ESMA
European Securities and Markets Authority

23 February 2026
ESMA91-1505572268-4513

# Consultation Paper

draft RTS amending Commission Delegated Regulation (RTS) 153/2013 in relation to public guarantees, public bank guarantees and commercial bank guarantees as collateral and in relation to certain aspects of investment policy and highly secure arrangements for the deposit of financial instruments.

## Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

1. respond to the question stated;
2. indicate the specific question to which the comment relates;
3. contain a clear rationale; and
4. describe any alternatives ESMA should consider.

ESMA will consider all comments received by **30 April 2026.**

All contributions should be submitted online under the relevant consultation.

**Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

**Data protection**

Information on data protection can be found at www.esma.europa.eu under the heading 'Legal Notice and Data protection'.

**Who should read this paper?**

All interested stakeholders are invited to respond to this Consultation Paper. In particular, responses are sought from central counterparties (CCPs) and clearing members and clients of CCPs (particularly those clearing members and clients that are non-financial counterparties).

# Table of Contents

# 1 Executive Summary

**Reasons for publication**

Following the energy crisis of 2022, ESMA amended, upon request from the European Commission, Commission Delegated Regulation 153/2013 (RTS 153/2013) to extend on a temporary and targeted manner the type of CCP acceptable collateral. This included an extension to public guarantees and uncollateralised commercial bank guarantees for non-financial clearing members.

EMIR 3 amended Article 46 to permanently broaden both the type of eligible guarantees and the scope of who may use them. First, the text now explicitly recognises public bank guarantees alongside public guarantees and commercial bank guarantees as eligible collateral, provided they meet strict conditions on enforceability and liquidity. Second, the reform removes the limitation that only clearing members which are non-financial counterparties (NFCs) could benefit from this flexibility. After EMIR 3, all NFCs, whether they are clearing members or clients of clearing members, can use uncollateralised public and commercial bank guarantees as collateral.

ESMA's mandate in Article 46 of EMIR has been renewed and requires ESMA to develop draft RTS to specify the relevant conditions under which public guarantees, public bank guarantees and commercial bank guarantees may be accepted as collateral under paragraph 1, including appropriate concentration limits, credit quality requirements and stringent wrong-way risk requirements for public bank guarantees and commercial bank guarantees. ESMA is planning to fulfil this mandate through an amendment to RTS 153/2013.

In addition, while EMIR 3 has not amended Article 47 of EMIR on 'Investment Policy', ESMA would nevertheless also like to propose a couple of targeted changes to the provisions set out in RTS 153/2013 that have been adopted under the mandate under Article 47(8) of EMIR. These targeted changes concern (i) the conditions under which debt instruments can be considered highly liquid, bearing minimal credit and market risk and hence can be considered as eligible financial instruments for the purpose of CCP investment policy; and (ii) the highly secured arrangements in which financial instruments posted as margins or as default fund contributions can be deposited.

**Contents**

This Consultation Paper presents the draft RTS prepared by ESMA. Section 3 explains the background to our proposals; Sections 4 to 6 set out our proposals in relation to the

conditions for the acceptance of public guarantees and bank guarantees by CCPs; Section 7 provides our proposals in relation to investment policy. Finally, Section 8 contains all the relevant annexes (Annex I provides the summary of all questions posed in this Consultation Paper; Annex II provides the legislative mandate for the development of this draft RTS; Annex III contains the cost-benefit analysis; Annex IV contains the draft RTS).

**Next Steps**

The consultation will be open until 30 April 2026. ESMA will consider the feedback it received to this consultation in Q2 2026 and expects to publish a final report and submit the final draft RTS to the European Commission for endorsement in Q4 2026, potentially together with other measures.

# 2 Legislative references and abbreviations

| | |
|---|---|
| BIS | Bank for International Settlements |
| CCP | Central counterparty |
| CP | Consultation Paper |
| CRR | Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 |
| RTS 153/2013 | Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on requirements for central counterparties |
| EBA | European Banking Authority |
| EC | European Commission |
| EMIR | Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories |
| EMIR 3 | Regulation (EU) No 2024/2987 of the European Parliament and of the Council of 27 November 2024 amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets |
| ESCB | European System of Central Banks |
| ESMA | European Securities and Markets Authority |
| ESMA Regulation | Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC |
| ESRB | European Systemic Risk Board |

| | |
|---|---|
| ETS Directive | Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC |
| EU | European Union |
| FC | Financial counterparty |
| IMF | International Monetary Fund |
| MiFID II | Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU |
| NCA | National competent authority |
| NFC | Non-financial counterparty |
| RTS | Regulatory Technical Standards |

# 3 Introduction

During the 2022 energy price crisis, the European Commission requested ESMA to look into possible emergency measures to address to the level of margins and of excessive volatility in energy derivatives markets and in this way alleviate the burden on non-financial counterparties (NFCs).

1. ESMA adopted on 14 October 2022 a Final Report revising its regulatory technical standards (RTS) 153/2013 to temporarily expand the pool of eligible collateral to uncollateralised bank guarantees for NFCs acting as clearing members and to public guarantees for all types of counterparties. This change to RTS 153/2013 was temporary and targeted to "ensure the smooth functioning of the Union financial and energy markets" during heightened volatility, while preserving CCP soundness by requiring CCPs to set minimum collateralisation standards for accepted guarantees and to reflect guarantor exposures in their overall exposure calculations.

2. The temporary measure proposed in October 2022 was further extended in 2023 with a new amendment to RTS 153/2013 which did not reshape the longer-term regime; instead, it prevented a legal gap from opening between the expiry of the 2022 emergency measures and the full entry into force of the EMIR 3 regime (which provides for a permanent re-design of collateral eligibility). Because the 2022 measures (especially acceptance of certain guarantees) were due to expire at the end of November 2023, the 2023 amendment ensured continuity of the relief until September 2024, maintaining that NFCs (especially energy firms) did not suddenly lose access to collateral flexibility before the new EMIR framework was in place.

3. The text of the expired measure allowed for the acceptance by CCPs of uncollateralised bank guarantees in respect of wholesale energy products as defined in REMIT. Furthermore, it provided the conditions for public guarantees to be used as collateral under Article 46(1) of EMIR, including the issuer of the guarantee, the obligation for the CCP to demonstrate that it has low credit risk based upon an internal assessment, the allowed currencies, the legal characteristics of the guarantee (irrevocable, unconditional and the issuing and guaranteeing entities cannot rely on any legal or contractual exemption or defence to oppose the payment of the guarantee) and the conditions for its execution (honoured within the period of liquidation of the portfolio of the defaulting clearing member providing it without any regulatory, legal or operational constraint or any third party claim on it).

4. EMIR 3 amended Article 46 to broaden what EU CCPs may accept as "highly liquid collateral". The core change permits CCPs, subject to strict conditions, to accept public guarantees, public bank guarantees and commercial bank guarantees (including,

where specified, uncollateralised bank guarantees) as eligible collateral, provided those guarantees are unconditionally available on request within the CCP's liquidation period and the CCP captures the credit exposure to the guarantor in its risk and concentration management. Public guarantees are guarantees issued by a central government, a regional governments or local authorities, the European Financial Stability Facility, the European Stability Mechanism, the European Union or a multilateral development bank; while bank guarantees are those issued by credit institutions which may be commercial banks or public banks. ESMA recognised though that there is no definition of public bank in EMIR and seeks views on a potential definition in this consultation paper.

5. The new Article 46 does not restrict the acceptance of these guarantees to wholesale energy market. Furthermore, it does not limit the use of these guarantees only to NFC that are clearing members. Under EMIR 3, NFCs that are clients of clearing members can also use these guarantees as collateral. This change extends the liquidity relief further down the clearing chain, ensuring that smaller energy firms and other NFCs that clear indirectly are not excluded from the collateral framework.

6. ESMA needs to define permanently the conditions for the new guarantees which can be accepted by CCPs as collateral in application of the new Article 46 of EMIR. The new mandate requires ESMA to define the relevant conditions under which these types of guarantees may be accepted as collateral, including appropriate concentration limits, credit quality requirements and stringent wrong-way risk requirements.

7. The first amendment to RTS 153/2013 that will be required is to include public guarantees permanently in Article 39 of that RTS. After that, a number of conditions are being specified for the guarantees that CCP may accept in accordance with the new drafting of Article 46 of EMIR.

8. The sections 4 – 6 of this consultation paper present ESMA's assessment and proposal in relation to the conditions applicable to the three different types of guarantees at stake. Firstly, ESMA has identified conditions which are common to all three types of guarantees, in particular in relation to concentration limits and to the use of those guarantees by non-financial clients. Secondly, ESMA develops its proposal in relation to conditions applicable to public guarantees based on the gathered information on the counterparties' experience during the emergency measures. Finally, ESMA presents amendments in relation to existing conditions for commercial bank guarantees and a condition for public bank guarantees.

9. In addition, while EMIR 3 has not amended Article 47 of EMIR on 'Investment Policy', ESMA would nevertheless also like to propose a couple of targeted changes to some of the provisions set out in RTS 153/2013 that have been adopted pursuant to ESMA's

mandate under Article 47(8) of EMIR. ESMA is of the view that such updates are necessary in light of recent developments, in particular due to the recent issuances by the EU of funding instruments (such as EU-bonds, EU-bills, NextGenerationEU Green Bonds and SURE social bonds) under the unified funding approach and due to the classification of emission allowances as financial instruments.

10. These targeted changes concern (i) the conditions under which debt instruments can be considered highly liquid, bearing minimal credit and market risk and hence can be considered as eligible financial instruments for the purpose of CCP investment policy (Article 47(1) of EMIR); and (ii) the highly secured arrangements in which financial instruments posted as margins or as default fund contributions can be deposited (Article 47(3) of EMIR). ESMA's proposals in relation to these topics are set out in Section 7 of this CP.

# 4 Common conditions to the use all guarantees

## 4.1 Concentration limits

11. ESMA's mandate in EMIR requires ESMA to look specifically at concentration limits. Currently, Article 42 of RTS 153/2013 outlines the requirements for CCPs regarding concentration limits on collateral. CCPs are required, among others, to set concentration limits across various dimensions, including individual issuers, types of issuers and assets, and exposures to individual and all clearing members. These limits must be conservatively determined, considering factors such as the similarity of issuers by sector or geography, the credit risk of instruments or issuers based on internal assessments, and the liquidity and price volatility of the instruments.

12. A specific restriction is imposed whereby no more than 10% of a CCP's collateral may be guaranteed by a single credit institution or its group entities, unless commercial bank guarantees exceed 50% of total collateral, in which case the limit may be raised to 25%.

13. For the sake of legal certainty, ESMA considers it necessary to amend the wording of this Article 42 of RTS 153/2013 so that there is clarity on the application of concentration limits to guarantees. However, ESMA does not consider it necessary to prescribe specific concentration limits. In this regard, the same rationale as that applied when ESMA first developed RTS 153/2013 would apply, i.e. concentration limits directly prescribed in the RTS may not be sufficiently flexible to deal with risks or developments which arise or are identified in the future.

14. Furthermore, to ensure that the risk profile of guarantees is taken into account by the CCP when establishing concentration limits, it is necessary in ESMA's view to add a

point (d) to the third paragraph of Article 42, specifically requiring CCPs to consider the level collateralisation of the guarantee when establishing concentration limits.

15. Finally, taking into consideration that non-financial clients can post these guarantees as collateral, CCPs may also consider whether the underlying activity of the non-financial client justifies the use of this collateral. This might be particularly relevant in the case of commodities markets, where some of the non-financial clients might have hedging positions which correspond to their physical activity, but they may need to use public or bank guarantees, because they do not have more liquid assets. For this reason, ESMA is proposing a subparagraph (e) in paragraph three of Article 42, allowing the CCP to take into consideration the activity of the non-financial client, when and if communicated by the clearing member, when setting concentration limits.

**Q1. Do you agree that the existing provision on concentration limits should apply to guarantees and as such Article 42 should be amended to provide legal clarity on this?**

**Q2. Do you agree with the inclusion of the level of collateralisation of the guarantee as a criterion for the CCP to consider when establishing concentration limits?**

**Q3. Do you agree with the inclusion of the new criteria (e) in paragraph 3 of Article 42, so that the CCP can consider the activity of the non-financial client when setting concentration limits?**

16. Currently, Article 46 of EMIR requires CCPs to take into account public bank guarantees or commercial bank guarantees when calculating its exposure to the bank, that is also a clearing member, issuing them. Hence, the risk from guarantees contributed by Clearing Members is well controlled by the stress test framework, as it is a precise calculation that ensures the core risk mechanism, the Cover-2 Default Fund buffer. However, this does not include guarantees issued by banks which are not clearing member, to which the CCP would not compute the risk in the context of stress tests. Article 42(4) of RTS 153/2013 sets out a concentration limit of 10% of total collateral per financial entity, which may go up to 25%. This limit can still become material depending on how the collateral is distributed and how concentrated it is across clearing members.

17. ESMA is therefore seeking feedback from respondents on whether a specific limit should be established for guarantees provided by non-clearing members so that an addition safeguard is incorporated in the framework.

**Q4. Shall there be specific concentration limits established for guarantees provided by non-clearing members, given these exposures are not considered in the Stress Test?**

## 4.2 Use of guarantees by non-financial clients

18. Article 46(1) of EMIR, as amended by EMIR 3, introduces the possibility for CCPs to accept public guarantees, public bank guarantees, or commercial bank guarantees to cover initial and ongoing exposures not only to its clearing members that are non-financial counterparties, but also to clients of clearing members, provided those clients are non-financial counterparties. This is not an obligation for CCPs to accept this type of collateral but a possibility.

19. It could be argued that, by definition, the CCP does not have initial and ongoing exposures to clients. The CCP has exposures to clearing members and the clearing members to the CCP and to its clients. Therefore, reading the third subparagraph of Article 46(1) in isolation could lead to confusion as to the objective of the provision. However, recital 55 of EMIR 3 makes it clear that the objective of this new provision is to "*facilitate access to clearing by non-financial entities that do not hold sufficient amounts of highly liquid assets*". On this basis, reading Article 46(1) together with Recital 55, the CCP may accept a guarantee for which the "principal" (the entity who has requested the guarantee) is a client of the clearing member. This means that, if the CCP accepts this guarantee, the guarantee would be issued at the request of the client and would be posted as collateral to the CCP by the clearing member to cover the CCP exposure flowing from the client's position. This represents a significant extension from the previous drafting of Article 46 of EMIR which limited the use of such guarantees to cover exposures to clearing members only.

*ESMA's understanding of the functioning of bank guarantees for which the principal is a client of a clearing member*

20. In the context of CCP collateral, bank guarantees would typically involve three parties: the guarantor (which may be a commercial or a public bank or a public entity), the principal (the client of the clearing member), and the beneficiary (which may be the CCP alone or the CCP and the clearing member). While the client may be principal, the CCP has only a contractual relationship with the clearing member (not with the client), and even if the client is the principal, the clearing member remains fully responsible to the CCP. If the clearing member fails to meet its obligations (e.g. due to a client default), the CCP can draw on the guarantee. In case of a client default alone, considering that the CCP does not have a direct contractual relationship with the client, the guarantee should not be executed by the CCP unless the default of the client causes the clearing member to default on its obligations to the CCP. Furthermore, considering that the guarantee would be issued to guarantee positions of a specific client, it is important that the CCP can know when the default of the clearing member corresponds to positions of that client (the one covered by the guarantee) and hence it can draw on the guarantee. In some circumstances, especially if the only beneficiary

of the guarantee is the CCP, the clauses of the guarantee may provide for the transfer of beneficiary from the CCP to the clearing member.

**Q5. Is ESMA's understanding correct? Are there other essential features of the guarantees that should be highlighted?**

*Conditions applicable to guarantees for which the applicant is a client of a clearing member*

21. In accordance with the functioning of the guarantee described above, ESMA considers it necessary to apply some specific conditions to the use of guarantees to cover positions from non-financial clients of clearing members. These conditions would be in addition to other conditions applicable to public guarantees, commercial bank guarantees and public bank guarantees that are described in the subsequent sections of this consultation paper:

22. The guarantee must be issued to guarantee a non-financial client, clearly identifying this client;

23. The beneficiary of the guarantee should be the CCP. The guarantee may provide, under conditions to be defined by the CCP, the possibility of transfer of the beneficiary from the CCP to the clearing member of the client. This transfer clause can provide certain flexibility to the CCP and the clearing member and might be necessary when the client exits the market or the clearing member wants to assume direct control of the guarantee;

24. The guarantee must be posted to an individually segregated account at the name of the non-financial client who is the principal in the guarantee. This would allow to clearly link the guarantee to the positions of the client. This individually segregated account would also allow to identify the collateral of the client in case the clearing member defaults and the positions of its clients have to be transferred to another clearing member.

25. The guarantee should not be issued by an entity that is part of the same group as the non-financial clearing member or the non-financial client covered by the guarantee; nor, the clearing member of the non-financial client covered by the guarantee.

**Q6. Do you agree with the conditions proposed by ESMA? Please provide your views specifically for each condition (a), (b), (c) and (d).**

**Q7. In relation to condition (c), do you agree with ESMA proposal? If not, is it in your opinion legally and practically feasible that guarantees are posted to an omnibus account?**

**Q8. Is there any other condition you consider would be necessary in relation to the extension of the use of guarantees to guarantee non-financial clients? E.g. should it be mandated that CCPs have in place a mechanism to identify the default of a non-financial client?**

# 5 Specific conditions for the use of public guarantees

26. The conditions for the use of public guarantees as collateral are largely detailed in Section 2a of the Annex I of RTS 153/2013. This section was included in the RTS 153/2013 as part of the emergency measures to alleviate the liquidity pressure on NFC during the 2022 energy crisis. Therefore, the conditions set forth therein are no longer applicable since these conditions were temporary.

27. ESMA sees the emergency measure as a good basis to build the conditions that should apply on a permanent basis when CCPs accept public guarantees as collateral. On top of changes included to ensure this type of guarantees can be used by non-financial clients (cf. section 3.2 of this consultation paper), the industry experience during the time the emergency measures were in place should also inform some potential adjustments to those conditions.

28. According to some industry feedback, the possibility to use public guarantees as collateral has had limited effect due, at least in part, to credit and liquidity risks issues linked to the type of guarantor. In order to make the framework more robust in this regard, some industry players suggest a number of additional conditions to limit the list of eligible public guarantors to guarantors for which a credit rating and financial data are available and that fulfil the conditions determined by the risk management framework of the CCP. ESMA understands the need for reliable financial data on which the CCPs can base their internal assessment of the guarantor and agrees with the need for the guarantor to respect the conditions determined by the risk management framework of the CCP accepting this type of collateral.

**Q9. Do you agree with ESMA's proposal to require that there are a credit rating and reliable financial data on the guarantor available for the CCP to use in its internal assessment?**

29. From a liquidity risk perspective, ESMA has also been made aware of some challenges for CCPs when executing and liquidating public guarantees in a default scenario. Unlike commercial banks, public bodies generally lack access to real-time gross settlement systems such as T2 in the Eurozone, which CCPs rely on for immediate settlement. Consequently, public guarantors would need to depend on a payment agent integrated

into the contractual framework. To ensure enforceability, the CCP would need a direct and executable claim against the payment agent backed by the public guarantee. ESMA understands the potential additional complexity due to the need for an intervention of a payment agent. However, this obligation for a public body to have access to real-time gross settlement such as T2 might be overly complex, resulting in a limitation of the number of potential public guarantors.

**Q10. Do you consider that the direct access of a public guarantor to real-time gross settlement systems such as T2 should be a requirement for public guarantors? Please provide evidence or reasoning to support your response.**

30. Finally, it has been brought to the attention of ESMA that some legal risks in relation to public guarantees should be addressed. This is because, contrary to bank guarantees which are well-known and highly standardised instruments, the use of public guarantees is more recent and less standardised. Furthermore, the variety and complexity of the public sector legal frameworks make it necessary to find solutions to address any potential legal risk.

31. A possible solution to address these legal risks could be found in the use of legal opinions. A legal opinion could help the CCP to obtain confirmation of the legal compliance of guarantees issued by public bodies with some necessary requirements. These requirements might include:

32. The effective representation of the public guarantor, meaning that the persons executing the guarantee and any related agreements, such as those with a payment agent, have the proper authority and that the guarantor possesses the legal capacity to enter into such obligations within its statutory mandate.

33. The validity of the guarantee should also be assured, ensuring that the guarantee creates enforceable payment claims on first demand and that the choice of law and jurisdiction is recognised under the legal framework governing both the guarantor and the payment agent. Furthermore, the guarantee must not be subject to contestation, revocation, or any mechanism that could undermine its binding nature after execution.

34. Enforceability is also important. The CCP must be able to assert and enforce claims under the guarantee and any related payment agent agreement without restrictions such as waiting periods or special authorisations, and the agreed venue for enforcement must be legally recognised.

35. Therefore, before accepting a public guarantee as collateral, ESMA is of the view that the CCP should obtain an independent legal opinion confirming the enforceability and validity of the guarantee and any related payment agent agreement under the

applicable law. This legal opinion should cover, at a minimum: (a) the capacity and authority of the public guarantor to issue the guarantee and enter into related agreements; (b) the legal validity of the guarantee and the recognition of the choice of law and jurisdiction; and (c) the enforceability of the CCP's rights under the guarantee and related agreements, including the absence of restrictions such as revocation rights, waiting periods, or special authorisations.

**Q11. Do you agree that public guarantees should be accompanied by a legal opinion confirming the effective representation of the guarantor, the validity of the guarantee and its enforceability?**

# 6 Conditions for the use of bank guarantees

36. Section 2 of Annex I of RTS 153/2013 describes the conditions for the use of bank guarantees as collateral. Two types of bank guarantees are currently included in this section of Annex I, commercial bank guarantees and central bank guarantees.

37. In relation to commercial bank guarantees, ESMA sees benefits in clarifying in the new drafting that the guarantor can only be a credit institution as defined under the Capital Requirements Regulation (CRR). This would provide legal clarity as to the nature of the guarantor. Furthermore, the third subparagraph of the Article 46(1) of EMIR provides that "A CCP (…) and may specify [in its operating rules] that it can accept fully uncollateralised public bank guarantees or commercial bank guarantees. It is important in ESMA's view to clarify in Section 2 of Annex I that the CCP may accept uncollateralised bank guarantees.

**Q12. Do you agree that the conditions for commercial bank guarantees should explicitly foresee that the guarantor is a credit institution as defined in CRR?**

**Q13. Do you agree that the possibility for CCP to accept uncollateralised bank guarantees should be specified in Section two of Annex I of RTS 153/2013?**

38. Finally, considering the new drafting of Article 46 of EMIR, a new paragraph 3 should be added in Section 2 of Annex I, specifying the conditions for the use of public bank guarantees as collateral. These conditions would be largely inspired by the current conditions for commercial bank guarantees.

39. The conditions applicable to public bank guarantees could largely follow the principles already established for commercial bank guarantees in Annex I, Section 2 of Delegated Regulation (EU) No 153/2013. This ensures consistency in risk management standards and maintains the robustness of collateral requirements, while adapting to the specific nature of public entities. The provisions for commercial bank guarantees already

establish robust requirements regarding irrevocability, unconditionality, enforceability, and timely availability of funds within the liquidation period. These principles remain relevant for public bank guarantees, as they aim to provide the CCP with reliable collateral that can be realised without legal or operational impediments in a default scenario.

40. EMIR 3 has not provided an explicit definition of "public bank". Some preliminary feedback from the industry suggests that further clarity on this would be welcome. Without providing a closed definition of what is a "public bank", ESMA sees merit in clarifying what can be considered as "public banks". This should refer to "publicly owned" banks other than multilateral development banks listed under Article 117(2) of Regulation (EU) No 575/2013 and central banks.

**Q14. Do you agree with ESMA that the conditions applicable to commercial bank guarantees should also be applicable to public bank guarantees? Please specify in your answer whether any addition condition should be considered.**

**Q15. Do you agree with the proposed way to address the lack of definition of "public bank"?**

# 7 Investment policy (Article 47 of EMIR)

41. Article 47(1) of EMIR provides that CCPs are required to invest their financial resources only in cash or in highly liquid financial instruments with minimal market and credit risk and that a CCP's investments must be capable of being liquidated rapidly with minimal adverse price effect.

42. Article 47(3) of EMIR provides that financial instruments posted as margins or as default fund contributions must, where available, be deposited with operators of securities settlement systems that ensure the full protection of those financial instruments, or, alternatively, other highly secure arrangements with authorised financial institutions may be used.

43. Article 47(8) of EMIR mandated ESMA, after consulting EBA and the ESCB, to develop draft RTS specifying, among other things:

    (a) the financial instruments that can be considered highly liquid, bearing minimal credit and market risk as referred to in Article 47(1) of EMIR;

    (b) the highly secured arrangements referred to in Article 47(3) of EMIR.

44. ESMA's RTS under Article 47(8) of EMIR are set out in RTS 153/2013, in particular in Chapter XI (Articles 43 – 46) and Annex II.

45. Article 47(1) of EMIR is further specified via Article 43 of RTS 153/2013, which currently provides that "*debt instruments can be considered highly liquid, bearing minimal credit and market risk if they are debt instruments meeting each of the conditions set out in Annex II*". As regards the conditions listed in Annex II, condition (a) currently requires that the debt instruments are issued or explicitly guaranteed by: (i) a government; or (ii) a central bank; or (iii) a multilateral development bank as listed under Section 4.2 of Part 1 of Annex VI to Directive 2006/48/EC; or (iv) the European Financial Stability Facility or the European Stability Mechanism where applicable.

*46.* Article 47(3) of EMIR is further specified via Article 44 of RTS 153/2013, which currently provides, in paragraph 1, that "*If a CCP is unable to deposit the financial instruments referred to in Article 45 or those posted to it as margins, default fund contributions or contributions to other financial resources, both by way of title transfer and security interest, with the operator of a securities settlement system that ensures the full protection of those instruments then such financial instruments shall be deposited with any of the following:*

*(a) a central bank (…);*

*(b) an authorised credit institution as defined under Directive 2006/48/EC (…);*

*(c) a third-country financial institution that is subject to and complies with prudential rules considered by the relevant competent authorities to be at least as stringent as those laid down in Directive 2006/48/EC (…).*"

## 7.1 Highly liquid financial instruments with minimal market and credit risk (Article 47(1) of EMIR)

47. The first proposed change concerns the conditions under which debt instruments can be considered highly liquid, bearing minimal credit and market risk and hence can be considered as eligible financial instruments for the purpose of CCP investment policy, as set out in paragraph 1 of Annex II to RTS 153/2013.

48. In particular, ESMA proposes to amend the list of entities listed in paragraph 1, point (a), of Annex II to RTS 153/2013 to allow debt instruments issued by or explicitly guaranteed by the European Union (EU), the Bank for International Settlements (BIS) and the International Monetary Fund (IMF), to be eligible financial instruments for CCP investments, provided that the other conditions listed in paragraph 1 of Annex II to RTS 153/2013 are also met.

49. As regards the debt instruments issued by the EU (such as EU-bonds, EU-bills, NextGenerationEU Green Bonds and SURE social bonds), their issuance has benefitted from a high degree of market demand and confidence in its credit quality, as confirmed by the credit ratings of the EU, the oversubscription of the debt issuance, and the high levels of market depth and liquidity, indicating that these instruments would bear minimal credit and market risk in line with other sovereign issuances in the EU.

50. As regards the inclusion of the BIS and the IMF, ESMA believes it is appropriate to expand the list of accepted public entities at the international level to increase the diversification of collateral risk at minimal market and credit risk. Furthermore, such a change would be in line with other pieces of EU legislation, in particular with Article 118 of CRR[1], which assigns a 0 % risk weight for exposures to the BIS and the IMF.

**Q16. Do you agree with the proposed change concerning the conditions under which debt instruments can be considered highly liquid, bearing minimal credit and market risk (and hence considered as eligible financial instruments for the purpose of CCP investment policy)?**

## 7.2 Highly secure arrangements for the deposit of financial instruments posted as margins or as default fund contributions (Article 47(3) of EMIR)

51. The second proposed change concerns the highly secured arrangements in which financial instruments posted as margins or as default fund contributions can be deposited, as set out in Article 44 of RTS 153/2013.

52. In particular, ESMA proposes to amend Article 44(1) of RTS 153/2013, by adding a new point (d), to include the Union Registry referred to in Article 19 of the ETS Directive[2] and maintained by the European Commission, in case of emission allowances (referred to in Section C(11) of Annex I to MiFID II[3]) accepted by CCPs as collateral in accordance with Article 46(2) of EMIR, i.e. where emission allowances are the

[1] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012; OJ L 176, 27.6.2013, pp. 1–337.
[2] Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC; OJ L 275, 25.10.2003, pp. 32–46.
[3] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast); OJ L 173, 12.6.2014, pp. 349–496.

underlying of the derivative contract or the financial instrument that originates the CCP exposure.

53. ESMA believes that such a change is necessary to cover the situation of some CCPs which would accept emission allowances as collateral in accordance with Article 46(2) of EMIR, but would be unable to comply with Article 47(3) of EMIR, as emission allowances cannot be deposited with operators of securities settlement systems (as required under Article 47(3) of EMIR) or with the other highly secured arrangements for the deposit of financial instruments as currently set out in Article 44 of RTS 153/2013 (i.e. with a central bank, an authorised credit institution as defined under Directive 2006/48/EC[4] or a third-country financial institution).

54. Furthermore, it should be stressed that EMIR Level 1, as well as RTS 153/2013, had entered into force before emission allowances were classified as financial instruments (in accordance with MiFID II, which entered into force on 3 January 2018), and hence could not be covered under Article 44 of RTS 153/2013, as that Article only concerns financial instruments.

55. For the sake of clarity, ESMA wishes to emphasise that it does not propose to designate emission allowances as 'highly liquid financial instruments with minimal market and credit risk' and hence as eligible financial instruments in which CCPs may invest pursuant to Article 47(1) of EMIR, as ESMA is of the view that emission allowances do not fulfil these criteria and, thus, such designation would be inappropriate. Instead, the proposal simply aims to allow CCPs that accept emission allowances as collateral (under Article 46(2) of EMIR) to deposit the emission allowances posted as margins at the Union Registry.

**Q17. Do you agree with the proposed change concerning the highly secure arrangements for the deposit of financial instruments posted as margins or as default fund contributions?**

[4] Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast); OJ L 177, 30.6.2006, pp. 1–200.

# 8 Annexes

## 8.1 Annex I

### Summary of questions

**Q1. Do you agree that the existing provision on concentration limits should apply to guarantees and as such Article 42 should be amended to provide legal clarity on this?**

**Q2. Do you agree with the inclusion of the level of collateralisation of the guarantee as a criterion for the CCP to consider when establishing concentration limits?**

**Q3. Do you agree with the inclusion of the new criteria (e) in paragraph 3 of Article 42, so that the CCP can consider the activity of the non-financial client when setting concentration limits?**

**Q4. Shall there be specific concentration limits established for guarantees provided by non-clearing members, given these exposures are not considered in the Stress Test?**

**Q5. Is ESMA's understanding correct? Are there other essential features of the guarantees that should be highlighted?**

**Q6. Do you agree with the conditions proposed by ESMA? Please provide your views specifically for each condition (a), (b), (c) and (d).**

**Q7. In relation to condition (c), do you agree with ESMA proposal? If not, is it in your opinion legally and practically feasible that guarantees are posted to an omnibus account?**

**Q8. Is there any other condition you consider would be necessary in relation to the extension of the use of guarantees to guarantee non-financial clients? E.g. should it be mandated that CCPs have in place a mechanism to identify the default of a non-financial client?**

**Q9. Do you agree with ESMA's proposal to require that there are a credit rating and reliable financial data on the guarantor available for the CCP to use in its internal assessment?**

**Q10. Do you consider that the direct access of a public guarantor to real-time gross settlement systems such as T2 should be a requirement for public guarantors? Please provide evidence or reasoning to support your response.**

**Q11. Do you agree that public guarantees should be accompanied by a legal opinion confirming the effective representation of the guarantor, the validity of the guarantee and its enforceability?**

**Q12. Do you agree that the conditions for commercial bank guarantees should explicitly foresee that the guarantor is a credit institution as defined in CRR?**

**Q13. Do you agree that the possibility for CCP to accept uncollateralised bank guarantees should be specified in Section two of Annex I of RTS 153/2013?**

**Q14. Do you agree with ESMA that the conditions applicable to commercial bank guarantees should also be applicable to public bank guarantees? Please specify in your answer whether any addition condition should be considered.**

**Q15. Do you agree with the proposed way to address the lack of definition of "public bank"?**

**Q16. Do you agree with the proposed change concerning the conditions under which debt instruments can be considered highly liquid, bearing minimal credit and market risk (and hence considered as eligible financial instruments for the purpose of CCP investment policy)?**

**Q17. Do you agree with the proposed change concerning the highly secure arrangements for the deposit of financial instruments posted as margins or as default fund contributions?**

## 8.2 Annex II

Legislative mandate to develop technical standards

*Article 46*

**Collateral requirements**

*3. ESMA, in cooperation with EBA, and after consulting the ESRB and the members of the ESCB, shall develop draft regulatory technical standards to specify:*

*(…)*

*(c) the relevant conditions under which public guarantees, public bank guarantees and commercial bank guarantees may be accepted as collateral under paragraph 1, including appropriate concentration limits, credit quality requirements and stringent wrong-way risk requirements for public bank guarantees and commercial bank guarantees.*

*ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 25 December 2025.*

*Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.*

*Article 47*

**Investment policy**

*8. In order to ensure consistent application of this Article, 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 and 4 and the concentration limits referred to in paragraph 7.*

*ESMA shall submit those draft regulatory technical standards to the Commission by 30 September 2012.*

*Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.*

## 8.3 Annex III

### Cost-benefit analysis

#### 8.3.1 Concentration limits

| | |
|---|---|
| **Specific objective** | Adjust concentration limit requirements to the public and bank guarantees, as well as to extension to non-financial clients to use those bank guarantees. |
| **Policy option 1** | Risk-sensitive limits, set by CCPs, considering non-financials' activity. |
| **Policy option 2** | Specific concentration limits set in the RTS. |
| Preferred option | **Policy option 1.** |

| **Impact of the proposed policy options** | |
|---|---|
| **Option 1** | |
| Benefits / drawbacks | Reduces CCP credit-risk concentration, while providing flexibility for the CCP to adapt the exact level of risks. Enhances clearing liquidity during market stress in commodity sectors. Allows for a fairer treatment of non-financial clients with commodities exposure.<br><br>Requires CCPs to develop methodologies for underlying activity risk assessment. May be viewed as regulatory arbitrage without clear criteria. |
| Compliance costs | It could generate some additional costs for the CCPs, to adapt concentration limits depending on underlying activity. |
| Supervision costs | It should not increase supervisory costs. |
| **Option 2** | |
| Benefits / drawbacks | Reduces CCP credit-risk concentration. Promotes transparency. |

| | |
|---|---|
| | Restricts access for NFCs in commodity markets reliant on guarantees. Provides less flexibility for concentration limits to work overtime depending on how the market evolve. Changing the concentration limits would require regulatory changes. |
| Compliance costs | Lower than option 1. |
| Supervision costs | Unchanged. |

### 8.3.2 Segregation of guarantees in individual accounts

| | |
|---|---|
| **Specific objective** | Ensure CCPs can identify the collateral corresponding to the non-financial client who is principal to the guarantee. |
| **Policy option 1** | Guarantees posted as collateral to cover non-financial clients should be posted to an individually segregated account. |
| **Policy option 2** | Guarantees posted as collateral to cover non-financial clients could be posted to omnibus accounts or to individually segregated accounts. |
| Preferred option | **Policy option 1** |

| **Impact of the proposed policy options** | |
|---|---|
| **Option 1** | |
| Benefits / drawbacks | Ensures legal and operational separation. Supports portability and default management.<br><br>Increases IT, operational and reconciliation infrastructure. Higher ongoing costs for both CCPs and clients. |
| Compliance costs | It generates additional costs for the CCPs and the clients. |

| | |
|---|---|
| Supervision costs | It should not increase supervisory costs. |
| **Option 2** | |
| Benefits / drawbacks | More economical than individually segregated accounts.<br><br>Operationally more complex and riskier as the guarantees are issued for one principal (the non-financial client) and cannot be commingled. |
| Compliance costs | Putting in place processes to ensure that the collateral (guarantee) corresponding to the non-financial client who defaults can be identified might bear costs, although lower to those incurred under option 1. |
| Supervision costs | Unchanged. |

### 8.3.3 Legal opinions for public guarantees

| | |
|---|---|
| **Specific objective** | Ensure CCPs have the necessary legal assurance when accepting guarantees issued by public guarantors. |
| **Policy option 1** | Mandatory independent legal opinion. |
| **Policy option 2** | CCP internal legal checks. |
| Preferred option | **Policy option 1** |

| **Impact of the proposed policy options** | |
|---|---|
| **Option 1** | |
| Benefits / drawbacks | Ensures enforceability across legal systems, meeting CCP legal certainty needs.<br><br>May add a cost to the non-financial client, or the guarantor. |

| | |
|---|---|
| Compliance costs | It might generate cost for the non-financial client or the guarantor. |
| Supervision costs | It should not increase supervisory costs. |
| **Option 2** | |
| Benefits / drawbacks | Balances risk assessment with reduced cost.<br><br>More complex for CCPs in-house legal assessment, given in particular the diversity of administrative legal frameworks in jurisdictions where non-financial clients might be based. |
| Compliance costs | Higher cost for the CCP. |
| Supervision costs | Unchanged. |

## 8.4 Annex IV - Draft RTS amending Commission Delegated Regulation (EU) No 153/2013

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

**of XX Month YYYY**

**amending Commission Delegated Regulation (EU) No 153/2013 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council as regards conditions for the acceptance of public guarantees and bank guarantees as collateral and changes to investment policy**

**(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories[5], and in particular Articles 46(3) and 47(8) thereof,

Whereas:

(1) Regulation (EU) No 2024/2987[6] amended Article 46 of Regulation (EU) No 648/2012 renewing the mandate for ESMA to set the relevant conditions under which public guarantees, public bank guarantees and commercial bank guarantees may be accepted as collateral by central counterparties (CCPs).

(2) Commission Delegated Regulation (EU) No 153/2013 [7] lays down regulatory technical standards on requirements for CCPs, including as regards highly liquid collateral with minimal credit and market risk, investment policy and highly secure arrangements for the deposit of financial instruments posted as margins or as default fund contributions.

(3) Concentration limits set by CCPs in relation to eligible collateral should cover public and bank guarantees. Considering the specific needs of non-financial clients operating notably in commodity markets, CCPs should take into account the underlying activity of these entities, if communicated to the clearing member, when setting specific concentration limits for public and bank guarantees posted by these clients as collateral.

---

[5] OJ L 201, 27.7.2012.
[6] OJ L, 2024/2987, 4.12.2024
[7] Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on requirements for central counterparties; OJ L 52, 23.2.2013, pp. 41–74.

(4) Considering the specific contractual constructions of public guarantees, public bank guarantees and commercial bank guarantees cannot be commingled with collateral from other clearing members of clients, therefore, when non-financial clients provide this type of guarantees as collateral, they should be posted to individually segregated accounts.

(5) Guarantees issued by public entities may be governed by public law requirements which might be difficult for the CCP to assess, having regard to the different jurisdictions where non-financial clients may be established. For this reason, in order to provide the required legal certainty to the CCP accepting this type of guarantees as collateral, the CCP should ask that the guarantee is accompanied by an independent legal opinion confirming effective representation of the public guarantor, the validity and the enforceability of the guarantee.

(6) In light of recent developments, it is also appropriate to update and amend certain provisions set out in Commission Delegated Regulation (EU) No 153/2013 with regard to investment policy and highly secure arrangements for the deposit of financial instruments posted as margins or as default fund contributions.

(7) In particular, due to the recent issuances by the Union of funding instruments (such as EU-bonds, EU-bills, NextGenerationEU Green Bonds and SURE social bonds) under the unified funding approach, which have benefitted from a high degree of market demand and confidence and high levels of market depth and liquidity, bearing minimal credit and market risk, it should be specified that debt instruments issued or explicitly guaranteed by the Union could be eligible financial instruments for the purpose of investment policy. In addition, in order to align the provisions on investment policy with Regulation (EU) No 575/2013[8], which assigns a 0 % risk weight for exposures to the Bank for International Settlements (BIS) and the International Monetary Fund (IMF), Commission Delegated Regulation (EU) No 153/2013 should also be amended to allow debt instruments issued or explicitly guaranteed by the BIS and the IMF to be eligible financial instruments for the purpose of investment policy.

(8) Furthermore, emission allowances having been classified as financial instruments in accordance with Directive 2014/65/EU [9] and considering that they can be accepted as collateral in accordance with Article 46(2) of Regulation (EU) No 648/2012, Commission Delegated Regulation (EU) No 153/2013 should also be amended to add the Union Registry referred to in Article 19(1) of Directive 2003/87/EC[10] to the list of highly secure arrangements for the deposit of financial instruments posted as margins or as default fund contributions.

(9) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

---

8 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012; OJ L 176, 27.6.2013, pp. 1–337.
9 Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast); OJ L 173, 12.6.2014, pp. 349–496.
10 Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC; OJ L 275, 25.10.2003, pp. 32–46.

(10) ESMA has developed the draft regulatory technical standards in cooperation with the European Banking Authority (EBA) and after consulting the European Systemic Risk Board (ESRB) and the European System of Central Banks (ESCB). In accordance with Article 10 of Regulation (EU) 1095/2010 of the European Parliament and the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)[11], ESMA has conducted open public consultations on such draft regulatory technical standards, analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010,

HAS ADOPTED THIS REGULATION:

*Article 1*

**Amendments to Commission Delegated Regulation (EU) No 153/2013**

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

(1) Article 39, first subparagraph is replaced by the following:

56. 'For the purposes of Article 46(1) of Regulation (EU) No 648/2012, financial instruments, bank guarantees, public guarantees and gold that meet the conditions set out in Annex I shall be considered as, highly liquid collateral.'

(2) Article 42, is amended as follows:

a. in paragraph 2, point (c) is replaced by the following:

57. 'type of asset or guarantee';

b. in paragraph 3, point (a) is replaced by the following:

58. 'financial instruments and guarantees issued by issuers of the same type in terms of economic sector, activity, geographic region;';

11 OJ L 331, 15.12.2010, p. 84.

c. In paragraph 3, the following points are added:

i. ‘(d) the level of collateralisation of guarantees;’

ii. ‘(e) the underlying activity of the non-financial client.’

d. Paragraph 4 is replaced by the following:

‘4. A CCP shall ensure that no more than 10 % of its collateral is guaranteed by a single credit institution, be it a commercial or a public bank, or equivalent third country financial institution, or by an entity that is part of the same group as the credit institution or third country financial institution. Where the collateral received by the CCP in the form of bank guarantees, from commercial or public banks, is higher than 50 % of the total collateral, this limit may be set up to 25 %.’

e. In paragraph 5, the word “guarantees” is added in the first sentence after “money-market instruments,” replaced by the following:

f. In paragraph 6, the words “or guarantees” are added after “its exposures to all financial instruments”

(3) In Article 44(1), the following point is added:

‘(d) the Union Registry referred to in Article 19(1), first subparagraph, of Directive 2003/87/EC in case of emission allowances referred to in Section C(11) of Annex I to Directive 2014/65/EU accepted by a CCP as collateral in accordance with Article 46(2) of Regulation (EU) No 648/2012.’

(4) Annex I is amended in accordance with Annex I of this Regulation.

(5) Annex II is amended in accordance with Annex II of this Regulation.

*Article 2*

**Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication iin 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, DD MM YYYY,

For the Commission

The President

ANNEX I

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

(1) section 2 is replaced by the following:

*'Section 2*

***Bank guarantees***

1. A commercial bank guarantee, subject to limits set out by the CCP in application of Article 42 of this Regulation, shall meet the following conditions to be accepted as collateral under Article 46(1) of Regulation (EU) No 648/2012:

(a) it is issued to guarantee a non-financial clearing member or a non-financial client;

(aa) When the commercial bank guarantee is issued to guarantee a non-financial client, it must be posted to an individually segregated account at the name of the non-financial client;

(ab) Commercial bank guarantees issued to guarantee a non-financial client, shall have as only beneficiary the CCP. These guarantees may include a transfer clause, allowing under conditions to be defined by the CCP, the transfer of the beneficiary from the CCP to the clearing member of the client;

(b) it has been issued by a credit institution as defined in Article 4(1)(1) of Regulation (EU) No 575/2013 that has low credit risk based upon an adequate internal assessment by the CCP. In performing such assessment the CCP shall employ a defined and objective methodology that shall not fully rely on external opinions and that takes into consideration the risk arising from the establishment of the issuer in a particular country;

(c) it is denominated in one of the following currencies:

(i) a currency the risk of which the CCP can demonstrate to the competent authorities that it is able to adequately manage;

(ii) a currency in which the CCP clears contracts, in the limit of the collateral required to cover the CCP's exposures in that currency;

(d) it is irrevocable, unconditional and the issuer cannot rely on any legal or contractual exemption or defence to oppose the payment of the guarantee;

(e) it can be honoured on demand within the period of liquidation of the portfolio of the defaulting clearing member providing it without any regulatory, legal or operational constraint;

(f) it is not issued by:

(i) an entity that is part of the same group as the non-financial clearing member or the non-financial client covered by the guarantee;

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

(iii) the clearing member of the non-financial client;

(g) it is not otherwise subject to significant wrong-way risk;

(h) when commercial bank guarantees are backed by collateral, that collateral shall meet the following conditions:

(i) it is not subject to wrong way risk based on a correlation with the credit standing of the guarantor or the non-financial clearing member or the non-financial client, unless that wrong way risk has been adequately mitigated by haircutting of the collateral;

(ii) the CCP has prompt access to it and it is bankruptcy remote in case of the simultaneous default of the clearing member and the guarantor.

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

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

(b) it is denominated in one of the following a currencies:

(i) a currency the risk of which the CCP can demonstrate to the competent authorities that it is able to adequately manage;

(ii) a currency in which the CCP clears transactions, in the limit of the collateral required to cover the CCP's exposures in that currency;

(c) it is irrevocable, unconditional and the issuing central bank cannot rely on any legal or contractual exemption or defence to oppose the payment of the guarantee;

(d) it can be honoured within the period of liquidation of the portfolio of the defaulting clearing member providing it without any regulatory, legal or operational constraint or any third party claim on it.

3. A bank guarantee issued by a publicly owned bank not covered by paragraph 2 of this section, subject to limits set out by the CCP in application of Article 42 of this Regulation, shall meet the following conditions to be accepted as collateral under Article 46(1) of Regulation (EU) No 648/2012:

(a) it is issued to guarantee a non-financial clearing member or a non-financial client;

(b) when the public bank guarantee is issued to guarantee a non-financial client, it must be posted to an individually segregated account at the name of the non-financial client;

(c) public bank guarantees issued to guarantee a non-financial client shall have as only beneficiary the CCP. These guarantees may include a transfer clause, allowing under conditions to be defined by the CCP, the transfer of the beneficiary from the CCP to the clearing member of the client;

(d) it has been issued by a publicly owned bank not covered by paragraph 2 of this section, that has low credit risk based upon an adequate internal assessment by the CCP. In performing such assessment the CCP shall employ a defined and objective methodology that shall not fully rely on external opinions and that takes into consideration the risk arising from the establishment of the issuer in a particular country;

(e) it is denominated in one of the following currencies:

(i) a currency the risk of which the CCP can demonstrate to the competent authorities that it is able to adequately manage;

(ii) a currency in which the CCP clears contracts, in the limit of the collateral required to cover the CCP's exposures in that currency;

(f) it is irrevocable, unconditional and the issuer cannot rely on any legal or contractual exemption or defence to oppose the payment of the guarantee;

(g) it can be honoured on demand within the period of liquidation of the portfolio of the defaulting clearing member providing it without any regulatory, legal or operational constraint;

(h) it is not issued by:

(i) an entity that is part of the same group as the non-financial clearing member or the non-financial client covered by the guarantee;

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

(iii) the clearing member of the non-financial client;

(i) it is not otherwise subject to significant wrong-way risk;

(j) unless otherwise specified by the operating rules of the CCP in application of the third subparagraph of Article 46(1) of EMIR, public bank guarantees are fully backed by collateral that meets the following conditions:

(i) it is not subject to wrong way risk based on a correlation with the credit standing of the guarantor or the non-financial clearing member or the non-financial client, unless that wrong way risk has been adequately mitigated by haircutting of the collateral;

(ii) the CCP has prompt access to it and it is bankruptcy remote in case of the simultaneous default of the clearing member and the guarantor.'

(2) In Annex I, Section 2a is replaced by the following:

*'SECTION 2a*

***Public guarantees***

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

(a) it is issued to guarantee a non-financial clearing member or a non-financial client;

(aa) when the public bank guarantee is issued to guarantee a non-financial client, it must be posted to an individually segregated account at the name of the non-financial client;

(ab) public guarantees issued to guarantee a non-financial client shall have as only beneficiary the CCP. These guarantees may include a transfer clause, allowing under conditions to be defined by the CCP, the transfer of the beneficiary from the CCP to the clearing member of the client;

(b) it is explicitly issued or guaranteed by any of the following:

(i) a central government in the EEA;

(ii) regional governments or local authorities in the EEA, where there is no difference in risk between exposures of regional governments or local authorities and the central government of that Member State because of the specific revenue-raising powers of the former, and the existence of specific institutional arrangements the effect of which is to reduce their risk of default;

(iii) the European Financial Stability Facility, the European Stability Mechanism, or the Union, where applicable;

(iv) a multilateral development bank as listed under Article 117(2) of Regulation (EU) No 575/2013 of the European Parliament and of the Council ([7]) and established in the Union;

(c) the CCP can demonstrate that it has low credit risk based upon an internal assessment by the CCP;

(d) the public guarantor respects the conditions determined by the risk management framework of the CCP;

(e) it is denominated in one of the following currencies:

(i) a currency the risk of which the CCP can demonstrate to the competent authorities that it is able to adequately manage;

(ii) a currency in which the CCP clears transactions, in the limit of the collateral required to cover the CCP's exposures in that currency;

(f) it is irrevocable, unconditional and the issuing and guaranteeing entities cannot rely on any legal or contractual exemption or defence to oppose the payment of the guarantee;

(g) it can be honoured within the period of liquidation of the portfolio of the defaulting clearing member providing it without any regulatory, legal or operational constraint or any third party claim on it.

For the purposes of point (c), the CCP shall employ, in performing the assessment referred to in that point, defined and objective methodology that shall not fully rely on external opinions. The assessment shall also include credit ratings or other publicly available financial information of the guarantor.

For the purposes of points (f) and (g), the public guarantee shall be accompanied by a written legal opinion confirming the enforceability and validity of the guarantee and any related payment agent agreement under the applicable law. The legal opinion shall, at a minimum, confirm that:

(i) the public guarantor has the legal capacity and authority to issue the guarantee and enter into any related agreements, and that all necessary permits and approvals have been obtained;

(ii) the guarantee and any related payment agent agreement create legally valid and enforceable payment obligations on first demand, and that the choice of law and jurisdiction clauses are recognized under the legal framework governing the public guarantor and the payment agent;

(iii) the guarantee and any related agreements cannot be contested, revoked, or otherwise rendered non-binding after execution; and

(iv) the CCP's rights under the guarantee and any related agreements can be judicially asserted and enforced without restrictions, waiting periods, or special authorizations, and that the agreed venue for enforcement is legally recognized.'

## ANNEX II

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

(1) In paragraph 1, point (a), of Annex II to Commission Delegated Regulation (EU) No 153/2013, the following sub-points are added:

'(v) the Union;

(vi) the Bank for International Settlements;

(vii) the International Monetary Fund.'