

COMMISSION DELEGATED REGULATION (EU) 2022/2311**of 21 October 2022****amending the regulatory technical standards laid down in Delegated Regulation (EU) No 153/2013 as regards temporary emergency measures on collateral requirements****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ⁽¹⁾, and in particular Article 46(3) thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) No 153/2013 ⁽²⁾ lays down regulatory technical standards on requirements for central counterparties (CCPs) to accept highly liquid collateral with minimal credit and market risk.
- (2) Recent political and market developments have led to significant price and volatility increases on energy markets, which have triggered substantial margin increases by CCPs to cover the related exposures. Those margin increases have created liquidity strains on non-financial counterparties, which typically have fewer and less liquid assets to meet margin requirements. As a consequence, those non-financial counterparties have been forced to either reduce their positions or leave them not properly hedged, which exposes them to further price variations.
- (3) In order to ensure the smooth functioning of the Union financial and energy markets under the current circumstances and to alleviate the liquidity pressure on non-financial counterparties active on gas and electricity regulated markets cleared in CCPs established in the Union, the pool of eligible collateral available to non-financial clearing members should temporarily be expanded to include uncollateralised bank guarantees.
- (4) In order to contain the liquidity strains observed on energy derivative markets, guarantees issued or backed by public entities should also be considered as eligible collateral for financial and non-financial counterparties by the CCP, given that those guarantees have low counterparty credit risk and are irrevocable, unconditional and can be honoured within the period of liquidation of the portfolio of the defaulting clearing member, therefore carrying limited liquidity risk.
- (5) The risks related to an expansion of eligible collateral to uncollateralised bank guarantees and public guarantees are expected to remain limited, as the expansion would be subject to the risk management safeguards of the CCP and all other applicable requirements, as laid down in Delegated Regulation (EU) No 153/2013, would continue to apply.
- (6) Delegated Regulation (EU) No 153/2013 should therefore be amended accordingly.
- (7) In order to further limit the risks associated to the acceptance of uncollateralised bank guarantees for non-financial clearing members and public guarantees for financial and non-financial clearing members as collateral, those measures should be of temporary nature and granted for a period of 12 months, providing relief to market participants and incentivising them to return to the markets.
- (8) In the light of the recent market developments, it is necessary to expand the pool of eligible collateral available to non-financial clearing members as quickly as possible. This Regulation should therefore enter into force as a matter of urgency.

⁽¹⁾ OJ L 201, 27.7.2012, p. 1.

⁽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 (OJ L 52, 23.2.2013, p. 41).

- (9) This Regulation is based on draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority (ESMA), after consulting the European Banking Authority, the European Systemic Risk Board and the European System of Central Banks.
- (10) ESMA has not conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, nor did it analyse the potential costs and benefits, as this would have been highly disproportionate to the scope and impact of the amendments to be adopted, taking into account the urgent nature and the limited scope of the proposed changes. Given the urgency, ESMA has not requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council ⁽³⁾. The Securities and Markets Stakeholder Group will be informed thereof pursuant to that provision,

HAS ADOPTED THIS REGULATION:

Article 1

Delegated Regulation (EU) No 153/2013 is amended as follows:

- (1) in Article 39, the following second paragraph is added:

'Until 29 November 2023, for the purposes of Article 46(1) of Regulation (EU) No 648/2012, public guarantees that meet the conditions set out in Annex I shall be considered as highly liquid collateral.;

- (2) in Article 62, second paragraph, the following sentence is added:

'However, Section 2, paragraph 1, point (h), of Annex I shall not apply in respect of transactions on derivatives, as referred to in Article 2(4), points (b) and (d), of Regulation (EU) No 1227/2011 from 29 November 2022 to 29 November 2023.;

- (3) Annex I is amended in accordance with the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 21 October 2022.

For the Commission
The President
Ursula VON DER LEYEN

⁽³⁾ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

ANNEX

In Annex I to Delegated Regulation (EU) No 153/2013, the following Section 2a is inserted:

'SECTION 2a

Public guarantees

Until 29 November 2023, a public guarantee that does not meet the conditions for a central bank guarantee set out in Section 2, paragraph 2, shall meet all of the following conditions to be accepted as collateral under Article 46(1) of Regulation (EU) No 648/2012:

- (a) it is explicitly issued or guaranteed by any of the following:
 - (i) a central government in the EEA;
 - (ii) regional governments or local authorities in the EEA, where there is no difference in risk between exposures of regional governments or local authorities and the central government of that Member State because of the specific revenue-raising powers of the former, and the existence of specific institutional arrangements the effect of which is to reduce their risk of default;
 - (iii) the European Financial Stability Facility, the European Stability Mechanism, or the Union, where applicable;
 - (iv) a multilateral development bank as listed under Article 117(2) of Regulation (EU) No 575/2013 of the European Parliament and of the Council (*) and established in the Union;
- (b) the CCP can demonstrate that it has low credit risk based upon an internal assessment by the CCP;
- (c) it is denominated in one of the following currencies:
 - (i) a currency the risk of which the CCP can demonstrate to the competent authorities that it is able to adequately manage;
 - (ii) a currency in which the CCP clears transactions, in the limit of the collateral required to cover the CCP's exposures in that currency;
- (d) it is irrevocable, unconditional and the issuing and guaranteeing entities cannot rely on any legal or contractual exemption or defence to oppose the payment of the guarantee;
- (e) it can be honoured within the period of liquidation of the portfolio of the defaulting clearing member providing it without any regulatory, legal or operational constraint or any third party claim on it.

For the purposes of point (b), the CCP shall employ, in performing the assessment referred to in that point, defined and objective methodology that shall not fully rely on external opinions.

(*) 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).'