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EBA FINAL draft Regulatory Technical Standards

on Capital Requirements for Central Counterparties
under Regulation (EU) No 648/2012

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1. Executive Summary

Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties ('CCPs') and trade repositories[1] ('the Regulation') requires the EBA to draft regulatory technical standards (RTS) on the capital requirements for CCPs. This set of draft RTS puts forward the EBA proposals on the above topic. The input from stakeholders assisted in its development. A summary of the responses received and of the EBA's analysis can be found in the accompanying documents section.

The development of the draft RTS is also required to cover the analysis of the costs and benefits that those legal provisions will imply. An analysis of the policy options considered and of the cost and benefits can also be found in the accompanying documents section, under 'Cost and benefit analysis/Impact assessment'.

The considerations on capital requirements expressed in this set of draft RTS have taken into account the international principles developed by CPSS-IOSCO[2] and the Directives 2006/48/EC and 2006/49/EC of the European Parliament and of the Council, which together form the so-called 'Capital Requirements Directive' ('CRD').

The EBA's view is that according to the Regulation the capital of a CCP, including retained earnings and reserves, should be at all times at least equal to the sum of :

1. the CCP's gross operational expenses during an appropriate time span for winding down or restructuring its activities;
2. the capital necessary to cover the overall operational and legal risks;
3. the capital necessary to cover credit, counterparty credit and market risks 'not covered'[3] by specific financial resources; and,
4. business risk.

Since the level of business risk is highly dependent on the individual situation of each CCP, the capital requirement should be based on a CCP's own estimate subject to the approval of the competent authority. Further, a floor needs to be introduced in order to ensure a prudent level playing field for the capital requirements.

As provided for by Regulation No 1093/2010 of the European Parliament and Council establishing the EBA[4] ('EBA regulation'), before submitting the draft RTS to the Commission, the EBA has conducted a public consultation and analysed the potential costs and benefits of the proposed standards. This paper includes the proposed legal text of the provisions constituting the draft RTS, an explanation of the proposed measures, a feedback statement and a cost-benefit analysis.

[1] eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:201:FULL:EN:PDF

[2] Principles for financial market infrastructures, assessment methodology and disclosure framework, CPSS Publications No 101, April 2012: www.bis.org/publ/cpss101.htm.

[3] The definition of 'non-covered risks is provided in Article 2 of the draft RTS.

[4] Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, OJ L 331, 15.12.2010, p. 12.

2. Background and rationale

Regulation (EU) No 648/2012 lays out provisions with the view to increasing the safety and transparency of the over-the-counter (OTC) derivatives markets. It introduces a legal obligation to clear OTC derivatives transactions through central counterparties (CCPs) and establishes organisational, conduct of business and prudential requirements for CCPs to ensure that these institutions are robustly risk-managed and financially sound irrespective of the financial instruments cleared.

The primary function of a CCP is to act as an intermediary between the counterparties to a bilateral trade, so that the parties' bilateral trade is replaced by two separate trades of each of them with the CCP. In this way, the CCP takes on the risk of the potential loss to which a party could be exposed if its counterpart were to default. Where one counterparty defaults, the CCP acts in the place of the defaulted counterparty and makes good its payment obligations. Therefore, a CCP allows market participants to trade without being exposed to the risk of each other's default.

To limit its credit exposures, the Regulation requires a CCP to collect margins, to maintain a pre-funded default fund and to maintain dedicated own resources. These resources make up the 'default waterfall' of risk mitigants that a CCP uses to cover its losses upon the default of one of its clearing members. In covering its losses, a CCP will use firstly the margins posted by the defaulting clearing member; secondly, the default fund contributions of the defaulting clearing member; thirdly, its dedicated own resources; and finally the default fund contributions of non-defaulting clearing members. Under no circumstances will a CCP use margins posted by non-defaulting clearing members to cover its losses resulting from the default of another clearing member. The CCP's dedicated own resources cannot be used to meet the CCP's regulatory capital requirements.

Articles 41 to 44 of the Regulation prescribe the calculation of financial resources: margins, default fund and dedicated own resources. These articles also specify the requirements about the collection, maintenance and use of the collaterals. Under these Articles no additional capital is required to mitigate the CCP's credit exposures or the market risk of the collateral collected.

Additional capital is however required under Article 16(2) of the Regulation to mitigate, on the one hand against market risk, credit risk and counterparty credit risk not covered by specific financial resources; and, on the other hand, to mitigate against operational risk arising from all activities of a CCP. Capital held to meet the CCP's regulatory capital requirement and the CCP's dedicated own resources is invested in cash and in financial instruments. Similarly, collateral provided by clearing members in the form of cash is invested in financial instruments or deposited through highly secure arrangements with authorised financial institutions or central banks. Collateral provided by clearing members in the form of financial instruments is deposited with operators of securities settlement systems or through highly secure arrangements with authorised financial institutions. The introduction of these capital requirements will also ensure that the risks inherent in these activities (investment or others) are monitored and adequately capitalised.

Having identified these risks, a CCP should hold capital, including retained earnings and reserves, that is at all times at least equal to the sum of : (i) its operational expenses during an appropriate time span for winding down or restructuring its activities; (ii) its capital requirements for the overall operational risk (including legal risk); and (iii) its capital requirements for non-covered credit, counterparty credit and market risks and business risks. The Regulation delegates powers to the Commission to adopt regulatory technical standards (RTS) specifying these requirements; the EBA developed this set of draft RTS, in close cooperation with the ESCB and after consultation with the ESMA, and hereby submits the RTS to the Commission by 30 September 2012. In developing the proposals explained in this consultation paper, relevant parts of the CPSS-IOSCO Principles for Financial Markets Infrastructure and of the Capital Requirements Directives 2006/48/EC and 2006/49/EC have been considered.

3. EBA FINAL draft Regulatory Technical Standards on Capital requirements for CCPs

EUROPEAN COMMISSION

Brussels, XXX
[…] (2012) XXX draft

COMMISSION DELEGATED REGULATION (EU) No …/..

of XXX

on

Capital requirements for Central Counterparties (CCPs) according to the European Parliament and Council Regulation (EU) No 648/2012

COMMISSION DELEGATED REGULATION (EU) No …/..-

of [date]

supplementing Regulation (EU) No No 648/2012 [EMIR] of the European Parliament and of the Council with regard to regulatory technical standards on CCP Capital 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 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (the 'Regulation' and 'EBA'); in particular Article 10 thereof,

Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on over the counter (OTC) derivatives transactions, central counterparties and trade repositories, and in particular Article 16 (3) thereof.

Whereas:

(1) This Regulation is based on the draft regulatory technical standards submitted by the European Supervisory Authority (European Banking Authority) to the European Commission.

(2) The European Banking Authority (EBA) has worked in close cooperation with the European System of Central Banks (ESCB) and has consulted the European Securities and Markets Authority (ESMA) before submitting the draft technical standards on which this Regulation is based. It has also conducted open public consultations on the draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010.

(3) Regulation (EU) No 648/2012[5] establishes, among other matters, prudential requirements for central counterparties (CCPs) to ensure that those CCPs are safe and sound and comply at all times with the capital requirements. Given that to a great extent risks stemming from clearing activities are covered by specific financial resources (Art. 41 to 44 of the EMIR), such capital requirements should ensure that the CCP is at all times adequately capitalised against non covered credit, counterparty, market, risks as defined in Article 2, operational, legal and business risks and that it is able to conduct an orderly winding down or restructuring of its operations if necessary.

(4) In defining these regulatory standards, the capital treatment of credit institutions and investment firms has been specifically taken into account because CCPs are exposed, while performing non covered activities, to risks that are similar to the risks incurred by those institutions. Relevant parts of the Principles for Financial Market Infrastructure issued by the Committee on Payment and Settlement Systems and the

[5] OJ, L 201/1, 27.7.2012, p.1.

International Organization of Securities Commissions ('CPSS-IOSCO Principles') have been also taken into account.

(5) In order to ensure that they would be able to organise an orderly winding down or restructuring of their activities, CCPs should hold sufficient financial resources to withstand operational expenses over an appropriate period of time. A CCP should be able during such a period of time to set up any kind of arrangement in order to reorganise its critical operations, including recapitalising, replacing management, revising its business strategies, cost or fee structures, restructuring the services it provides, liquidating its clearing portfolio or merging with - or transferring its clearing activities to - another CCP. During the winding down or restructuring a CCP still needs to continue its operations. While in this case some costs may decrease (e.g. marketing costs) other costs may increase (e.g. legal expenses). Therefore, using the gross annual operating expenses is deemed to be an appropriate approximation of the actual expenses during the winding down or restructuring of a CCPs' operations.

(6) As the capital shall be at all times sufficient to ensure an orderly winding down and an adequate protection against the relevant risks as required by Art. 16 (2) of the EMIR, it is necessary to establish an 'early warning' tool to enable the competent authorities to gain knowledge sufficiently in advance of the situation in which the capital of the CCP is close to the capital requirement. Such ancillary tool is the introduction of a notification threshold which is set at the level of 110% of the capital requirement.

(7) Notwithstanding the difficulties in quantifying the exposure to operational risk, Directive (EU) No 48/2006 of the European Parliament and of the Council of of 14 June 2006 on prudential requirements for credit institutions and investment firms[6] is the relevant benchmark for the purpose of establishing the capital requirement for CCPs. Consistently with Directive (EU) No 48/2006, the definition of operational risk in this Regulation includes legal risk.

(8) Directive (EU) No 2006/48/EC and Directive (EU) No 2006/49/EC of the European Parliament and of the Council of 14 June 2012 on the capital adequacy of investment firms and credit institutions[7] are an appropriate benchmark for the purpose of establishing capital requirements to cover credit, counterparty and market risks non covered by specific financial resources, since these are similar to those carried out by credit institutions or investment firms.

(9) A CCP does not have to hold capital for trade exposures and default fund contributions which arise under an interoperability arrangement where the requirements of Articles 52 and 53 of the EMIR are fulfilled. However, where these requirements are not fulfilled, links between CCPs might expose them to additional risk if the collateral posted by them is not fully protected and bankruptcy remote or if the default fund contributions are at risk in case a clearing member of the receiving CCP defaults. Therefore, in this case capital charges should apply to default fund contributions and to trade exposures with other CCPs. In order to avoid contagion effects, the treatment set out in this Regulation regarding default fund contributions to other CCPs is in general more conservative than the treatment of credit institution exposures to CCPs. The own resources of a CCP used to contribute to the default fund of another CCP should not be taken into account for the purposes of Article 16(2) as they are not

[6] OJ L 177, 30.6.2006, p.1.
[7] OJ L 177, 30.6.2006, p.201

invested in accordance with its investment policy. They should also not be double counted for the purpose of calculating risk weighted exposures stemming from these contributions.

(10) Since the time necessary for an orderly winding down is strictly dependent on the clearing services provided by the single CCP and on the market environment in which it operates (in particular, the possibility that another CCP can take on its services), the number of months required for winding down should be based on the CCP's own estimate, subject to the approval of the competent authority. A conservative floor on the number of months needs to be introduced in order to ensure a prudent level of the capital requirements.

(11) Business risk refers to the risk a CCP assumes due to its efficiency and potential changes in general business conditions which are likely to impair its financial position as a consequence of decline in its revenues or an increase in its expenses resulting in a loss that must be charged against its capital. Since the level of business risk is highly dependent on the individual situation of each CCP and can be caused by various factors such as inefficient procedures, adverse market environment, ineffective response to technological progress, or poor execution of business strategies, the capital requirement should be based on a CCP's own estimate subject to the approval of the competent authority. A floor needs to be introduced in order to ensure a prudent level of the capital requirements.

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

For the purpose of this Regulation, the following definition shall apply:

(1) 'non covered risks' means all risks which are not covered by the specific financial resources as set out in Articles 41 to 44 of Regulation (EU) No 648/2012;

Article 2

Capital requirements

1. A CCP shall hold capital, including retained earnings and reserves, which shall be at all times more than or equal to the sum of:

   (a) the CCP's capital requirements for winding down or restructuring its activities calculated in accordance with Article 3;
   (b) the CCP's capital requirements for operational and legal risks calculated in accordance with Article 4;
   (c) the CCP's capital requirements for credit, counterparty and market risks calculated in accordance with Article 5;
   (d) the CCP's capital requirements for business risk calculated in accordance with Article 6.

2. A CCP shall have procedures in place to identify all sources of risks that may impact its on-going functions and shall consider the likelihood of potential adverse effects on its revenues or expenses and its level of capital.

3. If the amount of capital held by a CCP according to paragraph 1 is lower than 110% of the capital requirements or lower than 110% of EUR 7.5 million (‘notification threshold’), the CCP shall immediately notify the competent authority and keep it updated at least weekly, until the amount of capital held by the CCP returns above the notification threshold.

4. That notification shall be made in writing and shall contain the following elements:

   a) the reasons for the CCP’s capital being below the notification threshold and a description of the short-term perspective of the CCP’s financial situation;

   b) a comprehensive description of the measures the CCP intends to adopt to ensure the on-going compliance with the capital requirements.

Article 3

Capital requirements for winding down or restructuring

1. A central counterparty (‘CCP’) shall divide its annual gross operational expenses by twelve in order to determine its monthly gross operational expenses, and multiply the resulting number by its time span for winding down or restructuring its activities determined according to paragraph 2. The result of this calculation is the capital required to ensure an orderly winding down or restructuring of the activities of the CCP.

2. In order to determine the time span for winding down or restructuring its activities referred to in paragraph 1, a CCP shall submit to the competent authority for approval in accordance with that competent authority's powers under Title III of Regulation No 648/2012 its own estimate of the appropriate time span for winding down or restructuring its activities. The estimated time span shall be sufficient to ensure, including in stressed market conditions, an orderly winding down or restructuring of its activities, reorganising its operations, liquidating its clearing portfolio or transferring its clearing activities to another CCP. The estimate shall take into account the liquidity, size, maturity structure and potential cross-border obstacles of the positions of the CCP and the type of products cleared. The time span for winding down or restructuring its activities used for the calculation of the capital requirement is subject to a floor of six months.

3. A CCP shall update its estimate of the appropriate time span for winding down or restructuring its activities whenever there is a significant change in the assumptions underlying the estimation and submit this updated estimate to the competent authority for approval.

4. For the purposes of this Article, operational expenses shall be considered in accordance with International Financial Reporting Standards (IFRS) adopted pursuant to Regulation (EC) No 1606/2002 2002 or, in accordance with Directives 78/660/EEC, 83/349/EEC and 86/635/EC or, 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). CCPs shall use the most recent audited information from their annual financial statement.

Article 4

Capital requirements for operational and legal risks

1. A CCP shall calculate its capital requirements for operational – including legal – risk referred to in Article 2 using either the Basic Indicator Approach or Advanced Measurement Approaches as provided in Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2012 related to the taking up and pursuit of the business of credit institutions[8] 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 (EU) No 2006/48/EC.

3. A CCP shall have in place a well-documented assessment and management system for operational risk with clear responsibilities assigned for this system. It shall identify its exposures to operational risk and track relevant operational risk data, including material loss data. This system shall be subject to regular review carried out by an independent internal or external party possessing the necessary knowledge to carry out such review.

4. A CCP operational risk assessment system shall be closely integrated into the risk management processes of the CCP. Its output shall be an integral part of the process of monitoring and controlling the CCP's operational risk profile.

5. A CCP shall implement a system of reporting to senior management that provides operational risk reports to relevant functions within the institutions. A CCP shall have in place procedures for taking appropriate action according to the information within the reports to management.

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 (EU) No 2006/48/EC.

7. CCPs using the Advanced Measurement Approaches as specified in paragraph 6 for the calculation of their capital requirements for operational risk shall hold capital which is at all times more than or equal to 80% of the capital required using the basic indicator approach according to paragraph 2.

[8] OJ L 177, 30.6.2006, p.1

Article 5

Capital requirements for non covered credit, counterparty credit and market risks

1. A CCP shall calculate its capital requirements for non covered credit, counterparty credit and market risks referred to in Article 2 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 the Directives (EU) No 2006/48/EC and No 2006/49/EC of the European Parliament and of the Council of 14 June 2012 on the capital adequacy of investment firms and credit institutions[9], subject to the restrictions provided in paragraphs 2 to 5.

2. For the calculation of capital requirements for non covered market risk, a CCP shall use the methods provided for in Annexes I to IV of the Directive (EU) No 2006/49/EC.

3. For the calculation of the risk-weighted exposure amounts for non covered credit risk, a CCP shall apply the Standardised Approach for credit risk provided for in Articles 78 to 83 of the Directive (EU) No 2006/48/EC.

4. For the calculation of the risk-weighted exposure amounts for non covered counterparty credit risk, a CCP shall use the Mark-to-market Method provided for in Annex III, part 3 of the Directive (EU) No 2006/48/EC and the Financial Collateral Comprehensive Method applying supervisory volatility adjustments provided for in Annex VIII, part 3 of the Directive (EU) No 2006/48/EC.

5. Where the conditions referred to in Articles 52 and 53 of Regulation (EU) No 648/2012 are not fulfilled and where a CCP does not use its own resources, the CCP shall apply a risk weight of 1250% to its exposure stemming from contributions to the default fund of another CCP and a risk weight of 2% to its trade exposures with another CCP.

Article 6

Capital requirements for business risk

1. The CCP shall submit to the competent authority for approval in accordance with that competent authority's powers under Title III of Regulation No 648/2012 its own estimate of the capital necessary to cover losses resulting from business risk based on reasonably foreseeable adverse scenarios relevant to its business model.

2. The capital requirement for business risk shall be equal to the approved estimate and shall be subject to a floor equal to 25% of its annual gross operational expenses. For the purposes of this Article, gross operational expenses shall be considered in accordance with Article 3(4).

[9] OJ L 177, 30.6.2006, p.201

Article 7

This Regulation shall enter into force 20 days after 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,

[For the Commission
The President]

[For the Commission
On behalf of the President]

[Position]

4. Accompanying documents

4.1 Cost-Benefit Analysis / Impact Assessment

4.1.1 Introduction

5. The draft Regulatory Technical Standards (RTS) have to be accompanied with an impact assessment according to the Article 10(1) of the EBA Regulation (Regulation (EU) No 1093/2010 of the European Parliament and of the Council).

6. Article 16 of the European Commission's (EC) proposals for a Regulation on over-the-counter (OTC) derivatives, central counterparties (CCPs) and trade repositories ('EMIR') requires the EBA to draft regulatory technical standards (RTS) on the capital requirements that a CCP should meet.

4.1.2 Procedural issues and consultation process

7. The EBA consulted on the regulatory technical standards on capital requirements for CCPs at several different stages.

8. On March 6th 2012 the EBA published a Discussion Paper on capital requirements for CCPs which included preliminary views on the draft regulatory technical standards for consultation of market participants and all interested stakeholders. The consultation closed on April 2nd 2012.

9. On June 15th 2012 the EBA published a Consultation Paper on these draft regulatory technical standards for consultation of market participants and all interested stakeholders. Consultation closed on July 31st 2012.

10. Both in the Discussion Paper and the Consultation Paper the EBA included questions in order to seek qualitative and quantitative (data) evidence for evaluating the impacts of the proposed options, and for informing the policy choices.

11. The consultation carried out through the Discussion Paper received 25 responses, in particular from CCPs (13), banking and financial associations (6), banks (4) and other financial institutions (2). 20 of those responses were authorised for publication on the EBA website.

12. The consultation carried out through the Consultation Paper received 17 responses, in particular from CCPs (8), banking and financial associations (3), banks (2), other financial institutions (2) and other stakeholders (2). 16 of those responses were authorised for publication on the EBA website.

13. In addition, a survey on current capital requirements for CCPs was conducted among the National Supervisory Authorities. The EBA received 12 responses.

14. The EBA organised a public hearing on the proposed RTS on capital requirements for CCPs on July 5th 2012. Also, bilateral communications with CCPs and other stakeholders took place throughout the rule-making process.

15.The EBA analysed the comments and the data received throughout the different consultation stages and considered them in developing these draft RTS.

4.1.3 Scope and nature of the problem

16.As documented in the Impact Assessment accompanying the EMIR Directive, increasing the safety and efficiency of the OTC derivatives market contributes to achieving the general policy objective of reducing systemic risk in the economy. In turn, safety and efficiency of the OTC derivatives market is ensured by the following specific policy objectives:

a) To increase the transparency of the OTC derivatives market for regulators, market participants and the public;

b) To reduce the counterparty credit risk associated with OTC derivatives; and

c) To reduce the operational risk associated with OTC derivatives.

17.EMIR further breaks down the specific objectives (a) (b) and (c) into the following operational objectives:

a) To obtain complete and comprehensive information on OTC derivatives' positions;

b) To increase the use of CCP clearing;

c) To improve bilateral clearing practices; and

d) To increase the standardisation of OTC derivatives contracts and processes.

18.As explained in the introduction of this consultation paper, the primary function of a CCP is to act as an intermediary between the counterparties to a bilateral trade, so that the parties' bilateral trade is replaced by each of them having a separate trade with the CCP. In this way, the CCP takes on the risk of the potential loss to which a party could be exposed if its counterpart were to default. Therefore, a CCP allows market participants to trade without being exposed to the risk of each other's default. In addition central clearing ensures that positions are netted off against each other and also maintains transaction records, thus increasing the overall transparency and efficiency of clearing operations.

19.For these reasons EU Regulation introduces a legal obligation to clear OTC derivatives transactions through CCPs with the aim of increasing the use of the latter (operational objective b).

20.Incentivising the use of central clearing, though, requires ensuring that CCPs are robustly risk-managed and financially sound irrespective of the financial instruments cleared.

21.To limit CCPs' credit exposures, the EMIR requires that a CCP collects margin, maintains a pre-funded default fund and maintains dedicated own resources. The CCP's dedicated own resources cannot be used to meet the CCP's regulatory capital requirements.

22.Further, additional capital is required under Article 16 of the Regulation to mitigate market risk, credit risk and counterparty credit risk arising from investment activities and other non-clearing activities; and also to mitigate operational, legal and business risks arising from all the activities of a CCP.

23. These draft RTS directly addresses the operational issues related to defining capital requirements mandated by Article 16 of EMIR, thus ensuring that CCPs are robustly risk-managed and financially sound. The RTS indirectly contributes to the achievement of EMIR operational objective (b) and, through the latter, to the achievement of specific objectives 1 to 3.

4.1.4 Baseline

24. The baseline is the scenario defined by market and regulatory practices against which the impacts of the present RTS are assessed and quantified.

25. Prior to this proposed Regulation:

   a) CPPs, as such, are not subject to any EU-wide capital requirements framework.
   b) CCPs being licensed as banking entities are subject to CRD type of capital requirements
   c) CCPs belonging to jurisdictions where the IOSCO-CPSS principles for Financial Market Infrastructures have been adopted, are subject to a capital requirement for winding-down / restructuring procedures equal to a minimum of 6 months of operational expenses.
   d) Some CPPs are subject to minimum initial capital requirements (necessary for authorisation/registration) which differ across Member States.

26. The baseline scenario is defined by the capital resources that European CCPs currently hold as a result of both market/business purposes and the regulatory framework summarised in points (a) to (d) above. In quantifying the capital costs associated to the RTS this Impact Assessment attempts to estimate the capital surplus/shortfall resulting from the comparison between the RTS capital requirements and the current levels of capitalisation of CCPs businesses. In this respect the following caveat is appropriate: the estimate of the capital surplus/shortfall resulting from the RTS takes into account that independently from the options adopted by these draft RTS all CCPs will be subject to a minimum initial capital requirement equal to 7.5 million Euros, as mandated by article 16(1) of EMIR.

27. An alternative baseline scenario could consider that the Regulation is implemented in the absence of the present technical standard. In this case however, it would not be feasible to quantify the capital requirements CCPs would be subject to as a result of the national implementation of the provisions in EMIR. As result no baseline capital figures would be available as benchmark for quantifying the capital surplus/shortfall resulting from the application of the RTS. For this reason, the baseline scenario is defined as in the previous paragraphs.

4.1.5 Considered and preferred options

28. The development of these draft RTS required the EBA to identify a preferred option for each of the following technical decisions:

   - Technical decision 1: The provision of a minimum floor to the number of months used by CCPs to estimate the winding-down and restructuring period.

   - Technical decision 2: The definition of operating expenses to be included in the computation of the capital requirement for winding-down and restructuring.

- Technical decision 3: The method(s) to be used for calculating the capital requirement for Operational Risk on covered and non-covered activities.

- Technical decision 4: The method(s) to be used for calculating the capital requirement for Credit Risk on non-covered activities.

- Technical decision 5: The method(s) to be used for calculating the capital requirement for Counterparty Credit Risk on non-covered activities.

- Technical decision 6: The method(s) to be used for calculating the capital requirement for Market Risk on non-covered activities.

- Technical decision 7: A Pillar II type of framework for the capital requirements covering legal risk and business risk.

- Technical decision 8: A framework for including capital requirements for business risk.

- Technical decision 9: The setting of a % notification threshold above the total minimum capital requirement.

29. In selecting a proposal for each of the technical decisions listed above the EBA has had regard to the specific advantages and disadvantages of the options considered, and to the extent to which each option contributes to achieving the objective of this RTS, i.e. ensuring that CCPs are financially sound, can sustain an orderly winding-down or restructuring of their activities and are robustly managed against operational, legal risk, business risk and other non-covered risks (see also section 'Scope and Nature of the Problem' above). Given a baseline scenario where CCPs already hold positive amounts of capital resources, part of the benefits discussed in relation to the requirements drafted in the RTS already materialise in the markets.

30. In discussing the disadvatanges, reference is made to quantitative costs which are further discussed in the section 'Quantitative Annex of the Impact Assessment'.

Technical decision 1: The provision of a minimum floor to the number of months used by CCPs to estimate the winding-down and restructuring period.

Link to the objectives	Estimating the duration of a winding-down and restructuring period might expose some of the CCPs to potentially material uncertainty and technical challenges. A prudential floor to the estimation ensures that such limitations do not undermine the operational objective of having CCPs that are sound enough to carry out orderly winding-down and restructuring operations.
Option 1:	No prudential floor is set for the estimation of a winding-down and restructuring time period.
	Advantages: The estimate of the winding down and restructuring period would fully reflect the specific business characteristics of the CCPs. Capital requirements generate direct and indirect costs for the CCPs (see Quantitative Impact Assessment).

	Disadvantages: Given the potential uncertainty and challenges CCPs are exposed to when estimating a winding-down and restructuring period, the lack of a prudential minimum might result in CCPs using inappropriately low estimates, thus undermining the objective of ensuring orderly winding-down and restructuring operations.
Option 2:	The time span for winding-down and restructuring estimated by the CCP is subject to a prudential floor of 6 months.
	Advantages: The use of inappropriately low estimates is ruled out by a prudential floor. The 6 months value is in line with pre-existing IOSCO-CPSS Principles for Financial Market Infrastructures. Therefore: - a level playing field for EU CCPs vis-à-vis non-EU CCPs is ensured - capital requirements do not constitute an indirect barrier to the recognition in the EU of non-EU CCPs. **Disadvantages:** Capital requirements generate direct and indirect capital costs for the CCPs (see *Quantitative Impact Assessment*).
Option 3:	The time span for winding-down and restructuring estimated by the CCP is subject to a prudential floor of 12 months.
	Advantages: The use of inappropriately low estimates is ruled out by a prudential floor. Against the possibility of a winding-down or restructuring phase arising, CCPs would benefit from materially larger levels of capitalization. **Disadvantages:** The 12 months calibration of the floor substantially departs from pre-existing IOSCO-CPSS Principles for Financial Market Infrastructures. Therefore, alike in Option1: - a level playing field for EU CCPs vis-à-vis non-EU CCPs could be compromised - capital requirements could constitute an indirect barrier to the recognition in the EU of non-EU CCPs. Direct and indirect costs would be materially larger than under Option 1 (see section 'Quantitative Impact Assessment').
Preferred option:	Given the considerations above, these draft RTS propose **Option 2 as the preferred option.**

Technical decision 2: The definition of operating expenses to be included in the computation of the capital requirement for winding-down and restructuring

Link to the objectives	During winding-down and restructuring activities some expense items might not be fully applicable while other expense items might be more relevant than in 'normal business' activities. Inappropriate choices over winding-down and restructuring expenses might result in materially different levels of capitalization and financial soundness.

Option 1:	Expenses to be covered during an orderly winding-down and restructuring period are ongoing annual gross expenses of a CCP computed according to the applicable accounting framework. **Note:** IOSCO-CPSS Principles mention the possibility of deducting from the expenses all items subject to depreciation and amortization. The view of the EBA is that those items should not be deducted since they do not fulfil the capital eligibility criteria set out in EMIR.
	Advantages: The definition ensures clarity as to which expenses should be considered for computing the requirement. It rules out discretion over a requirement which substantially contributes to the total capital requirements for CCPs (see *Quantitative Impact Assessment*) **Disadvantages:** The definition is such that the requirement cannot be tailored to the winding-down and restructuring plans of the individual CCP.
Option 2:	Expenses to be covered during an orderly winding-down and restructuring period include only those ongoing expenses that, as agreed between the individual CCP and the National Supervisor, apply to the winding-down and restructuring activities of the CCP.
	Advantages: The definition ensures that the requirement can be tailored to the winding-down and restructuring plans of the individual CCP. **Disadvantages:** The definition introduces a non-harmonized method for computing the requirement. It introduces discretion over a requirement which materially contributes to the total capital requirements for CCPs (see section 'Quantitative Impact Assessment').
Preferred option:	Given the considerations above, these draft RTS propose **Option 1 as the preferred option.**

Technical decision 3: The method(s) to be used for calculating the capital requirement for Operational Risk on covered and non-covered activities.

Link to the objectives	Minimum capital requirements covering operational risk contribute to the objective of maintaining CCPs robustly risk-managed and financially sound against the risks normally arising during operations on both covered and non-covered activities
Option 1:	The capital requirement for operational risk is computed according to the Basic Indicator Approach (BIA).
	Advantages: The requirement is computed according to a harmonized methodology. **Disadvantages:** The resulting capital requirement is not tailored to the specific operational risk profile of the individual CCP. CCPs that operate at low levels of gross income, such as start-up CCPs or

	CCPs that strategically operate according to low-profit business models, would be subject to low requirements even when exposed to material sources of operational risk. Capital requirements generate direct and indirect costs for the CCPs (see section 'Quantitative Impact Assessment').
Option 2:	The capital requirement for operational risk can be computed according to either the Basic Indicator Approach or the Standardized Approach.
	Advantages: The advantages of Option 1 apply, as regards the BIA. **Disadvantages:** The disadvantages of Option 1 apply, as regards the BIA. The Standardised Approach provided in the CRD framework for banks is not appropriate for CCPs since the business lines of such approach are not adapted to the activities carried out by CCPs. The development of a new framework with CCP specific business lines is, at present stage, not feasible given the type of information delivered by the industry during consultation.
Option 3:	The capital requirement for operational risk can be computed according to either the Basic Indicator Approach or the Advanced Measurement Approach.
	Advantages: Same advantages as in Option 1, as regards the BIA. AMA approach should result in a capital requirement for operational risk that better suits the CCP's specific operational risk profile. This is particularly relevant given the large relative contribution of the requirement for operational risk to the total capital requirement (see section 'Quantitative Impact Assessment'). The use of AMA models for operational risk contributes to strengthening risk management practices. **Disadvantages:** The disadvantages of Option 1 apply, as regards the BIA. The development and use of AMA models is expected to generate higher operational compliance costs for CCPs relative to the costs of the BIA approach.
Option 4:	The capital requirement for operational risk can be computed according to either the Basic Indicator Approach or Advanced Measurement Approach. The requirement resulting from the use of the AMA approach cannot be lower than 80% of the requirement that would result from the BIA approach.
	Advantages: The advantages of Option 3 apply. The prudential floor to the output of the AMA approach ensures that: potential competition on internal models, the economic incentives behind the adoption of those models and the potential technical weaknesses of the models themselves do not result in capital requirements inappropriately low. The use of AMA models is compatible with the use of insurance contracts against operational risks. **Disadvantages:**

	The disadvantages of Option 3 apply. The prudential floor might result in a weaker economic incentive to use the AMA approach.
Preferred option:	Given the considerations above, these draft RTS propose **Option 4 as the preferred option.**

Advanced models: advantages and disadvantages

31. As regards the methods for computing the capital requirements for credit, counterparty and market risk, the EBA has considered both the standardised models and the advanced models provided for the same requirements within the CRD/CRR framework for credit and financial institutions. Irrespective of the specific risk to which it relates, the choice of more advanced models presents the following advantages and disadvantages:

32. Advantages: Advanced models are better suited for providing a capital requirement which closely reflects the risk profile of the individual CCP. In addition, the use of advanced models help the CCPs to improve their risk management practices.

33. Disadvantages: Advanced models are expected to generate larger compliance costs for CCPs with respect to the more standardised models. The choice among internal models might be excessively driven by the economic incentive of obtaining lower capital requirements, potentially more than offsetting the benefit of improved risk management practices.

34. Having had regard to the advantages and disadvantages mentioned above, and to the minor quantitative relevance of non-covered activities and the resulting capital requirements, the EBA decided to propose the standardised models for the computation of credit, counterparty and market risks. Technical decisions 4 to 6, below, were taken based on the consideration of the mentioned advantages and disadvantages.

Technical decision 4: The method(s) to be used for calculating the capital requirement for Credit Risk on non-covered activities.

Link to the objectives	Minimum capital requirements covering credit risk contribute to the objective of maintaining CCPs robustly risk-managed and financially sound against the credit risks arising from non-covered activities
Option 1:	The capital requirement for credit risk on non-covered activities can be computed according to the Standardised Method provided in the CRD framework for credit and financial institutions.
Option 2:	The capital requirement for credit risk on non-covered activities can be computed according to either the Standardized Method or the Foundation Internal rating based approach (FIRB) and Advanced Internal rating based approach (ARB) provided in the CRD framework for credit and financial institutions.
Preferred	Given the considerations in Advanced models: advantages and disadvantages

option:	above, these draft RTS propose Option 1 as the preferred option.

Technical decision 5: The methodology(s) to be used for calculating the capital requirement for Counterparty Credit Risk on non-covered activities.

Link to the objectives	Minimum capital requirements covering counterparty risk contribute to the objective of maintaining CCPs robustly risk-managed and financially sound against the counterparty risks arising from non-covered activities
Option 1:	The capital requirement for counterparty credit risk on non-covered activities can be computed according to the Mark-to-market Method (for derivatives) and the Financial Collateral Comprehensive Method (for SFT) provided in the CRD framework for credit and financial institutions.
Option 2:	The capital requirement for counterparty credit risk on non-covered activities can be computed according to either the Mark-to-market Method (for derivatives) and the Financial Collateral Comprehensive Method (for SFT) or the Advanced methods (for both derivatives and SFT) provided in the CRD framework for credit and financial institutions.
Preferred option:	Given the considerations in the section 'Advanced models: advantages and disadvantages' above, these draft RTS propose **Option 1 as the preferred option.**

Technical decision 6: The method(s) to be used for calculating the capital requirement for Market Risk on non-covered activities.

Link to the objectives	Minimum capital requirements covering market risk contribute to the objective of maintaining CCPs robustly risk-managed and financially sound against the market risks arising from non-covered activities
Option 1:	The capital requirement for market credit risk on non-covered activities can be computed according to the Standardised Method provided in the CRD framework for credit and financial institutions.
Option 2:	The capital requirement for market credit risk on non-covered activities can be computed according to either the Standardised Method or the CAD1 or CAD2 methods provided in the CRD framework for credit and financial institutions.
Preferred option:	Given the considerations in the section 'Advanced models: advantages and disadvantages' above, these draft RTS propose **Option 1 as the preferred option.**

Technical decision 7: A Pillar II type of framework for the capital requirements covering legal risk and business risk.

Link to the objectives	Minimum capital requirements covering legal and business risks contribute to the objective of maintaining CCPs robustly risk-managed and financially sound.
Option 1:	The capital requirements for both legal and business risks are determined by a Supervisory Review and Evaluation Process within a Pillar 2 framework as

	provided in the CRD framework for credit and financial institutions.
	Advantages: A Pillar 2 framework ensures that the capital requirements for legal and business risks better tailors the specific activities of the individual CCPs and their systemic importance. **Disadvantages:** A Pillar 2 framework introduces room for supervisory discretion and hence undermines harmonization of prudential requirements for CCPs in the Single Market.
The decision:	The adoption of a Pillar 2 framework was given consideration and eventually ruled out as non-compatible with the mandate given to the EBA of drafting the RTS.

Technical decision 8: A framework for including capital requirements for business risk.

Link to the objectives	Minimum capital requirements covering business risk contribute to the objective of maintaining CCPs robustly risk-managed and financially sound against the business risks arising from both covered and non-covered activities.
Option 1:	The capital requirement for business risk is estimated by the CCP and approved by the National Supervisory Authority.
	Advantages: This option potentially ensures that the capital requirements for business risk better tailors the CCP's specific activities. **Disadvantages:** This option introduces discretion on the side of both CCPs and National Supervisory Authorities. Given the uncertainty and the technical challenges the estimation is exposed to, this option might result in inappropriately low capital requirements for business risk.
Option 2:	The capital requirement for business risk is equivalent to the gross operational expenses covering 3 months.
	Advantages: This option represents a standard and, as such, minimizes the degree of discretion on the side of both CCPs and National Supervisory Authorities. **Disadvantages:** This option does not allow tailoring the capital requirements for business risk to the specific activities of the individual CCP.
Option 3:	The capital requirement for business risk is estimated by the CCP and approved by the National Supervisory Authority. The estimate is subject to a prudential floor equal to the amount of gross operational expenses covering 3 months.
	Advantages: Advantages of Option 1 apply. The prudential floor ensures that, given the uncertainty and the technical challenges the estimation is exposed to, the resulting requirement is not

	inappropriately low. **Disadvantages:** The prudential floor established might be such that the requirement is too high for CCPs exposed to particularly low levels of business risk.
Preferred option:	Given the considerations above, these draft RTS propose **Option 3 as the preferred option.**

Technical decision 9: The setting of a % notification threshold above the total minimum capital requirement.

Link to the objectives	One of the conditions behind financially sound and robustly risk-managed CCPs is effective supervisory monitoring. The notification threshold is a monitoring tool ensuring that early intervention can take place as the capital resources of a CCP approach the minimum required level and the likelihood increases of such resources becoming insufficient to buffer the risks of the CCP's activities.
Option 1:	No notification threshold is established.
	Disadvantages: The absence of a notification threshold opens to the possibility for the CCP to become financially non-viable, i.e. breaching the minimum capital requirements, without the supervisor being aware and able to timely intervene at a stage when actions can still be taken for maintaining financial viability. In this respect, the absence of a notification threshold undermines the objective of maintaining CCPs robustly risk-managed and financially sound.
Option 2:	The notification threshold is set to 110% of the minimum capital requirement.
	Advantages: A positive notification threshold enables supervisory authorities with a tool for timely monitoring and early intervention. The 110% value is in line with the specific use of early warning type of indicators, as indicators of proximity to a critical event (breach of the capital requirement).
Option 3:	The notification threshold is set to 125% (as proposed for consultation in the Consultation Paper) or larger percentage of the minimum capital requirement.
	Advantages: A positive notification threshold provides supervisory authorities with a tool for timely monitoring and early intervention. **Disadvantages:** A value as high as 125% (or higher), is likely to water down the warning function of the tool, the fact that it should flag proximity to a critical event and should trigger a level of engagement on the side of both firms and supervisors which is proportionate to the proximity of the threat. Holding capital resources which are permanently lower than 125% of the minimum capital requirement is likely to turn into an ''ordinary' condition for a non-negligible number of CCPs in the market who cannot sustain as high capital levels as the one implied by the fulfilment of a 125% threshold. The threshold could lose its function of triggering increased monitoring of those CCPs who are experiencing non-ordinary and progressive deteriorations of

	their capital position. This view has been supported by the ESMA and by national supervision experts.
Preferred option:	Given the considerations above, these draft RTS propose **Option 2 as the preferred option**.

4.1.6 Quantitative Annex of the Impact Assessment

4.1.7 Introduction

35. This section develops a quantitative assessment of the impacts on capital as well as of the costs of the capital implied by the requirements proposed in these draft RTS.

36. Capital requirements might impose costs on both regulators and regulated entities, as summarised by the following table:

Table 1: Overview of the costs of these draft RTS split by direct and indirect, one-off and on-going, capital and operational costs.

<table>
<tr><td rowspan="3">Direct Costs</td><td>On National Supervisory Authorities</td><td>Costs of supervision:</td><td>One-off: e.g. new IT systems
On-going: e.g. new staff, new training</td></tr>
<tr><td rowspan="2">On regulated entities (compliance costs)</td><td>Capital compliance costs
(resulting from capital shortfalls)</td><td>One-off: operations for raising new capital
On-going: Remuneration of capital shortfall</td></tr>
<tr><td>Operational costs of compliance</td><td>One-off: e.g. new IT systems, new training
On-going: e.g. staff for computing, monitoring, reporting the requirements</td></tr>
<tr><td rowspan="2">Indirect Costs</td><td rowspan="2">Pass-through of direct costs on the markets direct costs</td><td rowspan="2"></td><td>Transactions with some CCPs might become more costly for clearing members and/or end clients.</td></tr>
<tr><td>In presence of bank ownership of CCPs raising new capital might result in reduced lending</td></tr>
</table>

37. Quantifying the indirect costs is not within the scope of this Impact Assessment.

38. The direct costs for National Supervisory Authorities (NSAs) are not expected to be material. In a majority of the national jurisdictions minimum capital requirements are already being implemented as a condition for the authorisation of the CCP's activities. Besides minimum capital requirements, some Member States already implement the IOSCO-CPSS principles on winding-down and

restructuring. Therefore NSAs already have the systems and resources necessary for supervising the (very small number of) CCPs under their jurisdiction.

39. The operations related to compliance with the requirement are, at least partially, already being carried out by the CCPS that, because of national regulations and/or CRD/CRR provisions, are subject to minimum initial capital requirements and/or capital requirements as for credit and financial institutions. However the provisions drafted in this RTS introduce requirements and regulatory methods for computing those requirements which are new to the majority of the CCPs domiciled in the EU.

40. The EBA was able to collect very limited evidence on the magnitude of the <u>operational costs of compliance</u> introduced by the draft RTS. A few respondents provided consistent estimates including both on-going and (amortised) of one-off operational costs which amount to approximately 2% of total annual gross expenses.

41. The assessment of the <u>capital compliance costs</u> would require detailed evidence on the cost of capital for individual CCPs and on the costs associated to the operations necessary for raising new capital. Such evidence is not readily available for this analysis. The scale of those costs, though, clearly depends on the estimated capital shortfall resulting from the application of the requirements. The following sections of this annex present the results of a Quantitative Impact Study (QIS) exercise which was carried out to obtain an approximate measure of such shortfall. In line with estimates on the cost of capital considered by the ESMA, which in turn are partly based on existing academic work, this impact assessment considers the one-off costs related to the operations of raising new capital to vary between 7.5% and 9% of the amount of capital to be raised (aggregate capital shortfall computed in the QIS). Based on the same evidence, the cost related to the annual remuneration of newly raised capital is also considered to vary between 7.5% and 9% of the capital amount (aggregate capital shortfall computed in the QIS).

4.1.8 Quantitative Impact Study exercise

42. This section presents the results of a Quantitative Impact Study (QIS) exercise which was carried out in order to:

   a) provide an approximate assessment of the impact of this RTS' proposed capital requirements, in terms of implied capital surplus/shortfall, on the capital resources held, as of 2011, by the CCPs who participated in the data collection.
   b) provide an approximate assessment of the quantitative contribution of each specific capital requirement mandated by this set of draft RTS within the CCPs total capital requirements.
   c) provide an approximate assessment of the costs of capital resulting from the requirements proposed by the RTS, of both one-off and on-going nature.

43. The numbers presented in this section are to be interpreted as an indication of the scale of the capital impacts, and associated capital costs. The analysis is subject to several important caveats:

   a) The capital shortfall/surplus figures are calculated in relation to capital resources held as of the end of 2011, and according to the capital requirements that would result from the application of the draft RTS to the current business profile of CCPs. After the EMIR package of new rules is implemented CCPs' business strategies and decisions might change substantially.

b) The capital requirements used in the analysis have been computed by CCPs, mostly, according to the best understanding of the rules drafted in the RTS.

c) The computation of the capital surplus/shortfall does not take into account the capital deductions that should apply given the provisions of EMIR on the eligibility of capital for CCPs. In this respect the figures obtained constitute a lower bound (upper bound) of capital shortfall (surpluses), as the eligible capital to be used for fulfilling the requirement will most likely be of a lower amount than the capital resources currently held.

d) The computation of the capital shortfall/surplus figures only represent the comparison between the minimum capital requirements resulting from the application of the RTS and capital resources currently held. As such, it does not take into account that CCPs can reasonably be expected to hold voluntary capital buffers on top of the minimum capital required by regulation. The analysis does not consider the notification threshold since the latter is a monitoring tool and is not part of the minimum capital requirement.

4.1.9 Data

44. In order to carry out this QIS, data were collected from both National Supervisory Authorities and Central Counterparties throughout the consultation and drafting process, on a best effort basis. In particular:

45. National Supervisory Authorities were asked to provide qualitative and quantitative evidence on the type of capital requirements currently being applied to CCPs at the national level.

46. CCPs were asked to provide:

a) an estimate of the capital requirements they would have to fulfill, according to each of the sources of risk and the methods for computing the capital requirements that were included for consultation in the March 2012 EBA Discussion Paper; and

b) an income statements and balance sheets related to the most recent available years.

47. Overall, the EBA received qualitative and / or quantitative responses from:

a) 11 National Supervisory Authorities[10].

b) 19 Central Counterparties.

48. The results presented in this section are based on data which only refer to 12 CCPs: these are the CCPs about which the EBA was able to collect sufficiently comprehensive and reliable evidence[11].

4.1.10 Methodology

49. This QIS computes the Total Capital Requirement (TCR) for each CCP under each of the following options:

a) Sum of / Winding-down 12 months.

[10] The NSAs who provided feedback to the EBA survey on capital requirements for CCPs belong to the following Member States: AT, DE, ES, FR, GR, HU, IT, NL, PT, RO and UK.

[11] One CCP among the 12 that provided comprehensive data for this exercise belongs to a non-EU jurisdiction. As such it will not be subject to the rules included in the draft RTS. The reported figures on aggregate capital shortfall do not include the impact on the mentioned CCP, however the CCP is kept in the sample for illustrative purposes and given the fact that it provided detailed quantitative feedback to the EBA Discussion Paper.

b) Sum of / Winding-down 6 months.

50.The different components of the TCR are listed in the following table.

Table 2: overview of the notations used in this section.

WD: Winding-down requirement	Operational expenses covering 6 or 12 months
OR: Operational Risk requirement	Basic Indicator Approach
CR: Credit Risk requirement	Standardised Approach
CPY: Counterparty Risk requirement	Mark-to-market Method or the Financial Collateral Comprehensive Method
MR: Market Risk requirement	Standardised Approach
BR: Business Risk requirement	Operational expenses covering 3 months

51.The components listed above enter the definition of options (1) and (2) as described in Table 2, below.

Table 3: Options and corresponding formulas

Formula for TCR	Name of the option
TCR = WD+OP+CR+CPY+MR+BR With WD covering 12 months	'Sum of' / Winding-down 12 months
TCR = WD+OP+CR+CPY+MR+BR With WD covering 6 months	'Sum of' / Winding-down 6 months

52.In addition the impacts of the RTS' capital requirements have been computed assuming that all the CCPs in the sample fulfil the EMIR Art 16(1) requirement of an initial 7.5 million € capital. This is the baseline scenario on which the provisions of the draft RTS are assumed to apply.

53.Consequently, the capital shortfall of those CCPs whose total capital requirement is lower than 7.5 million € has not been included in the aggregate capital shortfall associated to the requirements of this RTS. For those CCPs the binding capital requirement is the initial requirement of EMIR Art 16(1) and the marginal impact of the RTS on them is nil.

4.1.11 The impacts on capital

Sum of / Winding-down 12 months

54.Under this option 10/12 CCPs in the sample have a total capital requirement which is larger than € 7.5 million and are therefore impacted by the requirements of the RTS.

55.The impacts on those CCPs can be summarised as follows:

a) The capital requirements result in an aggregate capital shortfall of approximately € 213 million.

b) 3/10 CCPs don't meet the Total Capital Requirement (i.e. would have to raise additional capital resources).

56. The median individual capital shortfall is approximately 55% of currently held capital.

57. The median capital surplus in the sample is approximately 61% of currently held capital.

58. 1/7 CCPs meeting their total capital requirement do not benefit from a surplus which is large enough for them to operate above the above the 110% notification threshold.

59. As mentioned, 2 CCPs in the sample have a total capital requirement lower than € 7.5 million. The shortfall experienced by those CCPs, once EMIR is in force, will be a direct consequence of EMIR Art 16(1) and not of this set of draft RTS. Accounting for those CCPs brings to 5 the total number of CCPs in the sample experiencing a capital shortfall and increases the aggregate capital shortfall in the sample to approximately 222 million €.

60. Figure 1 provides a picture of the individual surplus/shortfall positions resulting from the application of these draft RTS' requirements under the option Sum of / Winding-down 12 months. It also includes, for the sake of completeness, the surplus/shortfall positions of those CCPs that are directly impacted by EMIR Art 16(1) and not by the requirements of the draft RTS.

61. Under this option (see Figure 2), the weighted average contribution of each requirement to the total capital requirement is:

a) Winding-down requirement: approximately 60% of TCR
b) Operational risk requirement: approximately 20% of TCR
c) Business risk requirement: approximately 15% of TCR
d) Investment risks requirements: approximately 5% of TCR

Figure 1: Capital shortfall for the CCPs in the sample with the assumptions 'sum of' approach and 12 months time span. The shortfall is computed as Shortfall= (Available Capital - Capital Requirement) / Available Capital

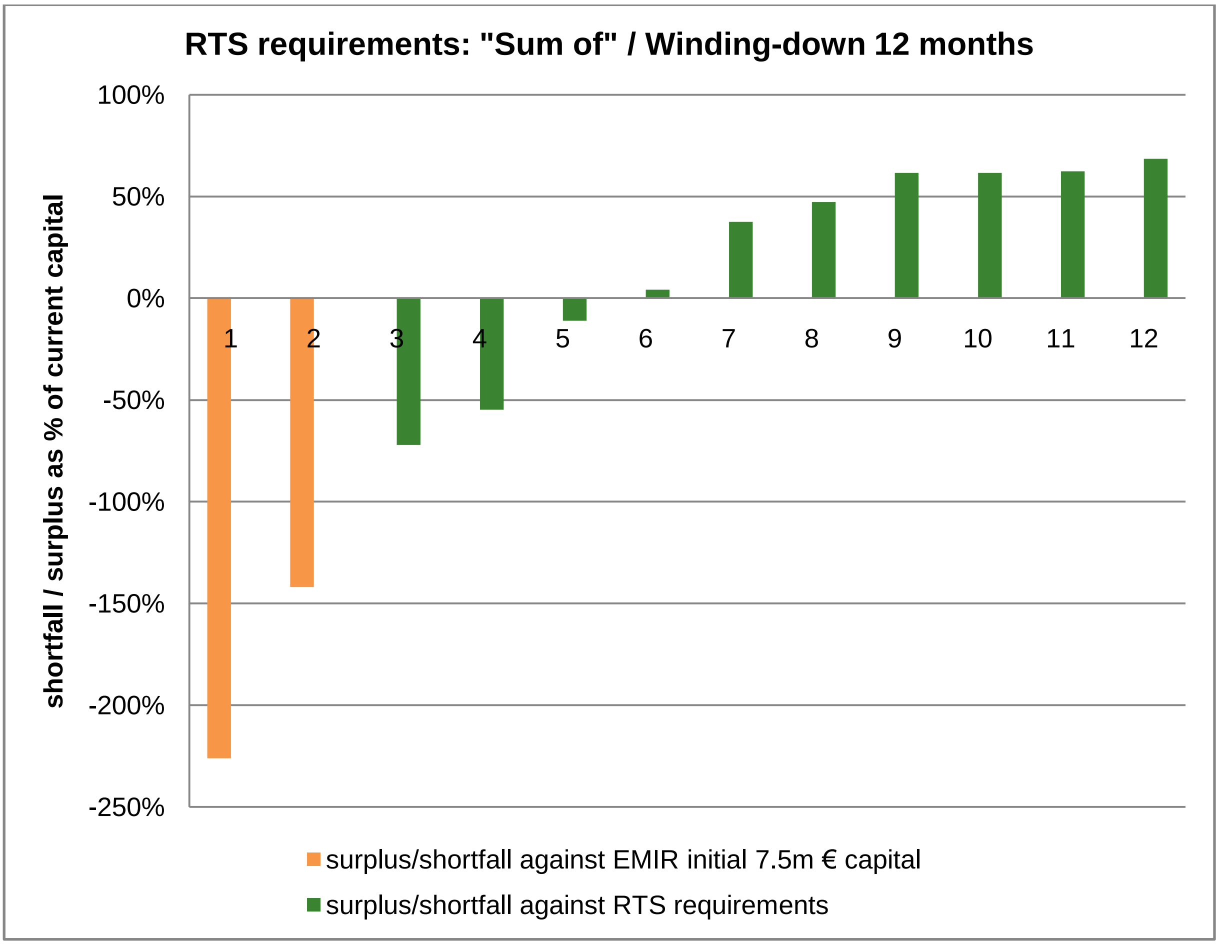
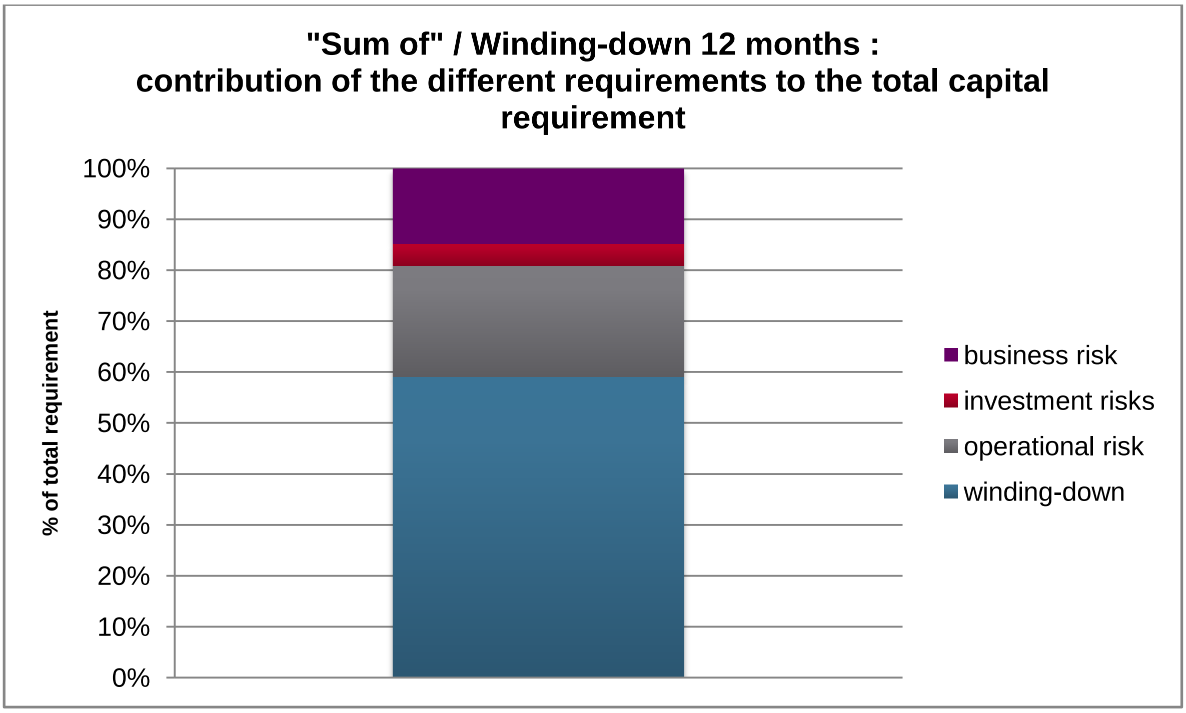


Figure 2: Components of the capital requirement for the CCPs in the sample with the assumptions 'sum of' approach and 12 months time span.[12]



Sum of / Winding-down 6 months

62. Under this option 10/12 CCPs in the sample have a total capital requirement which is larger than € 7.5 million and are therefore impacted by the requirements of the RTS.

63. The impacts on those CCPs can be summarised as follows:

a) The capital requirements result in an aggregate capital shortfall of approximately € 54 million.

b) 2/10 CCPs don't meet the Total Capital Requirement (i.e. would have to raise additional capital resources).

64. The median individual capital shortfall is approximately 18% of currently held capital.

65. The median capital surplus in the sample is approximately 68% of currently held capital.

66. All the CCPs meeting their total capital requirement (8/10) benefit from a surplus that is large enough for them to operate above the 110% notification threshold.

67. As mentioned, 2 CCPs in the sample have total capital requirement lower than € 7.5 million. The shortfall experienced by those CCPs, once EMIR is in force, will be a direct consequence of EMIR

[12] The % contribution of the specific requirement has been calculated by creating a composite CCP at a total sample level, which means that the % contributions are weighted ones. For example, the % contribution of Operational risk is equal to the ratio between the sum of operational risk requirements across all the CCPs in the sample and the sum of the total capital requirements across all the CCPs in the sample.

Art 16(1) and not of this set of draft RTS. Accounting for those CCPs brings to 4 the total number of CCPs experiencing a capital shortfall and increases the aggregate capital shortfall in the sample to approximately € 64 million.

68. Figure 3 provides a picture of the individual surplus/shortfall positions resulting from the application of these draft RTS' requirements under the option Sum of / Winding-down 12 months. It also includes, for the sake of completeness, the surplus/shortfall positions of those CCPs that are directly impacted by EMIR Art 16(1) and not by the requirements of the draft RTS.

69. Under this option (see Figure 4), the weighted average contribution of each requirement to the total capital requirement is:

a) Winding-down requirement : approximately 42% of TCR
b) Operational risk requirement: approximately 31% of TCR
c) Business risk requirement: approximately 21% of TCR
d) Investment risks requirements: approximately 6% of TCR

Figure 3: Capital shortfall for the CCPs in the sample with the assumptions 'sum of' approach and 6 months time span. The shortfall is computed as Shortfall= (Available Capital - Capital Requirement) / Available Capital

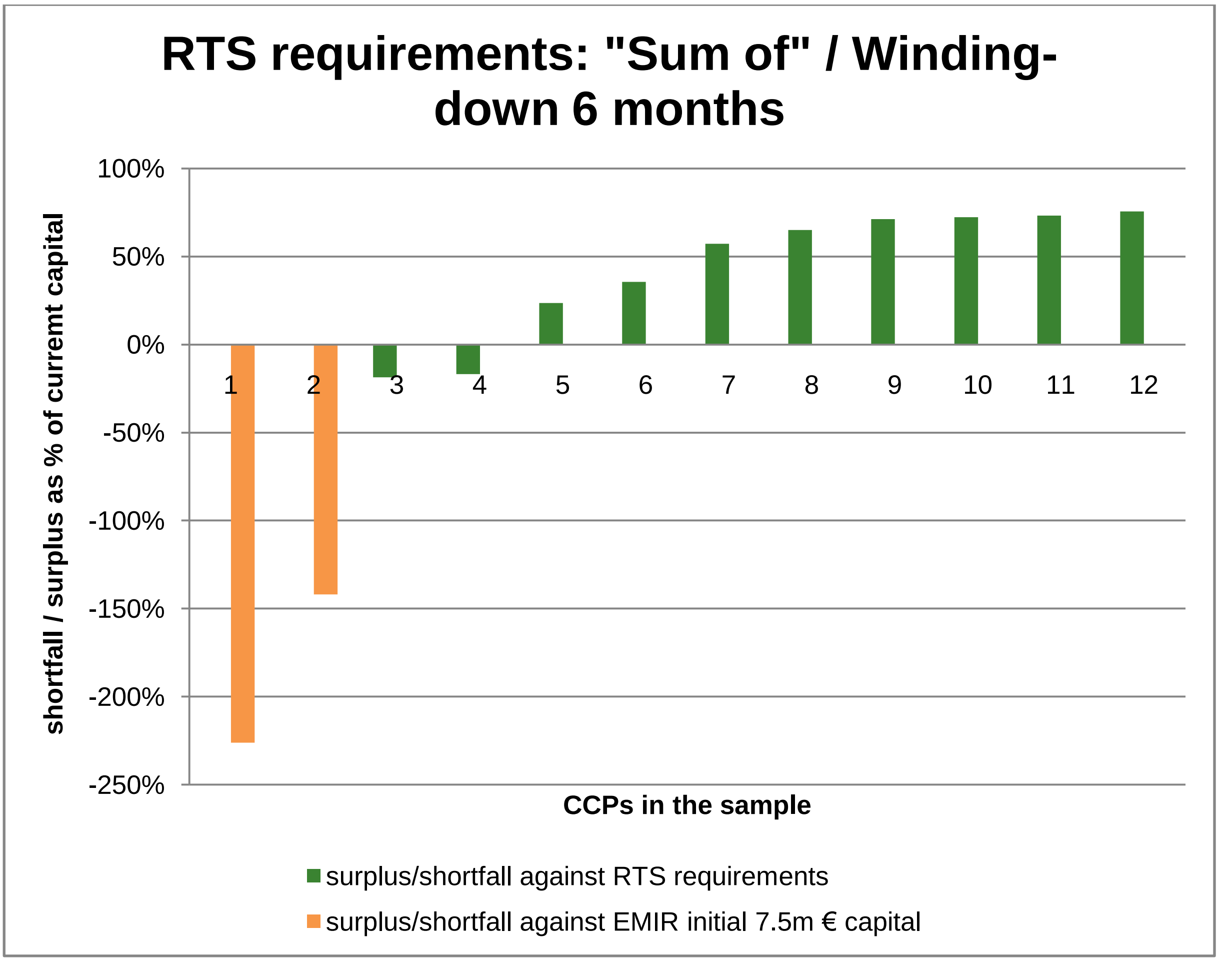
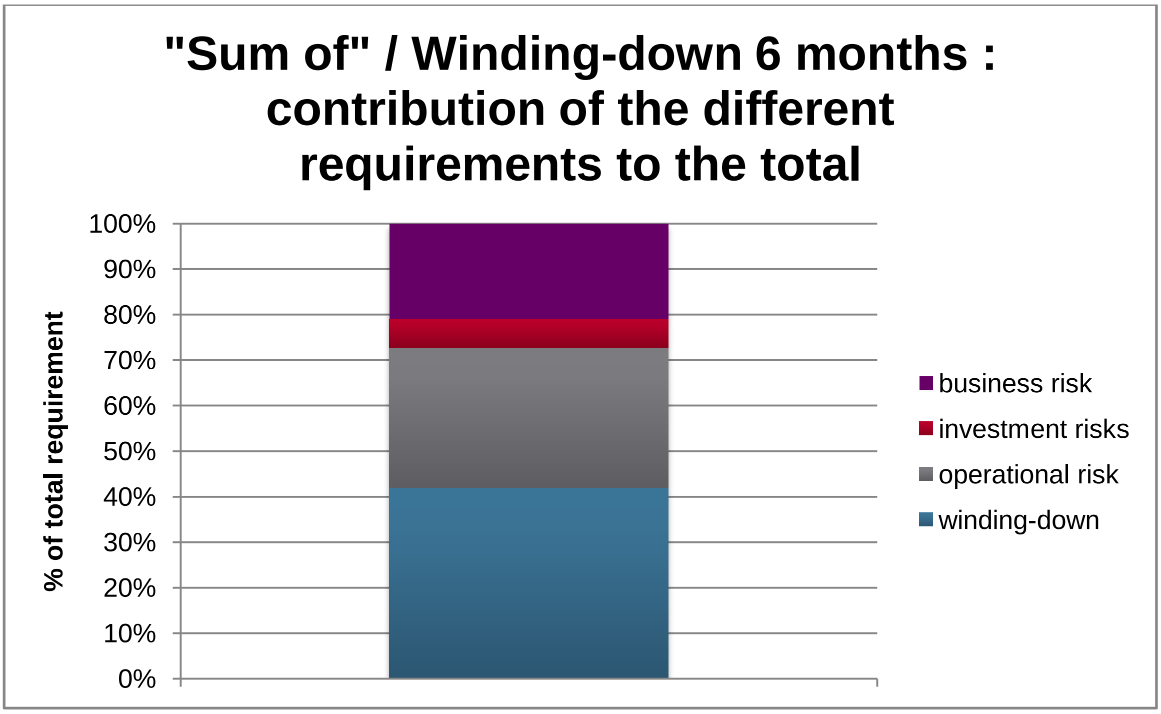


Figure 4: Components of the capital requirement for the CCPs in the sample with the assumptions 'sum of' approach and 6 months time span.[13]



70.One of the concerns raised is that the requirements proposed by the RTS could put the EU CCPs in a competitive disadvantage with respect to other jurisdictions. One of the relevant benchmarks, in this respect Capital requirements being proposed by US regulatory authorities are, in this respect, a relevant benchmark.

71.In the current US proposal, CCPs are subject to a total capital requirement equal to 12 months of operational expenses. No capital requirements are proposed for market, credit, counterparty, operational, legal and business risks. Out of those 12 months, 6 months have to be covered with sufficiently liquid capital resources while additional 6 months can be covered by bank credit lines, if no sufficiently liquid capital resources are available.

72.The simulation of a similar requirement on the CCPs in the sample results in an impact which is not materially different from the impact of the requirements proposed by the draft RTS. The requirements differ as specified in the previous paragraph, although two specific assumptions make the comparison meaningful:

a) The shortfall caused by the CFTC requirement on the CCPs in the sample is a shortfall of resources, irrespective of the instruments that can be used to cover it. Credit lines potentially eligible for covering 50% of the CFTC requirement are assumed to be non available to the CCPs in the current (baseline) situation.

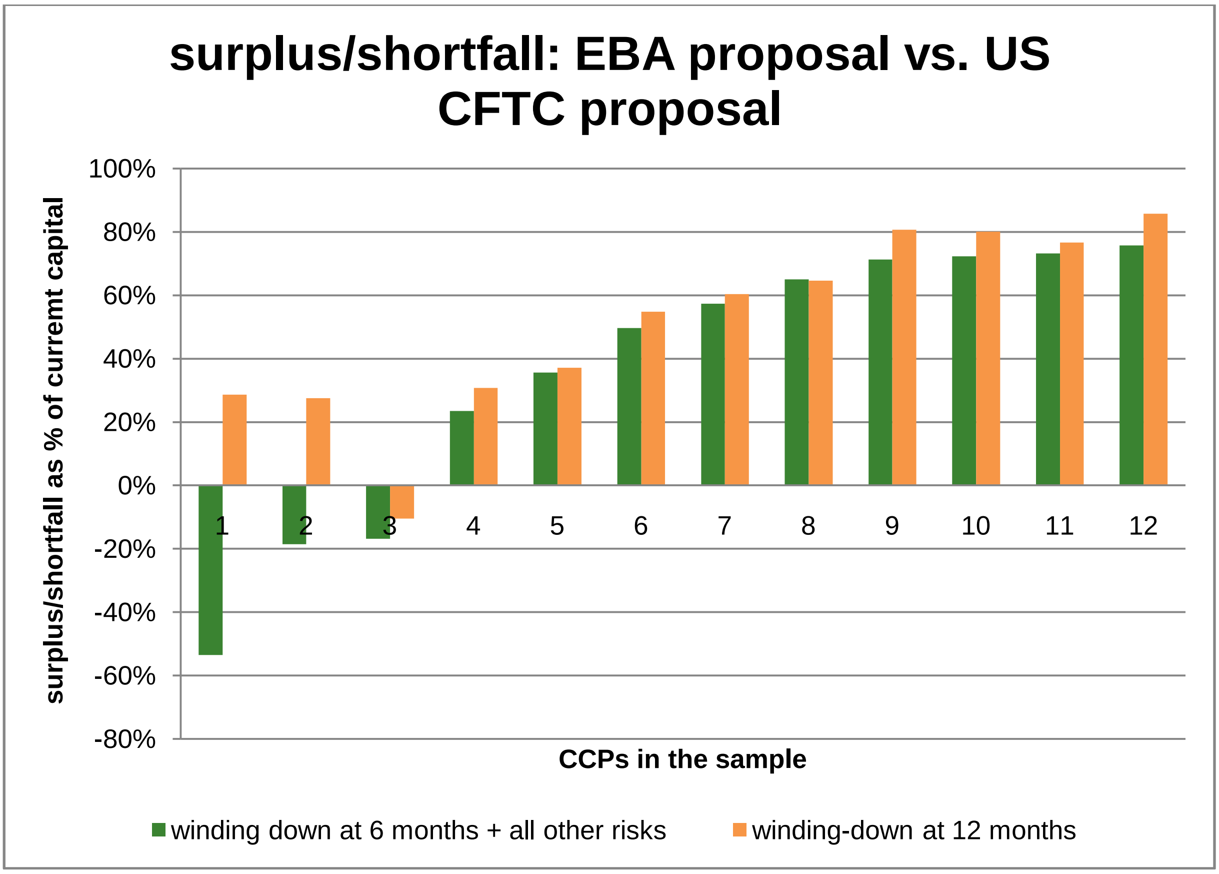
b) The costs of remunerating the resources defining the shortfall, on an on-going basis, could be of comparable magnitude: the cost of equity is not expected to be materially different from the cost of a credit line.

[13] The method for computing the % contributions is the same as the one described in Figure 2.

73.In the current US proposal, CCPs are subject to a total capital requirement equal to 12 months of operational expenses. No capital requirements are proposed for market, credit, counterparty, operational, legal and business risks.

74.The simulation of such a requirement on the CCPs in the sample results in an impact which is not materially different from the impact of the requirements proposed by the draft RTS. As Figure 5 illustrates, the surplus/shortfalls resulting from the two regulatory approaches are materially different only in two cases. One of them is not impacted by any of the requirements under comparison since it is one of those entities for which the € 7.5 million EMIR requirement is the binding (i.e. largest) requirement.

Figure 5: Comparison of the capital requirement in the current proposal and the capital requirement equals to 12 months of operational expenses.



75. Table 4 summarises the impacts of the three capital requirements frameworks as estimated by this exercise.

Table 4: Overview of the results for each of the different scenarios.

	Sum of / Winding-down 12 months	Sum of / Winding-down 6 months	Winding-down 12 months (US CFTC)
No. of CCPs with Total Capital Requirement> 7.5m €	10 out of 12	10 out of 12	9 out of 12
Aggregate Shortfall	€ 213m	€ 54m	€ 21m
No. of CCPs in shortfall	3 out of 10	2 out of 10	1 out of 9
Median Shortfall as % of current capital	55%	18%	
Median Surplus as % of current capital	61%	68%	
CCPs in surplus & below 110% Notification Threshold	1 out of 7	0 out of 8	0 out of 8
CCPs in surplus & below 125% Notification Threshold	1 out of 7	0 out of 8	0 out of 8

4.2 Views of the Banking Stakeholder Group (BSG)

To the European Banking Authority ('EBA') from the Banking Stakeholder Group ('BSG') – Comments on Draft Regulatory Technical Standards on Capital Requirements for CCPs

Key points

The bullet points below set out feedback of the BSG in relation to the EBA's consultation on Draft Regulatory Technical Standards on Capital Requirements for CCPs (the '**Draft Standards**') and, in particular, the EBA's consultation paper on the Draft Standards dated 15 June 2012.

- **Differentiation from regulatory capital regime for credit institutions** – Whilst we agree (as noted in recital 7 of the Draft Standards) that some aspects of the regulatory capital regime for credit institutions may serve as a useful benchmark for CCPs, it will be important to ensure that the regulatory capital regime for banks is not applied wholesale to CCPs. In this context, we note that some CCPs (such as Eurex Clearing AG) are regulated in their home jurisdiction as credit institutions. In our view, the business and risk profiles of CCPs are substantially different to that of banks and it is important that the regulatory capital regime applied to CCPs is designed with this in mind and appropriately calibrated. Furthermore, the fact that CCPs benefit from default backing from clearing members, who (in practice) are mostly banks that will be required to hold capital against their potential default backing contributions should be considered in designing capital requirements for the CCPs themselves; as noted by ICE on page 4 of its response to the draft CPSS-IOSCO principles for financial market infrastructures (the '**FMI Principles**'), '*capital rules relating to banks will inevitably serve in many cases to create pressure for CCPs to adopt no greater than the specified minimum requirements*.' This touches on a more general point, namely whether CCPs should retain the freedom to carry on non-clearing related activities (i.e. rather than being 'pure' CCPs) and, if so, the capital requirements that should apply to their 'non covered' activities. This is discussed further in the final bullet.

- **Need for CCP capital requirements to be sensitive to CCPs' individual risk models** – Article 16(2) of the European Market Infrastructure Regulation ('**EMIR**'), which the Draft Standards are intended to implement, provides that CCPs should hold capital to protect against risks '*which are not already covered by specific financial resources as referred to in Articles 41 to 44*', i.e. margin requirements (Article 41), the CCP's default fund (Article 42), other financial resources (Article 43) and liquidity risk controls (Article 44). In other words, Article 16(2) only requires CCPs to hold prescribed capital to the extent that risks are not already adequately covered by other financial resources in Articles 41 – 44. The Draft Standards should therefore be tailored with sufficient flexibility to ensure that individual CCPs' capital requirements are sensitive to the default backing arrangements that CCP has in place and whatever other financial resources the CCP has access to. The possibility of CCP losses being written off against capital should be seen as merely one tool to ensure CCP stability that may be utilised in a CCP's prudential model, rather than a necessary consequence of any clearing member default. Subject to Article 45 (*Default waterfall*) (on which, see further below), it should be permissible for CCP's with broader default backing arrangements and access to wider financial resources to hold a smaller amount of risk-adjusted capital. With this in mind, we would recommend including similar qualifications on CCPs' obligations to maintain capital as set out in Article 3 of the Draft Standards as are set out in Article 16(2) itself, in particular including recognition that potential losses may be covered by risk mitigants other than capital, if available.

- **Capital charges for operational risk –** Operational risk is a crucial risk type for the CCPs. The proposed basic indicator approach seems to be a possible starting point. Nevertheless, it is questionable whether the 15% multiplier is justified. If the CCP calculated the operational risk capital requirement by the standardised approach, most of its income would be mapped to business lines where the relevant percentage (β factor) is 18 per cent. All the more, because as it is mentioned in the draft as well, in the case of low revenue CCPs the BIA might understate the operational risk capital charge. It could be also considered that an alternative simple approach based on the total number and value of the transactions would not be a better basis for the operational risk capital charge than the revenue based approach. We agree with the proposal that the CCPs should be allowed to use the Advanced Measurement Approach in order to incentivise them to increase their operational risk management, which is their main risk beyond the one (counterparty risk) covered by 'the other financial resources'. The use of such approach should however be subject to a strict validation by an appropriate Authority, i.e. with the expected expertise and probably a banking supervisory Authority. The explicit reference to floor would probably be discouraging and therefore not advisable.

- **Estimating the wind-down period for operational risk charges** – Whilst, in our view, twelve months does not sound like an unreasonable default time period within which a CCP could theoretically be resolved and its positions transitioned, we would note that this time period may vary considerably depending upon the jurisdiction in which the CCP is established and the prudential risk model that it adopts. Therefore, this question should principally be for CCPs to assess in conjunction with their national regulator. In this context, we take some comfort from the provision in Article 6 of the Draft Standards that would base the capital charge for operational expenses on the CCP's '*estimated winding down or restructuring period*', subject to the proposed twelve month floor (on which, see below), i.e. the twelve month figure is a back-stop rather than a default figure.

- **Whether a floor should be applied to the wind-down period for operational risk charges** – As a matter of interpretation, we do not think that an '*appropriate time span'* for orderly wind-down or restructuring of a CCP's activities necessarily requires an explicit floor to be set in the Level 2 Technical Standards; there may be an argument for allowing CCPs to apply a shorter time period when they are able to evidence through their general capital plan that a shorter period for wind-down or restructuring is foreseeable. Assuming that the general capital plan, as set out in Article 5 of the Draft Standards, is appropriately scrutinised by the CCP's competent regulator, then there should be flexibility to set a shorter time period for the purposes of setting a CCP's capital charges for operational risk. With this in mind, we would not object to a shorter floor than twelve months, provided the likely resolution period continues to be estimated on a CCP-by-CCP basis. (One general point to note here is that it is not clear how these proposals will dovetail into the Commissions forthcoming consultation on the resolution of CCPs. The general capital plan referred to in Article 5 appears to include a resolution and recovery plan under Article 5(1)(b), which begs the question of whether Draft Standards under EMIR are the correct instrument to achieve this, but also raises the question as to what the forthcoming Commission consultation on the resolution of CCPs will address. There is no reference whatsoever in the Draft Standards to the Commission's ambitions or draft crisis management proposals and this needs clarifying.

- **The implications of CCP capital requirements for non-member ownership interests** – In considering what capital requirements to apply to CCPs, it is important not to lose sight of the potential impact on CCP's ownership models. The practical consequences of requiring CCPs to hold additional capital will, in many cases, be that CCPs will be required to raise additional capital, either from their existing shareholders or other third parties. In the case of principally member-owned clearing houses (e.g. DTTC), this either raises the risk of increasing clearing members' potential losses in the event of a CCP failure (i.e. by adding additional potential losses on CCP equity held by a clearing member on top of any contributions that clearing member may need to make to the CCP's default fund) or else, if existing clearing members are reluctant to contribute the additional capital required, mandating capital raising from non-members. Raising equity capital from third parties may not be cost effective (particularly if a number of different CCPs are required to seek funding in the equity capital markets at the same time) and may also lead to non-stakeholders with a principally financial motivation having a considerable say in CCP governance. It has been noted by some commentators that opening up the membership of US CCPs to non-members would leave the CCPs' practices open to scrutiny under US anti-trust laws, which do not apply to member-owned businesses; likewise, it will be necessary to consider the EU competition law implications of EU CCPs raising capital from persons other than clearing members.

- **Positioning of CCP resources and capital in the loss waterfall** – Article 45(4) (*Default waterfall*) of EMIR envisages that CCPs should use their dedicated own resources before using the default fund contributions of non-defaulting clearing members. This approach (known as 'CCP skin-in-the-game') was justified in the EMIR negotiations as incentivising responsible risk management by CCPs (see e.g. point 6 of the public comments from ISDA/AFME on the Hungarian Presidency compromise text of 17 March 2011). We note from Article 43(1) (*Other financial resources*) that such resources should not be used to meet the capital requirements required under Article 16, but there is no similar rule in relation to capital, the implication being that CCPs may call on default fund contributions from non-defaulting clearing members before writing off any further losses against capital. We also note that, under Article 45(5), responsibility lies with ESMA (rather than the EBA) to develop rules on the calculation and maintenance of CCPs' own resources requirements. It is important that ESMA and the EBA work together closely on these issues due to the interrelationships between them; in particular, the amount of other resources that CCPs will be required to hold under the ESMA rules will have a direct impact on both the risk posed to default fund contributions from non-defaulting clearing members and the risk that a CCP will be required to recapitalise following the default of a clearing member (which, in turn, should factor into a CCP's capital plan that will be required by Article 5(1) of the Draft Standards). In addition to this, it might be useful for the EBA to clarify what the 'other financial resources' held by CCPs are likely to comprise in practice and confirm whether the intention of Article 43 is to carve such resources out of the definition of 'capital' for the purposes of CCP capital adequacy requirements (or, if not, how the provision should be read). In this context, we note that, at the recent EBA open hearing on the draft RTS, the EBA representatives expressed the view that the 'other financial resources' requirement, which sits higher up in the default waterfall than capital, is explicitly deducted from capital in Article 3 - potentially helping with the ambiguity on how such resources should be treated (and eliminating the risk of double-counting).

- **Capital charges for business risks and residual legal risks –** Whilst we would not object to competent authorities having the power to require CCPs to hold additional capital against business and legal risks (as envisaged in Article 9 of the Draft Standards), we believe that this should be discretionary and should take into account CCP's overall prudential model, including its access to other financial resources and the extent to which such risks (in particular, legal risks) are already covered in the CCP's default backing arrangements. We believe that this is consistent with the present draft of Article 9 and therefore have no changes to suggest to the current wording.

- **Capital charges for 'non covered' activities** – Article 8 of the Draft Standards imposes an additional capital charge for non covered activities that appears to go beyond the intent of Article 16(2) of EMIR. Article 8 is geared towards the investment activities of CCPs, including the investment of its own financial resources and collateral received from clearing members (see Article 8(2)). However, it is not entirely clear that this additional capital charge is proportionate to the risks that these activities give rise to given the highly conservative investment policy of CCPs which is buttressed with quite detailed Level II standards being proposed by ESMA (confer Article 47 EMIR and Chapter XII of ESMA's draft RTS on OTC Derivative, 25 June 2012). CCPs should not carry trading book positions (even if they may have open FX positions) or significant credit risk.

This raises the issue as to whether or not prudentially regulated CCPs should be permitted to use internal models for other risks than operational ones;. A simple application of a standardised approach to risk to a broad range of activities would then be perfectly legitimate. CCPs should focus on their main role which is to make trade exchange safer and not to divert their attention towards other profit generating activities.

- **Capital requirement notification threshold -** We understand that the threshold set at 125% is not construed as being a capital buffer, which makes a lot of sense, but the contemplated sanction in case of breach of the minima is not clearly established and cannot only be a more stringent reporting.

4.3 Feedback on the public consultation and on the opinion of the BSG

The EBA publicly consulted on the draft proposal contained in this paper.

The consultation period lasted for six weeks and ended on 31 July 2012. Seventeen responses were received, of which sixteen were published on the EBA website.

This paper presents a summary of the key points and other comments arising from the consultation, the analysis and discussion triggered by these comments and the actions taken to address them if deemed necessary.

In many cases several industry bodies made similar comments or the same body repeated its comments in the response to different questions. In such cases, the comments, and EBA analysis are included in the section of this paper where EBA considers them most appropriate.

Changes to the draft ITS have been incorporated as a result of the responses received during the public consultation.

Summary of key issues and the EBA's response

The EBA has formally consulted ESMA for this set of draft RTS and its contribution to these draft RTS is addressed in the feedback statement. The main issues addressed by the industry as well as by ESMA are the following:

a) The 'sum of' approach is a significant departure from the internationally adopted principles. The 'sum of' approach refers to the provision (in the Level 1 text) to cumulate the capital requirements for the various risks (market, credit, counterparty, operational legal and business) on the top of the capital required for an orderly winding down or restructuring of the activities.

b) Capital requirements that are more conservative than those prescribed by CPSS-IOSCO, might result in a disproportionate capital requirement and would create a serious issue in terms of international consistency.

c) If implemented, it could also potentially hamper the recognition process of non-EU CCPs under EMIR.

d) ESMA considers that credit and market risk associated with the collateral collected should be covered with adequate haircuts and therefore it would not be appropriate to require, on top of that, capital requirements for that purpose.

These and the other issues are addressed in detail in the feedback statement in the annex: 'Summary of responses to the consultation and the EBA's analysis'. About the bullet point 1, the provision is in the level 1 text and cannot be changed in the technical standard. Bullet points 2 and 3 about international consistency have been considered for the calibration of some of the risk weights and this is explained in the annex: Impact Assessment. The level 1 text (and the corresponding technical standards developed by ESMA) specifies what risks should be covered by specific financial resources. All the risks not covered by specific financial resources and in the list of risks present in Art. 16(2) of the EMIR have to be covered by capital requirement. This set of draft RTS does not specify further what is already specified in the level 1 text (and the corresponding technical standards developed by ESMA).

The comments of the Banking Stakeholder Group (BSG) are reported above. Although the BSG supports the approach proposed in the Consultation Paper, it points out at least two additional key topics:

a) the main risk driver subject to capital requirement is operational risk and the use of advanced methods should be allowed,

b) that the capital requirement should be more tailored to the actual CCPs activities and

c) potential impact on CCP’s ownership models.

Other more general comments (like ‘CCPs should focus on their main role which is to make trade exchange safer and not to divert their attention towards other profit generating activities’) are not under the mandate of this technical standard. As explain in the Impact Assessment, the EBA tries to capture the specificity of the CCPs as much as possible and it is aware of the limitations of some of the proposed models. The impact on the shareholder on CCP’s ownership models is briefly discussed in the Impact Assessment.

Summary of responses to the consultation and the EBA's analysis

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
General comments			
Overarching comments	1. The capital requirements are going to be more stringent than for banks, combining requirements for the banking sector with additional CCPs specific requirements (operational expenses for winding down). 2. The capital requirements are massive. 3. Unless consistent capital standards are adopted globally, CCPs outside the EU will benefit from a competitive advantage as their lower capital requirements will allow them to offer lower costs to users. 4. The proposed approach does not take into account the fact that CCPs hold initial margins and default funds to cover the potential default of a clearing member. 5. The increased costs for central clearing could incentivise market participants to enter into bilateral transactions rather than centrally cleared. 6. Clarification to equally treat spot products and derivatives (Article 1) (EACH): clearing of non-financial instruments using equivalent processes and procedures as for financial instruments should be defined as 'covered activity'.	1. The capital requirement with regard to operational expenses for winding down is already incorporated in Art. 16 (2) EMIR. The RTS only specifies the requirements of Art. 16 (2). 2. Capital requirements are expected to be higher than the minimum suggested by the CPSS IOSCO Principles but in line with international trends. This aspect is further elaborated in the Annex: Impact Assessment. 3. See answer 2 above. 4. Initial margins and default funds should cover the risks stemming from clearing activities. Besides the risks stemming from clearing activities a CCP faces also risks non covered by dedicated resources which should be covered by the capital requirements of Art. 16 (2). 5. If the upcoming requirements for bilateral cleared transactions will not be aligned with the already existing ones for central clearing, there may be the risk of incentivising bilateral transactions. Though this is a RTS specifying a requirement with regard to the central clearing (capital requirements for CCPs). The basic requirement is already laid down in EMIR. Additionally, for the increased use of central clearing there is the requirement of the mandatory clearing of standardised OTC-derivative transactions. 6. The distinction between risks covered by specific financial resources and non covered risks is not in the mandate of Art. 16(3) of the EMIR.	1. No amendment 2. See amendment on the calculation of winding down expenses and business risk 3. No amendment 4. No amendment 5. No amendment 6. No amendment
Use of approaches	1. Not appropriate; Reasoning: the observations made in recital 6 which advocate the use of the CRD/CRR framework for the purposes of establishing capital	1. The EBA is aware that the use of the BIA for operational risks could in some special case underestimate the risks. For this reason, the draft RTS allows the use of advanced	1. The corresponding recital is amended.

set out in the 'CRD/CRR'	requirements to cover operational risk borne by CCPs on the basis that the financial instruments that CCPs clear are the same as those 'used' by credit institutions and investment firms. Applying the CRD/CRR framework to CCPs will not produce a correctly calibrated outcome in relation to CCPs as clearing financial instruments, as opposed to trading those same instruments, is an entirely different activity with a very different operational risk profile.	approaches under the AMA. 2. For market, credit and counterparty risks the CRR/CRD approach is used because the CCP faces risks that are very similar to those of credit institutions. This is particularly evident for any investment activity.	2. No amendment
Boundaries of the mandate	1. The obligation for a CCP to determine the winding down period including a detailed documentation on how this is determined. 2. The introduction of notification threshold. 3. The possibility to ask for additional capital based on the review and evaluation process as laid down in Article 21 EMIR (Art. 9) (note: there is no basis for a technical standard for Article 21 EMIR and also no room in EMIR to introduce something similar as the pillar II process known within the banking framework – even not in Article 21 EMIR. 4. The alternate power to require a CCP 'to decrease its exposures to risks if deemed necessary'. 5. The establishment of a general capital plan. Suggestion: The validation of a mandatory general capital plan; If the mandate is confirmed, such plan should only be requested if the capital comes under a high percentage of capital requirements (for example, 200%).	1. This point is discussed in the Annex: Impact Assessment, in the Technical decision 1: 'The provision of a minimum floor to the number of months used by CCPs to estimate the winding-down and restructuring period.' As explained in the recitals, as the capital shall be at all times sufficient to ensure an orderly winding down and an adequate protection against the relevant risks, it is necessary to establish an 'early warning' tool to enable the competent authorities to know sufficiently in advance if the capital of the CCP falls too close to the capital requirements. 2. The EBA is of the opinion that rules provisions to cover pillar 2 type risks are necessary to give the competent authority a tool to react adequately to other risks that may arise or to the specific situation of an individual CCP are necessary and crucial to ensure financial stability in EU. 3. Therefore, the respective requirement has been kept but was moved from Art. 9 to Art. 3(2) ('Capital requirements') of the RTS in order to be clearly referred to all risks. 4. Same as answer 4 above. 5. The CCP has to deliver all the information needed by the supervisor to judge if the estimate of the time span is correct.	1. No change 2. No change 3. Amended recital 4. Amended Art. 3 5. The same information is required in the article on the winding down period without reference to a general capital plan.
Capital requirements	1. Deductions: some respondent wonders whether the EMIR legislative mandate for the RTS is sufficient to allow for Article 3 (2) sub C as it proposes capital deductions exceeding those contemplated in EMIR Article 47 (2). 2. Some respondent supports the view expressed in Article 2 3 (a) that contributions to any default fund of	1. The draft RTS does not propose capital deductions exceeding those contemplated in the Level 1 text. 2. That point is clear in the distinction between covered and non covered activities. 3. The section should be deleted.	1. The risks arising from the CCP's contribution to the default fund of another CCP receive a risk weight of 1250%. The Impact assessment

	another CCP should be deducted from the capital of a CCP. 3. Clarity is required on the treatment of margins deposited by a CCP with another CCP. 4. The contribution to other CCP's default fund should be treated in harmony with the CRR.		elaborates on this point. 2. No amendment 3. Deleted
Approach for the (capital) calculation of operational risk	1. Some concern related to the approach taken to the calculation of operational risk. 2. Reasons: the BIA is based on the methodology employed for credit institutions and investment firms. The application of such banking capital requirements to CCPs is inappropriate. The business model and risk profile of a CCP differs fundamentally from that of a credit institution or investment firm. 3. The floor of 80% for AMA versus BIA should be lowered (or removed). Reasoning: to increase incentives for CCPs to use models of increased sophistication and risk sensitivity.	1. The Impact Assessment elaborates on this aspect in Technical decision 3: The method(s) to be used for calculating the capital requirement for Operational Risk on covered and non-covered activities. 2. Same as answer 1 above.	1. No amendment 2. No amendment
Time span for winding down or restructuring	1. The floor for winding down or restructuring activities should be set at 6 month (Article 6). 2. For smaller CCPs the floor should be set at 6 month, taking into account. Reasoning: There is a difference in the complexity of winding down a large, systemically important CCP that operates in multiple jurisdictions and clears a large number of different asset classes compared to a small, not systemically important CCP that operates under one jurisdiction and clears a limited number different asset classes. 3. The floor for winding down or restructuring activities should be set at 12 month. Reasoning: This is consistent with Generally Accepted Accounting Principles, which imply that an entity's ability to continue as a going concern is jeopardised if the entity would be unable to continue to meet its obligations in the next 12 months, without resort to external sources of funding. 4. The floor of 12 months to be applied to the estimate of	1. This aspect is discussed in the annex Impact Assessment, Technical decision 2: The definition of operating expenses to be included in the computation of the capital requirement for winding-down and restructuring. 2. Same as for answer 1 above. 3. Same as for answer 1 above. 4. Same as for answer 1 above.	1. A single floor is kept as in the Consultation Paper. The time span is amended to 6 months. 2. Same as for answer 1 above. 3. Same as for answer 1 above. 4. Same as for answer 1 above

	the winding down or restructuring period is not necessary, provided that the estimate provided by the CCP to the competent authority is sufficiently reliable. Alternatives: 5. A floor should only be applied in case a CCP fails to provide the necessary level of comfort that the estimate is realistic. In this way, the floor acts as incentive; 6. If a floor must be kept, we would then be in favour of a tiered floor based on objective features of the CCPs and the markets served, such as the product range (e.g. cash equities vs. long term derivatives) and other features (e.g. interoperability, resolution procedures, segregation and portability possibilities).		
The 'sum of' or the 'higher of' amount	1. The amount of capital to be hold should be based on the ''higher amount'' and not on ''the sum of. (Article 3). Reasoning: 2. It could increase risk in the event of the management of a default. In fact the capital requirement has a direct impact on the amount of 'dedicated own resources' (skin in the game) that a CCP will have to include in its default waterfall – currently proposed by ESMA as 50% of the capital requirements. Such a high amount of dedicated own resources would run the risk of diluting a key incentive on members to participate in the default management of an OTC position. 3. It is inconsistent with CPSS/IOSCO Principles for Financial Market Infrastructures and with rules proposed in the US pursuant to the Dodd-Frank Act which do not require *separate capital* for credit and market risks, and could lead to European CCPs becoming uncompetitive when offering services in third countries. 4. ISDA understands the logic for a CCP's capital requirement being the sum of the expenses-based winding down requirement and the risk-based requirement, as opposed to the higher of the	1. There is neither a double counting of risks nor are the going-concern state and the "winding-down or restructuring" state (gone-concern) mutually exclusive: The capital requirements of Art. 16 (2) of the EMIR are to ensure that in the case where the capital hold for the overall operational, legal, business, credit, counterparty and market risks is consumed there will be enough capital left to cover the costs of a winding down or restructuring if necessary. Additionally, the approach "higher of" is considered to be in conflict with the level 1 text. The legal service confirmed that in Art. 16 (2) "and" is to be interpreted as requiring the "sum of". 2. This point should be addressed to ESMA. 3. The requirement of 'separate capital' for credit, counterparty and market risks is in the Level 1 text. The effects on competition are discussed in the Impact Assessment, Section 4.1.11: "The impacts on capital" that also offers some comparison with respect to other international proposals. 4. Same as for answer 3 above. 5. This respondent supports 12 months.	1. Amendment to the Impact assessment

	requirements, which was envisaged in the EBA's first consultation. However, ISDA *queries the benefit* of layering capital requirements without a greater appreciation of the relative probabilities of the two states manifesting, to inform an analysis as to whether a CCP requires full capital for both the 'business-as-usual' state and the 'winding down' state.		
Expenses to be included in the operational expenses computation	1. In a wind down scenario, some discretionary expenses would not be incurred and should not included in the operational expenses computation (Article 6). 2. In a wind down scenario, some expenses would not be incurred but there may be additional costs relating to issues such as decommissioning of systems, termination of contracts and professional fees required to execute the winding down (ISDA); consider that a detailed analysis of these costs would be beneficial in determining the capital risks a CCP would actually run in the wind-down state. 3. Depreciation and amortisation expenses can be excluded for the purposes of this calculation as these are not cash costs to a business and accordingly we do not believe a CCP should be required to retain a cash pool to cover such costs. 4. In the proposed list it is unclear why 'losses related to operational failures' should constitute an on-going expense when in fact this element is already covered by the operational risk element of the capital calculation.	1. This aspect is discussed in the Recital (5). 2. There may be some expenses that may not incur in the case of a winding down but in the case of a restructuring. Given that in Art. 16 (2) EMIR inter alia it is required that the capital of a CCP shall at all times be sufficient to ensure an orderly winding down or restructuring and it is not foreseeable which of the both cases could occur therefore it is seen as appropriate to include these expenses. 3. Same as answer 1 above. 4. Same as answer 1 above.	1. The draft RTS was amended including all the operational expenses with no deduction. 2. Added one recital with clarifications on why all the operational expenses have been considered. 3. Same as above. 4. Same as above.
Level of the notification threshold	1. The notification threshold should be deleted. (KDPW, ECC, Eurex) Reasoning: EMIR Article 16 (3) does not give a legal basis for defining a notification threshold. This would also reflect current regulatory practice for banks. 2. The notification threshold should be lowered to the level of 105%-110% (Article 4) because the capital requirements are stable.	1. This aspect is explained in the Impact Assessment Technical decision 9: The setting of a % notification threshold above the total minimum capital requirement. 2. Same as answer 1 above.	1. Amended. The level of the notification threshold is 110%.

	3. The notification threshold should be lowered to 105%; Reasoning: the higher threshold does not appear to be supported by any particular rationale; unclear what purpose such a large buffer is intended to serve as the original purpose behind an 'early warning system' can be adequately addressed via a reporting threshold set at 105% of the actual capital requirement; 4. ISDA does not object to the 125% 'notification threshold'; Reasoning: since it helps regulators to spot potential problems early.		
Role of the notification threshold	1. Some respondent pointed out that the notification threshold will act as a *de facto capital requirement* as Article 4 (2) (b) requires a CCP to take measures to ensure ongoing compliance with the capital requirements if a CCP's capital falls below the notification threshold. 2. This de facto threshold would be read across to the calculation of the CCP's contribution to the default waterfall under Article 45 (4) of EMIR which we believe is an unnecessary and unintentional consequence of the draft Regulation. 3. ISDA would appreciate more clarity in the RTS on what actions regulators would be empowered to take once notified and before a CCP's capital falls below the minimum requirement. 4. In addition, ISDA notes that page 5 of the Consultation Paper contemplates that a competent authority could require a CCP to hold additional capital to cover other business and legal risks (similar to Pillar 2 for banks). ISDA therefore considers it necessary to clarify what the notification threshold would be in circumstances where the CCP had such an additional capital requirement and that this should be made explicit in the text. 5. A CCP holding more than notification threshold level of additional capital by way of the 'Skin in the Game' under ESMA RTS is deemed to hold sufficient capital	1. This was already clear in the text of the CP. 2. This is aspect should be addressed to ESMA. 3. This was already clear in the text of the CP. 4. This was already clear in the text of the CP. 5. The notification threshold refers only to the capital requirements as mandated in Art. 16(3) of the EMIR. Additional capital by way of the 'Skin in the Game' is not in the EBA's mandate.	1. In order to stress the fact that the notification threshold is not an additional capital buffer, the section is moved to the section 'Monitoring and reporting'

	and should not trigger notification threshold.		
The interpretation of resources in accordance with Art. 47 (1)	1. The Interpretation of resources in accordance with Article 47 (1) - Article 3 2. Reasoning: The scope of the word 'resources' will be decisive for the compliance. If 'resources' is to include for example cash held by a CCP awaiting delivery of financial instruments or cash held in the framework of collateral for interoperability arrangements, it would be difficult to ensure compliance.	1. The response refers to Financial 'Resources' in accordance with Art 47 (1). If there is room for interpretation then it would be in the competence of ESMA to provide a respective definition. (See Art. 47 (8) where 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.)	1. No amendment
Discretionary Capital Requirement under Article 9	1. Not appropriate; Reasoning: entirely unclear what other risks might be in scope, difficult to see what other legal risk could be identified that would not already be covered under the Article 3 calculation, whilst business risk is addressed via the wind down component of the Article 3 (a) calculation; the reservation and use of discretionary powers by definition will increase uncertainty regarding the outcome of any single CCP's capital calculation and could potentially lead to very different outcomes in relation to CCPs which have very similar operational profile; uncertainty will be introduced into the calculation of the CCP's contribution to the default waterfall under Article 45 (4) of EMIR unless the component that might be added under Article 9 is expressly excluded from the default waterfall calculation. 2. Alternative: national competent authority to have powers to increase the wind down period over and above the minimum floor, to increase that period by up to 3 months would enable national regulators to exercise prudent oversight, but the process would still remain sufficiently predictable and objective that a CCP would be able to factor this into its capital planning process without undue difficulty.	1. Incompatible with Level 1 text. This part should be deleted.	1. Text amended

Use of internal models	1. Most of the respondents explicitly support the use of internal models for market, credit and counterparty credit. 2. The approach for credit and counterparty risk related to non covered activities is not risk-sensitive and can create undesirable incentives. A more risk-sensitive approach (such as Basel II IRB combined with IMM) would assign credit risk weights that depend on the counterparty and exposure that reflect the possible market values of an OTC trade. Such an approach would require the CCP to have internal models (CCPs presumably have some modelling capacity to set their margin requirements). The approach that is being proposed for market risk related to non covered activities is not very risk-sensitive either. (British Bankers' Association). Similarly, Eurex commented that the 'principle of proportionality' needs to be more reflected. 3. Some issues such as *large exposure* limits which should to be addressed.	1. The annex Impact Assessment elaborates on this topic in Technical decision 6: The method(s) to be used for calculating the capital requirement for Market Risk on non-covered activities. 2. Same as answer 1. 3. There is no mandate for the EBA to introduce *large exposure* limits.	1. No amendment 2. No amendment 3. No amendment
Losses exceeding the default waterfall financial resources	1. In page 6 of the Consultation Paper: 'Under no circumstances will a CCP use margins posted by non-defaulting clearing members to cover its losses resulting from the default of another clearing member.' 2. Assumes the reference to 'margins' means Initial Margin. Otherwise, this would clash with CPSSIOSCO Financial Market Infrastructure Principle ('PFMI') 3.4.25. Importantly, if non-defaulting clearing members agree to assume some of the residual losses through the use of their variation margin, then as this could be beneficial from a financial stability perspective (ISDA, UBS); ISDA urge EBA (and ESMA as the case may be) *to ensure CCP capital requirements do not restrict arrangements available to absorb losses that exceed the resources in the waterfall*.	1. It should be deleted 2. There is no such a restriction in the draft RTS	1. Deleted 2. No amendment
More flexibility in the RTS and	1. EBA should take the Basel Committee's work on the treatment of a CCP's default fund and reviewing the trading book as well as CRD or CCR requirements that refers to CCPs into consideration and to build flexibility	1. Deleted. Interoperability is addressed elsewhere in the EMIR.	1. Text deleted

considering other regulatory requirements	into the standards that are issued.		
Adequate phase in time	1. The suggested capital requirement might result in higher capital requirements for CCPs which currently have a bank license. This obviously would require time for implementation.	1. The 'phase in' time is related to the authorisation process for the CCPs to operate. The EMIR specifies the entry into force of the RTS.	1. Deleted
Future changes of the banking standards	1. Clear rules with regard to future changes of the banking standards used need to be implemented, because of the references to the CRR/CRD. Additionally also the possible time lack between the submission of the RTS and the enforcement of the CRR/CRR needs to be considered.	1. The draft RTS should refer to the texts of the Directives (EU) No 2006/48/EC and No 2006/49/EC.	1. amended
Monitoring and reporting (Art.10)	1. Reporting the compliance with the capital requirements to the competent authority should take place every six months, and not on a quarterly basis - that is too often and thus can place quite a burden on CCPs.	1. Reporting frequencies will be addressed outside of this draft RTS.	1. The specific reporting frequency is deleted
Responses to questions in Consultation Paper EBA/CP/2012/08			
Question 1. **Do you support this approach to capital requirement?**	Generally respondents supported the overall approach but opposed the following components: 1. the change to a 'sum of' approach from the initial 'higher of' proposal in March; 2. the increase in the notification buffer to 125%; 3. the increase in the wind-down period to 12 months from 6 months previously and inclusion of discretionary expenses; 4. the level of the 'skin in the game' capital requirement.	1. Our view is that the broad approach is right given that CCPs may face substantial financial risks from non-clearing activities. Despite the concerns expressed by respondents to the consultation paper, overall the capital requirement would still be small compared to the amount of cash margin that many EU CCPs invest as principal.	1. Impact assessment, Section 4.1.11: "The impacts on capital" offers some comparison with respect to other international proposals.
Question 2. **Do you have any other option to suggest that is**	1. Three respondents proposed allowing for the use of internal models under the CRD component of Article 3 2. Two CCPs proposed that revenue earned during a wind-down should be factored into the calculation of	1. The EBA does not envisage that CCPs would need use of internal models given future investment restrictions. The annex Impact Assessment elaborates on this topic in Technical decision 6: The method(s) to be used for calculating the capital requirement for Market Risk on non-	1. No amendment 2. Amended to include all the operational expenses with no

not covered in this set of draft RTS.	wind-down capital.	covered activities. 2. No deduction is allowed in the estimate of the operational expenses necessary for the winding down or restructuring. This aspect is discussed in the annex Impact Assessment, Technical decision 2: The definition of operating expenses to be included in the computation of the capital requirement for winding-down and restructuring.	deduction.
Question 3. **Do you consider there to be any alternative approach which is more appropriate that would be more consistent with Article 16 of the regulation.**	1. In general respondents proposed: 2. reverting to the initial 'higher of' approach; 3. a floor of 6 months for calculating the wind-down capital requirement; 4. a lower notification threshold (105%-110%); 5. excluding discretionary and non-cash costs from calculation of the wind-down component.	1. These points are addressed in the Section 'General comments' of this feedback statement.	1. Please see our responses to questions 1 & 2 above.
Question 4. **What is the incremental cost to your CCP for the implementatio n of this proposal?**	1. Question for the Impact Assessment	1. The Impact Assessment elaborates on this aspect in the Section 4.1.6 Quantitative Annex of the Impact Assessment.	1. Impact assessment amended
Question 5. **What is the incremental benefit to your CCP for the implementatio n of this proposal?**	1. Does not see any benefit but additional costs and burden. No benefit to us from the implementation of this proposal in comparison with the *original* proposal. 2. Will be reputational benefits from being one of the European CCPs subject to the harmonized requirements and standards, but it is difficult to see that such benefits will deliver financial results that would balance the costs referred to above (one	4. The Impact Assessment elaborates on this aspect in the Section 4.1.6 Quantitative Annex of the Impact Assessment. 5. The quantitative data delivered as answer to Question 5 are considered confidential and reported in the Impact Assessment in an anonymous way.	6. See amendments related to time span of winding down and business risk.

	respondent) 3. To improve our risk management mechanisms, even though at a high cost.		
Question 6. **What is the incremental cost for the supervisors for the implementation of this proposal?**	1. Question for the Impact Assessment.	1. The Impact Assessment elaborates on this aspect in the Section 4.1.6 Quantitative Annex of the Impact Assessment.	-
Question 7. **What is the incremental benefit for the supervisors for the implementation of this proposal?**	1. Question for the Impact Assessment.	1. The Impact Assessment elaborates on this aspect in the Section 4.1.6 Quantitative Annex of the Impact Assessment.	-
Question 8. **What is your view on the notification threshold? At which level should it be set?**	1. Two respondents are of the view that the notification threshold is *not covered by the mandate*. Level, Pros 2. One respondent thinks that the notification threshold set at 125% of the capital requirements is more than appropriate . 3. One respondent believes that 25% higher than the capital requirements is too low and that the level should not be below 110%, which is the level set for firms regulated by the UK FSA although, given the business model of CCPs, consideration should be given as to whether a fixed or higher percentage is	1. This aspect is explained in the Impact Assessment Technical decision 9: The setting of a % notification threshold above the total minimum capital requirement. 2. Respondents support the level suggested in the Consultation Paper. 3. Same as answer 1 above. 4. The draft RTS needs to be simplified. 5. About points (a) and (b): 'Over engineering' the notification threshold is not necessary. (c) The only measure is an higher reporting frequency. 6. It is already clear from the text that the notification threshold	1. The draft RTS is amended: the notification threshold is in the same section of monitoring and reporting. 2. The level is fixed at 100%. 3. Same as 2 above. 4. Amendment: the section on the notification threshold has been moved to

	appropriate. Level: Cons and other proposed levels 4. A higher threshold (115%) than proposed in the EBA March DP could be justified if the calculation is of less duplicative nature, as follows: a capital requirements framework that is based on the higher of operational risk and wind down costs, with such costs *based on a 6 month* floor and excluding operational costs that would not be incurred. 5. Two respondents don't think that a NT is in the mandate, but if a NT will be introduced it should be lowered to the level of 105%-110%, as proposed in the Discussion Paper. 6. One respondent favours a NT of about 105%. 7. One respondent is indeed of the opinion that the notification threshold should be set at perhaps 120% and is also content with the proposal of 125%. *But this should be calculated with reference only to the risk requirement and not the operational expense requirement* should both be retained. (Justification: Likely decreases of capital that may or may not happen on a regular basis are based on a going-concern principle and consequently should not relate to an event of wind-down or restructuring. This capital requirement is likely to be fixed annually as it is less variable). Other proposed amendments 8. Eliminate the information requirements expressed in Art. 4 (2), if the NT does not come close to a level of 105%. The proposal seems exaggerated to high levels of NT, since it does not differ much from the requirements in Art. 3. Operational clarifications: 9. To set a trigger for the NT in function of the violation of the limit during a period of 10 consecutive days or 20 non consecutive days in a moving 60 days period.	is not an additional capital buffer. 7. (a) The notification threshold applies to the all capital requirements listed in the Article 'Capital requirements'. (b) Interaction with the 'Skin in the Game' should be addressed to ESMA.	the section on monitoring and reporting. 5. No amendment. 6. No amendment. 7. No amendment.

	10. The NT should only be activated when the capital is previously above the limit, so as to avoid unnecessary daily notifications when the capital remains under the limits (this applicable for high values of the NT). 11. No restriction measures, other than informational, should be imposed to the CCP as long as the capital is maintained at an equal or higher level than 100% of the requisites. Functionality of the threshold: 12. This article could be interpreted as: the CCP must hold 125% of its Article 3 capital. The drafting should make this much clearer. 13. A requirement to recapitalize back to the 125% notification threshold and believes this should be made explicit, as were this not the case, the 125% notification threshold would become the de-facto minimum capital requirement. 14. Since CCP own resources (EMIR art. 43(1) and art. 45(3)) will be indexed to EBA requirements, it should not become a capital requirement in itself. Other issues needing a clarification 15. One respondent is of the view that it should be clarified what the notification threshold would be in circumstances where the CCP had an additional capital requirement to cover other risks. 16. Interplay with the 'skin in the game' requirement: a CCP holding more than notification threshold level of additional capital by way of the 'Skin in the Game' under ESMA RTS is deemed to hold sufficient capital and should not trigger notification threshold, assuming the notification threshold is lower than the skin in the game.		
Question 9. **In your view, in which case should**	1. One respondent is of the view that the introduction of restriction measures is not covered by Article 16 (3) EMIR and that article 22 (3) EMIR is the place where the basis for any measures is regulated. This Article puts the competence to national law and the	1. Specifying specific measures to be taken in case the notification threshold is breached is not in the mandate. 2. The only 'measure' considered is the increase in reporting frequency (option left to the supervisor).	

restriction measures be taken by the competent authority once the notification threshold is breached?	competent authority. Nevertheless the respondent agrees that restrictive measures in case of breaches should be taken and should be harmonized across the EU to the extent possible and therefore kindly urges EBA to recommend to the Commission to consider such an approach during any future revision of EMIR. 2. One respondent is of the view that measures should always be taken once the notification threshold is breached. This should include at least heightened supervision and discussion with the CCP on the timeline and process to return above the threshold. The respondent does not believe the CCP's activities should be restricted during this period except in exceptional circumstances or where the capital requirement is breached. 3. One respondent is of the view that for a simple breach of the threshold there would be no restriction measures. The respondent understands Article 4 in a way that disciplinary action would only be merited if the minimum capital requirement under Article 3 is not fulfilled (along the lines set forth in principle 15, key consideration 5, of the CPSS-IOSCO Principles) or for a failure to explain why a CCP is holding capital at a level between the Article 3 capital requirement and the threshold. As an example, in this case authorisation can be refused or removed if capital is not reintegrated for more than one year. In general, as the measures will depend on the specific circumstances, *discretionary powers to decide measures should be left to the competent authorities* in case the notification threshold is breached or the capital is not sufficient.	3. Discretionary powers to decide measures left to the competent authorities are out of the mandate of this RTS.	
Question 10. **Which criteria do you take into account for estimating the appropriate time span for orderly**	1. The time span to wind down a CCP is highly dependent on the reason to wind it down, its business scope, size and complexity, kind and size of collateral taken, economic and market conditions, insolvency law and potential litigations. and the ease to transfer products to another CCP, e.g. cash equities, repos, listed derivatives are easier to transfer than OTC derivatives, time and costs associated with the closing of IT contracts.	1. The Impact Assessment elaborates on this aspect in Technical decision 1: The provision of a minimum floor to the number of months used by CCPs to estimate the winding-down and restructuring period. 2. The Impact Assessment elaborates on this aspect in Technical decision 2: The definition of operating expenses to be included in the computation of the capital requirement for winding-down and restructuring.	1. Amended to 6 months. 2. Amended to full list of ongoing operational expenses.

winding down or restructuring of the CCP's activities?	2. Additionally the respondent is of the view that it does not seem appropriate to base the calculation on wind-down costs simply on the basis of on-going operational expenses of a CCP.		
Question 11. **What is your estimation for the number of months necessary to ensure an orderly winding down or restructuring of the CCP's activities?**	1. A respondent believes that a maximum of six months would be sufficient for an orderly wind-down. The same would be apply to a restructuring. (Justification: Given the systemic importance of CCPs, a wind-down and transfer the positions of the clearing members to another CCP would need to be done more quickly than over 12 months) (LCH). However, a CCP, should, on the basis of its own estimation and in conjunction with its competent authority, provide for a longer winding up period if that is necessary. 2. One respondent neither feels in a position to determine such a period ex ante nor see the need to specify it. The regulator should fix the time span.	1. The Impact Assessment elaborates on this aspect in Technical decision 1: The provision of a minimum floor to the number of months used by CCPs to estimate the winding-down and restructuring period. 2. Same as answer 1 above.	1. No amendment
Question 12. **What is the incremental cost or benefit to your CCP of this pro-posal assuming that the time span for winding down or restruc-turing a CCP"s activities is 12 month?**	1. One respondent expects only costs but no benefit. 2. Under the assumption that the question asks what would be the incremental cost of using a wind down period of 12 months instead of 6 months – one respondent replied that the costs would be half of the wind-down cost plus half of that amount as dedicated own resources in the default waterfall.	1. The Impact Assessment elaborates on this aspect in Technical decision 1: The provision of a minimum floor to the number of months used by CCPs to estimate the winding-down and restructuring period. 2. Same as answer 1 above.	1. No amendment 2. No amendment
Question 13. **How do you currently measure and capitalise for operational**	1. Respondents use the Basic Indicator Approach for operational risk. 2. One respondent currently covers operational risk by a group insurance policy, which would guarantee the protection of the CCP against such risks.	1. The Impact Assessment elaborates on this aspect in Technical decision 3: The method(s) to be used for calculating the capital requirement for Operational Risk on covered and non-covered activities. 2. Same as answer 1 above.	1. No amendment 2. No amendment

risk?			
Question 14. **Do you think that the banking framework is the most appropriate method for calculating a CCP"s capital requirements for opera-tional risk? If not, which approach would be more suitable for a CCP?**	1. The banking framework seems appropriate for calculating CCP's capital requirements (BBVA, LCH), also because CCPs will become as systemically important as banks. 2. Two respondents are of the view that the banking framework is, *in principle*, an appropriate method for calculating the capital requirement for operational risk but believes that the suggested approach for assessing additional *charges f*or operational risk is inappropriate in the context of the proposed additive nature of the operational risk and winding down cost calculations. 3. Mixing the banking framework with an approach to hold capital for 'winding down' purposes is *systematically overstating the capital requirements* because the banking framework as such is supposed to already cover such risk in the total of its capital requirements.	1. The EBA believes that the methodologies for the calculation of the capital requirements for market, counterparty and credit risks are adequate to the risks they cover. 2. The (potential) limitations of the use of the BIA for operational risk are addressed in the Impact Assessment in the Section 'Policy decision: Operational risk'. 3. The comparison with international trends on capital requirements for CCPs is addressed in the Impact Assessment in the Section 'Policy decision: Time span for winding down and restructuring'.	1. The corresponding recitals is amended.
Question 15. **Do you think that the Basic Indicator Approach set out for banks is appropriate for CCPs?**	1. One respondent believes that the Basis Indicator Approach – like any of the three approaches allowed in the banking framework – is appropriate to CCPs to the same extent. 2. Difficult to comment on whether the factors comprising the 'relevant indicator' represent an appropriate proxy for a CCP's risks and whether the approach shares the limitations recognised in the BIA more generally. It may be questioned as to whether it is appropriate for systemically important institutions such as CCPs, given that BIA was not originally intended for large, internationally active institutions. 3. One respondent believes that the Basic Indicator Approach as it is now *overestimates* investments risks incurred *by CCPs*. 4. In the case of a CCP with *low revenues* the capital requirement for operational risk may be low but could	1. The Impact Assessment elaborates on this aspect in Technical decision 3: The method(s) to be used for calculating the capital requirement for Operational Risk on covered and non-covered activities. 2. There are different views on whether (in different circumstances) the BIA could underestimate or overestimate the capital requirements for operational risks. The EBA concludes that the BIA seems a valid starting point. 3. Same as answer 2 above. 4. Same as answer 2 above. 5. Given the considerations in the answer 2, lowering the multiplier is considered very inappropriate. 6. The Impact Assessment elaborates on this aspect in Technical decision 3: The method(s) to be used for calculating the capital requirement for Operational Risk on	1. No amendment 2. No amendment 3. No amendment 4. No amendment 5. No amendment 6. No amendment 7. No amendment

	understate the real risks. *Proposal:* In this case the EBA should consider a floor of minimum capital, possibly related to the type of asset cleared (higher for more complex instruments). 5. Two respondents believe that the 'BIA' seems to provide a practical starting point but proposes (with motivations) a 12% multiplier. 6. One respondent considers that it will be more appropriate, in light of the different business areas/divisions that CCPs may have, to use the standardised approach, instead of the Basic Indicator Approach. 7. LSEG questions how the application of the use of basic indicator (or advanced measurement approaches), as provided by CRR, could be applied to CCPs in the timescales anticipated by EMIR, as the necessary regulatory technical standards under CRR are not due to be drafted until 2016. It should be clear whether these methodologies are to be applied on the basis of existing legislation/technical standards or new standards.	covered and non-covered activities. After the review of the suggestions delivered by the industry during the consultation, the EBA is not confident enough in introducing a different calibration of the Standardised Method for CCPs. 7. To the best of our knowledge, the update of the CRR will be accompanied by a 'mapping table' linking the articles in the new version of the regulation to the articles in the older one.	
Question 16. **In your view, which alternative indicator should the EBA consider for the Basic Indicator Approach?**	1. Two respondents stated that they do not have a view on an alternative indicator for the BIA. 2. The structure of the CRR is dedicated to an adjacent sector, not fitting totally with CCPs; therefore, in a second phase, these particularities should be incorporated as part of a review of the CRR. For example, it is desirable that specific business lines for CCPs are considered in the CRD framework in order to allow the full application of the Standardized Approach. 3. One respondent believes that CCPs should be encouraged to migrate towards more advanced approaches to operational risk management and calculation of operational risk capital requirements to optimise the protection of all market participants and the system as a whole.	1. No amendment 2. Unfortunately, the two timescales are different. 3. The EBA believes that the use of the AMA should be allowed (as proposed in the Consultation Paper).	1. No amendment 2. No amendment 3. No amendment

Question 17. **What would be the incremental cost of employing the BIA set out for banks for the calculation of your capital requirements for operational risk?**	1. Two respondents stated that there would be no additional cost as they have already implemented the Basis Indicator Approach.	1. The Impact Assessment elaborates on this aspect in Technical decision 3: The method(s) to be used for calculating the capital requirement for Operational Risk on covered and non-covered activities.	1. No amendment
Question 18. **Do you think CCPs should be allowed to calculate the capital requirements for operational risk with an internal model, as in the advanced measurement approach?**	1. All respondents believe that it is appropriate for a CCP to use an internal model for such risk management. About The 80% limit defined in Art. 7 (7) for the AMA, the reservations are: 2. It seems to be a clear disincentive to the use of more sophisticated methodologies and, to that extent, a disincentive to a more perfect operational risk monitoring. 3. It becomes uncommon to calibrate/restrict a more sophisticated method by a simpler one. 4. But nevertheless see difficulties for CCPs to use the AMA, based on missing external data and also believes that the use of the more advanced approach by CCPs will be limited – if used at all.	1. The Impact Assessment elaborates on this aspect in the Section 'Policy decision: Operational risk'. 2. About point (a) see the Section 'Policy decision: Operational risk' in the Impact Assessment. (b) It is the only available reference. 3. The EBA is aware that the use of the AMA by CCPs will be very limited.	1. No amendment 2. No amendment 3. No amendment
Question 19. **Which other approaches should the EBA consider for operational risk measurement?**	1. One respondent currently does not see the need to look out for other approaches including any approach to link the operational risk charge to expenses, income or balance sheet size. The Standardised Approach could be adapted via an *appropriate mapping of the CCP business* to existing business lines or creating specific business lines for CCPs.	1. The Impact Assessment elaborates on this aspect in Technical decision 3: The method(s) to be used for calculating the capital requirement for Operational Risk on covered and non-covered activities. After the review of the suggestions delivered by the industry during the consultation, the EBA is not confident enough in introducing a different calibration of the Standardised Method for CCPs. The Standardised Approach for operational risk was not in the proposal of the Consultation Paper.	

Question 20. **What are the incremental costs and benefits to your CCP for the implementation of the advanced measurement approach for operational risk?**	1. Question for the Impact Assessment.	1. The Impact Assessment elaborates on this aspect in the Section 'Policy decision: Operational risk'.	1. No amendment
Question 21. **Do you think CCPs should be allowed to calculate the capital requirements for market, credit and counterparty credit risks with internal models?**	1. All respondents think that CCPs should be allowed to calculate the capital requirements for market, credit and counterparty credit risks with internal models with the following justifications: it is a good incentive for more sensitive and valuable measure of the risks they are running (BBVA, LCH, OMIClear), CCPs should be subject to the same standards that apply to regulated financial institutions. (British Bankers' Association, Eurex), CCPs could develop this expertise and infrastructure, and therefore the EBA should not preclude CCPs from using advanced modeling.	1. The Impact Assessment elaborates on this aspect in Technical decision 6: The method(s) to be used for calculating the capital requirement for Market Risk on non-covered activities.	1. No amendment
Question 22. **How do CCPs currently measure and capitalise for credit, counterparty credit and market risk stemming from non covered activities?**	1. Currently using the Standardised Approach for credit risk including the comprehensive method for financial collateral. It uses the standardised method for market risk. As market risk is coming from FX risk only and no trading book exists, the method for market risk does not really matter. 2. Apply the Standardised Approach of 8% weighting on the positions.	1. The Impact Assessment elaborates on this aspect in Technical decision 6: The method(s) to be used for calculating the capital requirement for Market Risk on non-covered activities.	1. No amendment

Question 23. **Do you think that the banking framework is the most appropriate method of calculating a CCP"s capital requirements for credit, counterparty credit and market risk stemming from non covered activities?**	1. General support (BBVA, British Bankers' Association, UBS, LCH, OMI Clear, Eurex) but with several remarks (see answers to the questions above) on how this should be implemented.	1. The Impact Assessment elaborates on this aspect in Technical decision 6: The method(s) to be used for calculating the capital requirement for Market Risk on non-covered activities. In any case, the EBA believes that no valid alternative was available after the consultation of the various stakeholders.	1. No amendment
Question 24. **What are the incremental costs or benefits to your CCP of this proposal assuming that for credit risk stemming from non covered activities is computed with the approach required in Art. 8?**	1. Question for the Impact Assessment.	1. The Impact Assessment elaborates on this aspect in Section 4.1.11: The impacts on capital.	1. No amendment
Question 25. **What are the incremental costs or benefits to**	1. Question for the Impact Assessment.	1. The Impact Assessment elaborates on this aspect in the Section 4.1.6: Quantitative Annex of the Impact Assessment.	1. No amendment

your CCP of this proposal assuming that for counterparty credit risk stemming from non covered activities is computed with the approach required in Article 8?			
Question 26. **What are the incremental costs or benefits to your CCP of this proposal assuming that for market risk stemming from non covered activities is computed with the approach required in Article 8?**	1. Question for the Impact Assessment.	1. The Impact Assessment elaborates on this aspect in the Section 4.1.6: Quantitative Annex of the Impact Assessment.	1. No amendment
Question 27. **Do you think that CCPs, should be allowed to calculate their capital requirements for credit, counterparty credit and**	1. See Q. 21	-	1. -

market risk using internal models?			
Question 28. **In your view, which other approaches should the EBA consider for credit, counterparty credit and market risk measurement?**	1. All respondents do not believe that there are other approaches/don't propose other approaches.	1. Supportive.	1. No amendment
Question 29. **What other risks should be considered in Art. 9?**	1. No additional proposals.	1. No additional proposals.	1. No amendment