect current market conditions taking into account any potentially procyclical effects of such revisions. Such margins shall be sufficient: (a) to cover potential exposures that may occur until the liquidation of the relevant positions; (b) to cover losses that result from at least 99 % of the exposures movements over an appropriate time horizon. Those margins 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.
Article 41(2) of Regulation (EU) No 648/2012	The third-country CCP applies 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.
Article 41(3) of Regulation (EU) No 648/2012	The third-country CCP calls and collects margins on an intraday basis, at least when predefined thresholds are exceeded.
Article 41(4) of Regulation (EU) No 648/2012	The third-country CCP calculates, calls and collects margins that are adequate to cover the risk stemming from the positions registered in each account with respect to specific financial instruments, or to a portfolio of financial instruments provided that the methodology used is prudent and robust.
Default Fund and Other Financial Resources Paragraphs 1 and 4 of Article 42 of Regulation (EU) No 648/2012	The third-country CCP: (a) maintains one or more pre-funded default funds to cover losses that exceed the losses to be covered by margins, arising from the default, including the opening of an insolvency procedure, of one or more clearing members; (b) establishes a minimum amount below which the size of the default fund is not to fall under any circumstances.
Article 42(2) of Regulation (EU) No 648/2012	The third-country CCP establishes the minimum size of contributions to the default fund and the criteria to calculate the contributions of the single clearing members. The contributions are proportional to the exposures of each clearing member.
Articles 42(3) and	The third-country CCP develops scenarios of extreme but plausible

43(2) of Regulation (EU) No 648/2012	market conditions, including the most volatile periods that have been experienced by the markets for which that CCP provides its services, and a range of potential future scenarios, taking into account sudden sales of financial resources and rapid reductions in market liquidity, and the default fund of that CCP enables it, at all times, to withstand the default of at least the two clearing members to which it has the largest exposures under extreme but plausible market conditions.
Article 43(1) of Regulation (EU) No 648/2012	The default fund of the third-country CCP maintains sufficient pre-funded available financial resources to cover potential losses that exceed the losses to be covered by margins. Those pre-funded available financial resources include dedicated resources of the CCP, are freely available to the CCP and are not used to meet capital requirements.
Article 43(3) of Regulation (EU) No 648/2012	The third-country CCP ensures that the exposures of the clearing members toward that CCP are limited.
Liquidity risk controls Article 44(1) of Regulation (EU) No 648/2012	The third-country CCP: (a) has access to adequate liquidity at all times measured to cover its liquidity needs on a daily basis and taking into account the liquidity risk generated by the default of at least the two clearing members to which it has the largest exposures; (b) obtains the necessary credit lines or similar arrangements to cover its liquidity needs in case the financial resources at its disposal are not immediately available; (c) ensures that a clearing member, parent undertaking or subsidiary of that clearing member together do not provide more than 25 % of the credit lines needed by that CCP.
Default waterfall Paragraphs 1 and 2 of Article 45 of Regulation (EU) No 648/2012	The third-country CCP uses the margins posted by a defaulting clearing member prior to other financial resources in covering losses and thereafter, where the margins posted by that clearing member are not sufficient to cover the losses incurred by the CCP, the default fund contribution of that clearing member to cover those losses.
Paragraphs 3 and 4 of Article 45 of Regulation (EU) No 648/2012	The third-country CCP: (a) uses contributions to the default fund of the non-defaulting clearing members and any other financial resources that are part of its default waterfall only after having exhausted the contributions of the defaulting clearing member and its dedicated own resources; (b) does not use the margins posted by non-defaulting clearing members to cover the losses resulting from the default of another clearing member.
Collateral requirements Article 46 of	The third-country CCP accepts only highly liquid collateral with minimal credit and market risk to cover its initial and ongoing exposure to its clearing members, and applies adequate haircuts to asset values that reflect the potential for their value to decline over the interval between

Regulation (EU) No 648/2012	their last revaluation and the time by which they can reasonably be assumed to be liquidated, taking 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.
Investment Policy Article 47(1) of Regulation (EU) No 648/2012	The third-country CCP invests its financial resources only in cash or in highly liquid financial instruments with minimal market and credit risk, and its investments are capable of being liquidated rapidly with minimal adverse price effect.
Article 47(3) of Regulation (EU) No 648/2012	The third-country CCP deposits financial instruments posted as margins or as default fund contributions with, where available, operators of securities settlement systems that ensure the full protection of those financial instruments, or with other authorised financial institutions using alternative highly secure arrangements.
Article 47(4) of Regulation (EU) No 648/2012	Cash deposits of the third-country CCP are 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.
Article 47(5) of Regulation (EU) No 648/2012	When depositing assets with a third party, the third-country CCP: (a) ensures that the assets belonging to the clearing members are identifiable separately from the assets belonging to that 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; (b) has prompt access to the financial instruments when required.
Article 47(6) of Regulation (EU) No 648/2012	The third-country CCP does not invest its capital or the sums arising from margins, default fund contributions, liquidity or other financial resources, in its own securities or those of its parent undertaking or its subsidiary.
Article 47(7) of Regulation (EU) No 648/2012	The third-country CCP takes into account its overall credit risk exposures to individual obligors in making its investment decisions and ensures that its overall risk exposure to any individual obligor remains within acceptable concentration limits.
Default procedures Article 48(1) of Regulation (EU) No 648/2012	The third-country CCP has procedures in place to be followed where a clearing member does not comply with the participation requirements of the CCP or when that clearing member is declared in default either by the CCP or by a third party.
Article 48(2) of	The third-country CCP takes prompt action to contain losses and liquidity

Regulation (EU) No 648/2012	pressures resulting from defaults and ensures 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.
Article 48(3) of Regulation (EU) No 648/2012	The third-country framework ensures that the third-country CCP promptly informs its competent authority before the default procedure is declared or triggered.
Article 48(4) of Regulation (EU) No 648/2012	The third-country CCP verifies that its default procedures are enforceable.
Paragraphs 5, 6 and 7 of Article 48 of Regulation (EU) No 648/2012	The third-country CCP: (a) acts in accordance with the rules of protection of collateral and positions of the client accounts applicable in the third country; (b) implements procedures facilitating the porting of clients' positions and collateral in accordance with the rules applicable in the third country.
Review of models, stress testing and back testing Article 49(1) of Regulation (EU) No 648/2012	The third-country CCP: (a) regularly reviews the models and parameters adopted to calculate its margin requirements, default fund contributions, collateral requirements and other risk control mechanisms; (b) subjects those models to rigorous and frequent stress tests to assess their resilience in extreme but plausible market conditions; (c) performs back tests to assess the reliability of the methodology adopted; (d) obtains either an independent validation or a validation by its competent authority of those models and of any significant changes thereto.
Article 49(2) of Regulation (EU) No 648/2012	The third-country CCP regularly tests the key aspects of its default procedures and takes all reasonable steps to ensure that all clearing members understand them and have appropriate arrangements in place to respond to a default event.
Article 49(3) of Regulation (EU) No 648/2012	The third-country CCP publicly discloses key information on its risk-management model and assumptions adopted to perform the stress tests on the models and parameters adopted to calculate its margin requirements, default fund contributions, collateral requirements and other risk control mechanisms.
Settlement Article 50(1) of Regulation (EU) No 648/2012	The third-country CCP uses, where practical and available, central bank money to settle its transactions or, where central bank money is not used, takes steps to strictly limit cash settlement risks.
Article 50(2) of Regulation (EU)	The third-country CCP clearly states 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

No 648/2012	indemnifies participants for losses incurred in the delivery process.
Article 50(3) of Regulation (EU) No 648/2012	Where the third-country CCP has an obligation to make or receive deliveries of financial instruments, that CCP eliminates principal risk through the use of delivery-versus-payment mechanisms to the extent possible.
Chapter 4: Calculations and reporting for the purposes of Regulation (EU) No 575/2013 of the European Parliament and of the Council¹	
Calculations and reporting Articles 50a to 50d of Regulation (EU) No 648/2012	The third-country CCP applies reporting requirements on capital requirements calculations in accordance with the respective third-country framework applicable to rules on accounting and capital requirements.

¹ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

ANNEX II

ELEMENTS REFERRED TO IN ARTICLE 4(1)

Provision of Union law	Elements referred to in Article 4(1)
<p>Interoperability arrangements</p> <p>Article 51(2) of Regulation (EU) No 648/2012</p>	<p>Where an interoperability arrangement is established to provide services to a particular trading venue, the third-country CCP has non-discriminatory access both to the data that it needs for the performance of its functions from that particular trading venue and to the relevant settlement system;</p>
<p>Article 51(3) of Regulation (EU) No 648/2012</p>	<p>The third-country CCP rejects or restricts entering into an interoperability arrangement or accessing a data feed or a settlement system, directly or indirectly, only in order to control any risk arising from that arrangement or access.</p>
<p>Risk management</p> <p>Paragraphs 1 and 2 of Article 52 of Regulation (EU) No 648/2012</p>	<p>The CCPs that have entered into an interoperability arrangement :</p> <ul style="list-style-type: none"> (a) have in place adequate policies, procedures and systems to effectively identify, monitor and manage the risks arising from that interoperability 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; (e) where the risk-management models used by the interoperable CCPs to cover their exposure to their clearing members or their reciprocal exposures are different, those CCPs 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.
<p>Provision of margins among CCPs</p> <p>Article 53 of Regulation (EU) No 648/2012</p>	<p>The third-country CCP distinguishes in accounts the assets and positions held for the account of CCPs with which it has entered into an interoperability arrangement.</p> <p>The third-country CCP only provides initial margins to that CCP under a security financial collateral arrangement by which the receiving CCP has no right of use over the margins provided by the other CCP.</p> <p>Collateral received in the form of financial instruments is protected in either of the following manners:</p>

	<ul style="list-style-type: none">(i) it is deposited with operators of securities settlement systems that ensure the full protection of those financial instruments;(ii) other highly secure arrangements with authorised financial institutions are used; <p>Assets are 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.</p> <p>In case of default of the CCP which has received the collateral in the context of an interoperability arrangement, the collateral provided is readily returned to the providing CCP.</p>
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