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VIA ELECTRONIC SUBMISSION
European Commission
Avenue d'Auderghem 45,
1040 Etterbeek
Brussels (Belgium)

CCP12 response to the Commission Delegated Regulation (EU) on *Derivatives trading – determining the systemic risk of non-EU clearing houses (tiering criteria)*.

CCP12 appreciates the opportunity to comment on the European Commission's ("the Commission") draft act on *Derivatives trading – determining the systemic risk of non-EU clearing houses (tiering criteria)* ("the Draft Act") and appreciates the Commission addressing certain feedback provided to ESMA's public consultation from 2019. CCP12 values the steps taken in the tiering process towards i) providing predictability and proportionality; ii) limiting the administrative burden on smaller third-country CCPs ("TC-CCP"); and iii) capturing a clear nexus to the EU, as a core element of the process. Regarding item i), CCP12 supports the Draft Act's focus on quantitative indicators for determining a TC-CCPs systemic importance to the EU and, if any of such indicators are exceeded, the ulterior evaluation of additional elements.

CCP12 welcomes the approach outlined by the Commission as it provides a sound basis for enhanced cross-border cooperation, striking the right balance between proportionate deference towards home supervisors and the legitimate financial stability imperatives. However, CCP12 would like to bring to the Commission's attention a few remarks, regarding the indicators outlined under Article 6 and the additional elements outlined under Articles 1 thru 5.

On assessing the indicator under Article 6(1)(d) that captures a TC-CCP's payment obligations committed by EU entities, CCP12 recommends clarifying what this indicator is intended to capture. In particular, CCP12 recommends it is clarified that this indicator captures committed liquidity resources that could be called upon by a TC-CCP from EU entities in EU currencies, caused by the default of any one single (or the two largest) clearing members under extreme but plausible market conditions. Focusing on liquidity provided by such entities captures appropriately liquidity resources and payment obligations that have a direct nexus to the EU. Specifically, assessing payment obligations in EU currencies, in Article 6(1)(d), would capture the potential liquidity provided by EU entities, related to financial instruments denominated in EU currencies.

With regards to Article 1, CCP12 does not believe that assessing the ownership and corporate structure of a TC-CCP is appropriate. While CCP12 appreciates that such assessment only occurs after a CCP exceeds any of the

indicators outlined in Article 6, ownership and corporate structure are not a good indication of the systemic importance of the TC-CCP to the stability of the EU. CCPs, whether standalone entities and/or part of a broader group, are fully resourced to cope with any extreme but plausible market conditions under their local legal and regulatory frameworks. The ongoing ability of a CCP to meet its regulatory obligations is independent of its ownership and corporate structure. Therefore, the ownership and corporate structure of a TC-CCP do not have a bearing on its systemic importance to the stability of the EU.

With regards to Articles 2 and 6(1)(c), CCP12 reinforces the idea that the evaluation of a TC-CCP's collateral held (e.g., margins and default fund contributions) should also include an evaluation of the protections for which such collateral is subject, in addition to the amount of such collateral denominated in EU currencies and/or collateral related to EU entities. A TC-CCP collects collateral from its market participants to cover potential future exposures, and therefore, such practice is a risk-mitigating one, so the more appropriate focus is not on the collateral holdings, but on the protections for which they are subject. In particular, in the event of a TC-CCP's failure or disruption, the potential impact on stability would also be driven by the level of collateral protections – e.g., collateral being bankruptcy remote. By way of background, we would like to note at this stage that it is not uncommon for some TC-CCPs to hold EU sovereign debt as initial margin, but when evaluating a TC-CCP's systemic importance to the stability of the EU relative to the impacts of its failure, it is also important to consider the manner in which such collateral is protected. Therefore, CCP12 recommends that the robustness of bankruptcy remoteness arrangements for collateral would be an additional metric to assess a TC-CCP's margins, default fund contributions, and eligible collateral under Articles 2 and 6(1)(c). CCP12 also believes that the focus of Article 2 should be on evaluating a TC-CCP's margins, default fund contributions, and eligible collateral denominated in EU currencies (regardless of the domicile of the entity) and/or for EU entities (irrespective of the currency denomination of the collateral), since this collateral could potentially impact the stability of the EU or one of its Member States in the event the CCP fails.

Referring to Article 5, CCP12 would note that direct connections to a central securities depository ("CSD") or payment systems should not necessarily be perceived by the Commission as a potential risk to the stability of EU that could lead to a higher tiering as this could incentivise a TC-CCP to use more risky indirect links.

As the global association for CCPs, we would encourage the Commission to discuss this approach with other jurisdictions and consider whether they could follow a similar proportionate approach based on predictable criteria for the determination of systemic importance and relying on approaches of regulatory deference, particularly for those CCPs of non-systemic importance.

Finally, CCP12 believes that both Tiering and Comparable Compliance assessments should be processed simultaneously to limit significant overlap that appears to exist with regards to the information requested for each application. This would significantly reduce the burden on TC-CCPs and limit compliance costs.

CCP12 response to the Commission Delegated Regulation (EU) on *Financial market regulation – compliance of non-EU clearing houses*.

CCP12 appreciates the opportunity to comment on the European Commission's ("the Commission") draft act on *Financial market regulation – compliance of non-EU clearing houses* ("the Draft Act") and appreciates the Commission addressing certain feedback provided to ESMA's public consultation from 2019. CCP12 values the steps taken towards regulatory deference by i) providing greater focus on whether the Tier 2 CCP's compliance with a third-country framework satisfies compliance with EMIR, while also taking into account the equivalence decision; and ii) recognizing that circumstances might arise where comparability is still warranted where EMIR requirements contradict applicable domestic law.

CCP12 overall welcomes the approach outlined by the Commission as it provides a sound basis for enhanced cross-border cooperation, striking the right balance between proportionate deference towards home supervisors and addressing financial stability concerns. However, CCP12 would like to bring to the Commission's attention a few remarks, particularly on ways to make clear that the equivalence decision will be accounted for and a holistic approach will be taken in the comparable compliance assessment, as we believe this was the legislative intention.

Effectively Considering the Equivalence Decision

Regarding Article 3 that focuses on the assessment of Title IV of Regulation (EU) No 648/2012, to avoid confusion CCP12 recommends that the Commission make clear that the elements to be assessed for comparable compliance relative to Title IV should be limited to the areas where the Commission adopted conditions for determining equivalence, given that the Commission has already found other areas equivalent (i.e., comparable).

Holistic Approach to Comparable Compliance

CCP12 would also welcome a further clarification of the holistic and outcomes-based approach for the assessment for comparable compliance with respect to Titles IV and V of Regulation (EU) No 648/2012 would be taken by ESMA pursuant to Articles 3 and 4. Given the items proposed under Annexes I and II, CCP12 is concerned that such Annexes could inadvertently impose a requirement-by-requirement assessment. In particular, the language under Articles 3 and 4 that states that comparable compliance is found where "the Tier 2 CCP complies with all relevant elements set out in" Annexes I and II is especially concerning. While the elements outlined are not as prescriptive as the requirements set out under Regulation (EU) No 648/2012 and the regulations that supplement it, we are concerned that these elements would effectively still require a Tier 2 CCP to comply with requirements other than those defined under its local regulatory framework. Further, although we do not believe this was the intention of the Commission, the structure of these Annexes do not provide for the certainty that a holistic, outcomes-based approach will be taken to comparable compliance. CCPs do not manage specific risks in a silo, so it is inconsistent with best practices in CCP risk management, which are to manage risks holistically, to conduct a comparable compliance assessment in any other manner than one that is done on a holistic, outcomes-basis.

As such, CCP12 recommends that the Commission's delegated act implements an approach to comparable compliance that does not specifically require direct compliance with specific elements of EU regulations and is completed on a holistic, outcomes-basis and in turn, allows for requirements to be looked at holistically. In addition to clearly recognizing the equivalence decision, Articles 3 and 4 should be revised to state that:

> *"the Tier 2 CCP complies with **local laws and regulations that are comparable to** all relevant elements set out in Annex [I/II] **on a holistic, outcomes-basis**."*

As the global association for CCPs, we would encourage the Commission to discuss this approach with other jurisdictions and consider whether they could follow a similar proportionate approach based on predictable criteria for the determination of systemic importance and relying on approaches of regulatory deference, particularly for those CCPs of non-systemic importance.

Finally, CCP12 believes that both Tiering and Comparable Compliance assessments should be processed simultaneously to limit significant overlap that appears to exist with regards to the information requested for each application. This would significantly reduce the burden on TC-CCPs and limit compliance costs.

CCP12 response to the Commission Delegated Regulation (EU) on *Derivatives trading – fees to be charged to non-EU clearing houses*.

CCP12 appreciates the opportunity to comment on the European Commission's ("the Commission") draft act on *Derivatives trading – fees to be charged to non-EU clearing houses* ("the Draft Act") and appreciates the Commission addressing certain feedback provided to ESMA's public consultation from 2019. CCP12 values the steps taken towards reducing overall fees, simplifying the fee structure, and providing for proportionality and transparency. However, CCP12 would like to bring to the Commission's attention a few remarks.

The one-off initial recognition fee amount for both Tier 1 and Tier 2 CCPs are driven by the same items (e.g., updating a MoU, check the completeness of applications, tiering, etc.), with the exception of the assessment of compliance and requests for comparable compliance for Tier 2 CCPs, valued by ESMA at 250,000 EUR minus 20 per cent of the annual fee. In light of this, CCP12 hopes the Tier 2 CCP recognition fee can be reevaluated to be more economically viable, but without causing an increase of the recognition fee for Tier 1 CCP from the current proposed level.

At the same time, we are concerned that, for smaller CCPs with *de minimis* level of activities in EU markets, the proposed fee level for a Tier 1 CCP, together with the costs associated with the application to ESMA for a recognition, may act as a substantial barrier for them in accessing to EU markets, which in turn may reduce the scope of markets that would be accessible by EU entities and pose a competitive disadvantage to them in non-EU markets where those CCPs are operating. Therefore, ESMA should consider establishing specific de minimis thresholds for initial margin and default fund of EU entities, below which ESMA would not charge, or would significantly reduce, the one-off fees for the initial recognition.

Regarding Article 4, CCP12 does not believe that the use of a Tier 2 CCP's revenues is an appropriate measure to determinate supervisory fees. Linking a third-country CCP's ("TC-CCP") systemic importance to revenues would seem arbitrary and implies that ESMA would need to more closely supervise TC-CCPs that are more profitable, which is counterintuitive. It is unclear how CCP revenue would directly lead to increased regulatory and supervisory activities by ESMA, since the complexity and size of the markets that a CCP clears are not necessarily reflected in its annual revenue.

Furthermore, such an approach with regards to supervisory fees could disincentivise TC-CCPs from improving their product range and risk management practices if they consider that those enhancements come at an additional arbitrary cost.

About CCP12

CCP12 is a global association of 37 members who operate more than 60 individual CCPs globally across Europe/Middle East/Africa ("EMEA"), the Americas, and the Asia-Pacific ("APAC") regions. CCP12 aims to promote effective, practical and appropriate risk management and operational standards for CCPs to ensure the safety and efficiency of the financial markets it represents. CCP12 leads and assesses global regulatory and industry initiatives that concern CCPs to form consensus views of its members and seeks to actively engage with regulatory agencies and industry constituents through consultation responses, forum discussions and position papers.