

Regulation No. 3/2013
on the authorisation and operation of central counterparties issued in accordance with the provisions of
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
of 21 August 2013

In force as of 30 August 2013

*The **consolidation of 20 July 2015** is based on the publication in the Official Journal, Part I No. 552 of 30 August 2013 and includes the modifications brought by the following acts: Regulation 2/2014; GD 41/2014; GD*

75/2014; Regulation 7/2015;

Last amendment was made on 28 May 2015.

CHAPTER I

General Provisions

Art. 1. - (1) This regulation lays down rules on the authorisation and operation of the central counterparties, in accordance with the provisions of 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, hereinafter referred to as Regulation (EU) No 648/2012, as well as in accordance with the provisions of the European rules issued for its implementation.

(2) The European rules issued for the implementation of Regulation (EU) No 648/2012 are the European delegated regulations supplementing it with regard to a series of technical regulatory standards, European regulations for the implementation of technical implementation standards in accordance with Regulation (EU) No 648/2012, as well as the guidelines and recommendations of the European Securities and Markets Authority (ESMA), issued for the implementation of Regulation (EU) No 648/2012, in accordance with Regulation (EU) No 1.095/2010 of the 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/CE and repealing Commission Decision 2009/77/CE.

Art. 2. - (1) The terms and expressions used in this regulation shall have the meaning provided in Regulation (EU) No 648/2012 and in the European rules issued for its implementation, in Law No. 297/2004 on the capital market, as subsequently amended and supplemented, hereinafter referred to as Law No. 297/2004, and in the regulations issued for its implementation by the Financial Supervisory Authority, hereinafter referred to as FSA.

(2) The central counterparty interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer and is responsible for the operation of a clearing system. The central counterparty acts in any of the capacities as central counterparty for derivatives and/or central counterparty for instruments other than derivatives, as well as in the capacity as clearing house in accordance with the provisions of Art. 157 of Law No. 297/2004.

(3) After the repeal of Title III of Regulation No. 13/2005 of the National Securities Commission on the authorisation and operation of the central depository, clearing houses and central counterparties, approved by Order No. 60/2005 of the National Securities Commission, as subsequently amended and supplemented,

hereinafter referred to as NSC Regulation No. 13/2005, the terms and expressions below have the following meanings:

1. margin call – means the mandatory demand by the central counterparty to a clearing member and, if applicable, to the central counterparties with which it concluded interoperability agreements or by a clearing member to a client or a non-clearing member in order to comply with the limits set out with regard to the margin account;

2. margin account – means the account where the funds and/or financial instruments set up for the purpose of covering open positions, as well as the rights acquired and obligations undertaken are recorded;

3. position account – means the account opened in the electronic clearing-settlement system for clearing/non-clearing members and/or their clients where the contracts purchased and/or sold, as well as the open positions with financial instruments as a result of concluding a transaction, are recorded;

4. financial collateral - a guarantee over securities, defined according to Government Ordinance No. 9/2004 on certain financial collateral arrangements, approved as amended and supplemented by Law No. 222/2004, as subsequently amended and supplemented;

5. mortgage over movable property – mortgage over securities as defined in Law No. 287/2009 on the Civil Code, republished, as subsequently amended;

6. exposure – the level of risk assumed by a clearing/non-clearing member that carries out financial instruments operations on its own account and on the account of its clients, calculated according to the methods established by the central counterparty;

7. closing an open position – discharge by the client, clearing/non-clearing member or the central counterparty of the contractual obligations of an open position, either by taking an opposite position, or by delivering the underlying asset, or by exercising the right granted by the option;

8. marking to market – updating the margin accounts, the collaterals and of other assets or liabilities, at least at the end of the trading session, by the favourable/unfavourable differences resulting from re-evaluating the open positions;

9. open position – the net number of contracts purchased or sold, recorded in a certain position account, which have not reached maturity or whose rights were not exercised or whose obligations have not been discharged;

10. group – the group of undertakings consisting of a parent undertaking and its subsidiaries within the meaning of the definition under Item 12 or the group of undertakings referred to in Art. 3 (1) and Art. 80(7) and (8) of 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;

11. qualifying holding - any direct or indirect holding in a central counterparty or trade repository which represents at least 10 % of the capital or of the voting rights, as set out in Art. 228 of Law No. 297/2004, taking into account the conditions regarding aggregation thereof laid down in Art. 12(4) and (5) of Directive 2004/109/EC of the European Parliament and of the Council of 19 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC or which makes it possible to exercise a significant influence over the management of the central counterparty or trade repository in which that holding subsists;

12. parent undertaking – an undertaking to which one of the following situations applies:

a) it holds the majority of the voting rights of the shareholders or associates in another undertaking (subsidiary); or

b) it has the right to appoint or revoke the majority of the members of the administrative, management or supervisory bodies of another undertaking (subsidiary) and is at the same time a shareholder or associate of such undertaking; or

c) it has the right to exercise a significant influence on an undertaking (subsidiary) whose shareholder or associate it is, based on a contract concluded with the undertaking at issue or on a clause in the instruments of

incorporation or statutes of the undertaking at issue, if the legislation applicable to the subsidiary allows it to be subject to such contracts or clauses;

d) it is a shareholder or associate of an undertaking and:

(i) either the majority of the members of the administrative, management or supervisory bodies of the undertaking at issue (subsidiary) who carries out such positions during that financial year, during the previous financial year and until the preparation of the consolidated accounts, were appointed only by the exercise of its voting rights,

(ii) either controls on its own, based on an agreement concluded with other shareholders or associates of the undertaking at issue (subsidiary), the majority of the voting rights of the shareholders or associates of the undertaking at issue.

Item (i) shall not apply if another undertaking holds the rights referred to in Letter a), b) or c) as regards the subsidiary.

For the implementation of Letters a), b) and d), the voting rights, the rights to appoint or revoke of any other subsidiary, as well as those of any other person acting in its own name but on behalf of the parent undertaking or of another subsidiary shall be added to those of the parent undertaking.

For the implementation of Letters a), b) and d), the following rights shall be excluded from the rights referred to in the previous paragraph:

1. the rights conferred by shares held on the account of a person that is neither the parent undertaking nor a subsidiary thereof; or

2. the rights conferred by shares held as collateral, provided that such rights are exercised in accordance with the instructions received or that the holding of such shares represents, for the undertaking holding them a current activity within its lending activity, provided that the voting rights are exercised in the best interest of the person offering the collateral.

For the implementation of Letters a) and d), the voting rights conferred by the shares held by the undertaking itself, by a subsidiary of the undertaking or by a person acting in its own name but on behalf of such undertakings shall be deducted from the total voting rights of the shareholders or associates of the subsidiary;

13. subsidiary – the undertaking referred to in Item 12, in relation to the parent undertaking, including a subsidiary of a subsidiary of the parent undertaking that runs them;

14. control – the relationship between the parent undertaking and a subsidiary, as described in Item 12;

15. close links – a situation in which two or more natural or legal persons are linked by:

(i) participation, by way of direct ownership or control, of 20 % or more of the voting rights or capital of an undertaking;

(ii) control, namely the relationship between a parent undertaking and a subsidiary, as described in Item 12, or a similar relationship between any natural or legal person and an undertaking. In this respect, a subsidiary of a subsidiary is considered a subsidiary of the parent undertaking of such subsidiaries.

A situation in which two or more natural or legal persons are permanently linked to one and the same person by a control relationship shall also be regarded as constituting a “close link” between such persons.

CHAPTER II

Provisions applicable to central counterparties

Art. 3. - For the purpose of authorisation and throughout its operation, the central counterparty shall meet the conditions referred to in Title IV Chapters V and VI of Law No. 297/2004 that are not against Regulation (EU) No 648/2012 and the European rules for the implementation thereof, as well as the provisions of this regulation.

SECTION 1

Authorisation of central counterparties

Art. 4. - (1) In order to obtain the operation authorisation, central counterparties shall submit to FSA an application for authorisation in accordance with Art. 14 and Art. 17 of Regulation (EU) 648/2012, signed by the legal representative of such undertaking and accompanied by the documents referred to in Para (2).

(2) In order to be granted the authorisation referred to in Para (1), a legal person intending to provide clearing services as a central counterparty shall submit an application specifying the activities and services it intends to carry out and the classes of financial instruments for which it intends to carry out specific activities, accompanied by the following documents:

a) the instrument of incorporation, in original or certified copy, containing data on the object of activity specified under Art. 11;

b) copy of the ruling issued by the delegated judge attached to the Trade Registry Office, to incorporate and register the undertaking in accordance with the provisions of Art. 10;

c) copy of the Certificate of Incorporation with the Trade Registry Office;

d) proof of holding the initial, permanent and available share capital of at least the RON equivalent of EUR 7.5 million referred to in Art. 16 of Regulation (EU) No 648/2012, calculated in accordance with Commission Delegated Regulation (EU) No 152/2013 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 capital requirements for central counterparties, hereinafter referred to as Delegated Regulation (EU) No 152/2013, and its own resources referred to in Art. 45 of Regulation (EU) No 648/2012 and calculated in accordance with the provisions of Art. 35 of 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 of 4 July 2012 with regard to regulatory technical standards on requirements for central counterparties, hereinafter referred to as Delegated Regulation (EU) No 153/2013;

e) proof of legal possession over the main headquarters necessary for the operation of the central counterparty, and the secondary processing headquarters which has to be able to ensure the continuity of all critical functions of the central counterparty in the same manner as the main headquarters, in accordance with the provisions of Art. 19 of Delegated Regulation (EU) No 153/2012, materialised in one of the following forms:

1. ownership deed;

2. rental contract registered with the fiscal authority in original/certified copy; the rental contract shall be valid for at least 12 months from the submission date of the application for authorisation. The rental contract shall be renewed and submitted to FSA within maximum 15 days from its expiry date. Joint venture agreements shall not be accepted as proof of holding the space intended as registered headquarters;

f) for each of the members of the board of directors and managers or, as the case may be, for the members of the supervisory board and of the directorate:

1. up-to-date curriculum vitae, dated and signed, presenting in detail the professional experience of such person, so as to reveal the fulfilment of the conditions referred to in Art. 17;

2. copy of the identity document;

3. certified copy of the study degree/degrees;

4. criminal record certificate and fiscal record certificate in original or in certified copy, issued in accordance with the legal provisions in force. For the persons residing in Romania for less than 5 years or who are not yet residing in Romania, the criminal record certificates and fiscal record certificates issued by the Romanian authorities shall be supplemented by equivalent documents issued by the competent authorities in their home states and in the state where they previously resided, if it is different from the home state; if no equivalent

documents are issued in the home state, the person at issue shall submit a statement signed by hand in this respect;

5. statement signed by hand revealing that they are not in breach of the provisions of Companies Law No. 31/1990, republished, as subsequently amended and supplemented, of Law No. 297/2004, as well as with regard to the compliance with the requirements referred to in Art. 17, and those mentioned in the applicable European rules;

6. documents issued by the National Bank of Romania (NBR) revealing that they were not sanctioned by the interdiction to carry out activities in the banking system, for the persons who previously carried out activities with entities regulated and supervised by NBR;

7. statement signed by hand prepared in accordance with Annexe No. 1, containing: all direct or indirect holdings individually and/or together with other persons with whom they act in concert or persons with whom they are closely linked, in any company, representing at least 10% of the share capital or the voting rights;

g) for the natural or legal person shareholders that directly or indirectly have a qualifying holding in a central counterparty, the documents referred to in Annexe No. 2 to Regulation No. 2/2009 of the National Securities Commission on the procedural rules and criteria applicable to the prudential evaluation of purchases and increases for a financial investment services company, approved by Order No. 15/2009 of the National Securities Commission (NSC Regulation No. 2/2009) revealing the fulfilment of the requirements referred to in Art. 8 of NSC Regulation No. 2/2009, as detailed in Annexe No. 1 of the same regulation;

h) the organisation and operation regulation of the central counterparty prepared in compliance with the provisions of Art. 26 of Regulation (EU) No 648/2012 and of Chapter III of Delegated Regulation (EU) No 153/2013 (Arts. 3 to 8 and Art. 11);

i) the regulations prepared by the central counterparty in compliance with the provisions of Art. 12;

j) the list of signature specimens of the representative/representatives of the central counterparty in the relationship with FSA;

k) copy of the contract concluded with a financial auditor, member of the Chamber of Financial Auditors of Romania;

l) statement signed by hand from the legal representative of the central counterparty, revealing that the undertaking complies with the provisions of Law No. 297/2004, the provisions of the applicable European regulations, as well as the provisions of this regulation;

m) the evaluation report regarding the technical equipment and the software required for the operation of the central counterparty, prepared by an independent expert/evaluator, as applicable;

n) the audit report prepared by an IT and security systems auditor, that has at least a CISA certificate (Certified Information Security Auditor), and is independent from the central counterparty, attesting to the security level of the system used by the central counterparty and the existence of the control mechanisms for the systemic and operational risk;

o) copy of the proof of legal ownership or right of use, as the case may be, over the specialised software to be used exclusively for the activity subject to authorisation, or a statement signed by hand, in original, of the legal representative of the central counterparty revealing that the software is developed by its IT department, that it is properly documented, released in versions, based on a documented change management process, and the user manual;

p) up-to-date curriculum vitae, dated and signed, presenting in detail the professional experience and the copy of the identity document of the persons appointed to ensure the internal audit function or, as the case may be, the copy of the contract concluded between the undertaking and the internal auditor, if the internal audit activity is outsourced;

q) documents for the authorisation of the persons ensuring the compliance function, in compliance with the provisions of Art. 13 (8);

r) up-to-date curriculum vitae dated and signed, presenting in detail the professional experience and the copy of the identity document of the persons ensuring the risk management function;

s) copy of the contract concluded with the market operators and system operators, as the case may be, of the trading venue/venues, defined in Art. 2 Item 4 of Regulation (EU) No 648/2012 for the transactions carried out from in their system for which clearing services are provided;

ş) the prior authorisation of NBR for the operations clearing system with financial instruments, in accordance with Art. 404 (1) of Government Emergency Ordinance No. 99/2006 on credit institutions and capital adequacy, approved as amended by Law No. 227/2007, as subsequently amended and supplemented;

t) the categories, levels and ceilings of the commissions and tariffs to be charged, if they were approved by the general meeting of shareholders;

ţ) any other documents deemed necessary by FSA to evaluate the compliance with the authorisation conditions.

(3) All documents referred to in this regulation, necessary for the authorisation, as well as those related to records and reports, shall be submitted to FSA in the Romanian language. The documents related to foreign natural and legal persons shall be submitted in copy and certified translation.

(4) The documents referred to in Para (2) shall be accompanied by certified translations in the English language.

(5) The evaluation of the shareholders referred to in Para (2) Letter g) in accordance with the provisions of Art. 31 and 32 of Regulation (EU) No 648/2012 shall be carried out based on the procedures, criteria and documents referred to in NSC Regulation No. 2/2009.

(6) For the application of the provisions of Art. 17 Para (3) of Regulation (EU) No 648/2012, the central counterparty shall submit additional information to FSA within maximum 6 months form FSA's request.

Paragraph (6) was amended by Regulation 2/2014 on 21/02/2014

**) According to Art. 1 of Decision No. 75/2014 of the Financial Supervisory Authority's Board, in case of the application for authorisation as central counterparty by Casa Română de Compensatie - S.A. and Casa de Compensare Bucureşti - S.A., the deadline referred to in Art. 4 (6) of Regulation No. 3/2013 for the authorisation and operation of central counterparties issued in accordance with the provisions of 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, approved by Decision No. 28/2013 of the Financial Supervisory Authority's Board, published in the Official Journal of Romania, Part I, No. 552 of 30 August 2013, as subsequently amended and supplemented, shall be extended until 31 January 2015.*

(6¹) If the central counterparty fails to submit additional information to FSA within the term referred to in Para (6), FSA shall issue a decision to reject the application for authorisation, within maximum 30 days from the expiry of such term.

Paragraph (6¹) was inserted by Regulation 2/2014 on 21/02/2014.

(7) FSA shall decide on the operation authorisation of the central counterparty in accordance with the authorisation procedure referred to in Title III of Regulation (EU) No 648/2012.

(8) The central counterparty shall comply at all times with the requirements for authorisation.

Art. 5. - The application for authorisation regarding the operation of a central counterparty may be rejected in the situations referred to in Art. 17 of Regulation (EU) No 648/2012 or if the additional requirements established by FSA in accordance with this regulation are not complied with.

SECTION 2

Withdrawal of the operation authorisation of central counterparties

Art. 6. - (1) FSA may withdraw the authorisation of a central counterparty in the conditions imposed by Art. 20 of Regulation (EU) No 648/2012.

(2) The central counterparty has the obligation to call the general meeting of shareholders within maximum 30 calendar days from the withdrawal of the authorisation, which shall include on its agenda the decision on the amendment of the object of activity or the dissolution of the undertaking, in accordance with the provisions of Law No. 31/1990, republished, as subsequently amended and supplemented.

(3) If the central counterparty fails to fulfil its obligation referred to in Para (2), FSA shall request the board of directors or, as the case may be, the directorate of the undertaking, to call the general meeting of shareholders which shall include on its agenda the decision on the amendment of the object of activity or the dissolution of the undertaking, in accordance with the provisions of Law No. 31/1990, republished, as subsequently amended and supplemented.

(4) If the provisions of Para (3) are not complied with, FSA shall request the competent tribunal to order the calling of the general meeting of shareholders in order to have the central counterparty comply with the provisions of Para (2).

Art. 7. - (1) In order to withdraw the operation authorisation of a central counterparty on demand, in accordance with Art. 20 (1) of Regulation (EU) No 648/2012, it shall file an application in this respect, accompanied by the following documents:

a) decision of the statutory body of the central counterparty on the application to withdraw the authorisation;

b) proof of publication of the central counterparty's announcement on the termination of its activity in 3 national newspapers, within maximum 5 days from the decision of the statutory body;

c) statement under own responsibility signed by hand of the legal representative/central counterparty, in original, and supporting documents revealing that there are no positions and collaterals recorded on the accounts of the clearing members and that no new contracts were initiated after the date of the general meeting of shareholders deciding to apply for the withdrawal of the authorisation;

d) proof that all contributions to the default fund of the central counterparty, as well as to any other guarantee schemes, were returned;

e) proof of termination of the contract concluded with the market operators and system operators, as the case may be, of the trading venue/venues, referred to in Art. 2 Item 4 of Regulation (EU) No 648/2012;

f) proof of payment of the debts to the clearing members, FSA and to other entities involved;

g) the address of the archive and the identification and contact details of the persons in charge of managing the undertaking's archive;

h) the report of the financial auditor on the situation of the undertaking upon the termination of its activity;

i) the trial balance sheet related to the current month;

j) any other documents and information that FSA finds necessary to settle the application.

(2) In case of withdrawal of the authorisation as a result of a merger, the documents referred to in Para (1) shall be supplemented by the proof of publication of the draft terms of merger and the proof that it was not challenged with the trade registry office within the term referred to in Law No. 31/1990, republished, as subsequently amended and supplemented.

(3) FSA shall decide on the withdrawal of the authorisation of the central counterparty upon finding that the conditions necessary to ensure the investor's protection are met, but not later than 90 days from the submission of the complete documentation in accordance with the provisions of Paras (1) and (2).

Art. 8. - (1) In case of withdrawal of the authorisation in accordance with the provisions of Art. 20 of Regulation (EU) No 648/2012, unless the authorisation is withdrawn on demand, the board of directors/supervisory board/directorate shall carry out only administrative acts to preserve the patrimony

existing on the date the authorisation is withdrawn, as well as to supervise the transfer of the operations, positions, collaterals (margins) and default fund to another undertaking authorised based on Regulation (EU) No 648/2012 to carry out the specific operations of the central counterparty and to publish such situation.

(2) Preservation of the patrimony existing on the date the authorisation is withdrawn means exclusively closing the existing open positions, the restitution of the collaterals and of the contributions to the default fund, as well as any other operations required for the proper conduct of the central counterparty's activity.

(3) The transfer of the operations, positions, collaterals (margins) and of the default fund to another central counterparty shall be performed as soon as possible so as to avoid as much as possible the accumulation of losses for the clearing members and their clients.

(4) If FSA finds that the undertaking risks entering the insolvency proceedings, the special administration and winding up measures referred to in Title IX of Law No. 297/2004 shall apply.

Art. 9. - The withdrawal of the operation authorisation or the initiation of the withdrawal proceedings shall not release the central counterparty from its obligations before FSA and the capital market entities, arising prior to the decision to withdraw the authorisation.

SECTION 3

Conditions for the authorisation of central counterparties

Art. 10. - Central counterparties are established in the form of joint stock companies issuer of nominative shares, in accordance with Law No. 31/1990, republished, as subsequently amended and supplemented.

Art. 11. - **(1)** The object of activity of central counterparties consists in clearing operations, as defined in Art. 2 Item 3 of Regulation (EU) No 648/2012 and other services and activities related to clearing and, as the case may be, in the operation of a settlement system for the operations with financial instruments.

(2) The object of activity shall include the services and activities provided by a central counterparty, including the classes of financial instruments for which it provides clearing services and activities.

(3) In order to expand the object of activity of the central counterparty in compliance with Art. 15 of Regulation (EU) No 648/2012, a central counterparty shall submit to FSA an application for authorisation to expand the object of activity, and the authorisation procedure shall be that provided under Art. 17 of Regulation (EU) No 648/2012.

(4) The application for authorisation referred to in Para (3) shall be accompanied by the documents referred to in Art. 4 (2) if they are amended in accordance with the expanded object of activity.

Art. 12. - **(1)** Central counterparties have the obligation to prepare their own regulations to ensure the compliance by the undertaking, by the board of directors and by the managers, or the supervisory board and directorate of the undertaking, the employees, the participants in the central counterparty and the investors with the provisions of Law No. 297/2004, of the applicable European rules and of the provisions of this regulation, which shall include at least the following:

a) policies and procedures on the establishment, duties and operation of the board of directors/supervisory board and of the actual management of the central counterparty in accordance with the provisions of Art. 27 of Regulation (EU) No 648/2012 and of Arts. 3 and 7 of Delegated Regulation (EU) No 153/2013;

b) risk identification, monitoring and management policies, procedures, systems and controls in compliance with the provisions of Art. 4 of Delegated Regulation (EU) No 153/2013;

c) compliance policies and procedures in accordance with the provisions of Arts. 5 and 6 of Delegated Regulation (EU) No 153/2013;

d) remuneration rules and procedures established in accordance with the provisions of Art. 8 of Delegated Regulation (EU) No 153/2013;

e) rules and procedures for the security and control of the IT systems, for ensuring confidentiality and for safekeeping the data and information stored in accordance with the provisions of Art. 9 of Delegated Regulation (EU) No 153/2013;

f) rules and procedures on the establishment, mandate and operation of the risk committee in accordance with Art. 28 of Regulation (EU) No 648/2012;

g) rules and procedures on the establishment and operation of the internal audit in compliance with the provisions of Art. 11 of Delegated Regulation (EU) No 153/2013;

h) rules and procedures on recording and safekeeping of data in accordance with the provisions of Art. 29 of Regulation (EU) No 648/2012, of Arts. 12 to 16 of Delegated Regulation (EU) No 153/2013 and of Commission Implementing Regulation (EU) No 1249/2012 of 19 December 2012 laying down implementing technical standards with regard to the format of the records to be maintained by central counterparties according to Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories, hereinafter referred to as Regulation (EU) No 1249/2012;

i) continuity policies and a recovery plan in case of disaster in accordance with the provisions of Art. 34 of Regulation (EU) No 648/2012 and of Arts. 17 to 21 of Delegated Regulation (EU) No 153/2013;

j) the crisis management procedure in accordance with the provisions of Art. 22 of Delegated Regulation (EU) No 153/2013;

k) procedures on the identification and management of conflicts of interest in accordance with the provisions of Art. 33 of Regulation (EU) No 648/2012;

l) procedures on the activity outsourcing in accordance with the provisions of Art. 35 of Regulation (EU) No 648/2012;

m) policies and procedures for the implementation of the rules of conduct in accordance with the provisions of Title IV Chapter 2 of Regulation (EU) No 648/2012;

n) rules and procedures on the margin requirements, the default fund and the calculation thereof, and on the establishment and use of other financial resources in accordance with the provisions of Arts. 41 to 43 of Regulation (EU) No 648/2012, and in accordance with the provisions of Titles VI to VII of Delegated Regulation (EU) No 153/2013;

o) procedures applicable in case of failure to fulfil the payment obligations in accordance with the provisions of Arts. 45 and 48 of Regulation (EU) No 648/2012 and the provisions of Chapter IX and Chapter XII section 7 of Delegated Regulation (EU) No 153/2013;

p) policies and procedures on the ongoing evaluation and monitoring of the liquidity of the assets accepted as collateral in accordance with the provisions of Art. 46 of Regulation (EU) No 648/2012 and the provisions of Chapter X of Delegated Regulation (EU) No 153/2013;

q) financial resources investment in compliance with the provisions of Art. 47 of Regulation (EU) No 648/2012, and in accordance with the provisions of Chapter XI of Delegated Regulation (EU) No 153/2013;

r) policies and procedures for the validation of the models, methodologies and management framework of the liquidity risk, as well as policies and procedures on stress testing and back testing programmes, in accordance with the provisions of Art. 49 of Regulation (EU) No 648/2012 and Chapter XII of Delegated Regulation (EU) No 153/2013;

s) procedures on the identification of risk sources that may affect the on-going functions of the undertaking, in accordance with the provisions of Art. 1 Para (2) of Delegated Regulation (EU) No 152/2013;

ş) procedures on the adoption of adequate measures based on the information included in the reports to the management, according to the provisions of Art. 3 of Delegated Regulation (EU) No 152/2013;

t) where applicable, procedures on the mass acquisition, as provided in Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit swaps.

(2) In order for FSA to assess the central counterparty risk in accordance with the provisions of Art. 19 (1) of Regulation (EU) No 648/2012, the central counterparty shall make sure that its own regulations referred to in Para (1) include all of the information referred to in Annexe No. 2.

(3) Any amendment to the undertaking's own regulations referred to in Para (1) is subject to FSA's authorisation prior to its entry into force. The authorisation for the amendment of the regulations shall be issued within maximum 60 days from the submission of the complete documentation related to such amendment, unless the amendment of the regulations implies the expansion of the object of activity of the central counterparty.

Art. 13. - (1) Central counterparties have the obligation to create a compliance department specialised in fulfilling the compliance function referred to in Art. 6 of Delegated Regulation (EU) No 153/2013.

(2) Central counterparties shall establish and maintain operational on a permanent basis the compliance function which shall be carried out independently and shall involve the following responsibilities:

a) continuous monitoring and evaluation of the efficiency and adequacy of the implementation of the measures and procedures set out according to Art. 12, and of the measures ordered to remedy any default of the undertaking (deficiencies found in the fulfilment of the undertaking's obligations);

b) ensuring the compliance with the provisions of Art. 6 Para (2) of Delegated Regulation (EU) No 153/2013;

c) granting advice and support to the persons holding management positions within the central counterparty, in charge of carrying out a certain activity for compliance with the requirements imposed in accordance with the provisions of regulations in force.

(3) Central counterparties shall have at least 2 employees in the compliance department.

(4) Each person within the compliance department, hereinafter referred to as compliance representative, shall be subject to FSA authorisation and shall be registered in the FSA Registry.

(5) In order to allow the compliance representative to carry out its duties correctly and independently, central counterparties shall ensure that the following conditions are met:

a) the person appointed as compliance representative has the necessary authority, resources, experience and specialised knowledge, as well as access to all relevant information;

b) the person appointed as compliance representative is responsible for the fulfilment of the duties related to the compliance function and for any report regarding the compliance with the regulations in force;

c) the person appointed as compliance representative is not involved in the activities he/she is monitoring;

d) the method of determining the remuneration of the persons appointed as compliance representative does not compromise their objectivity and does not lead to such a compromise.

(6) In the fulfilment of his/her duties, the compliance representative shall report directly to the board of directors/supervisory board/managers/members of the directorate depending on the organisational structure of the central counterparty and on its internal organisation regulations and procedures, also informing without delay the internal auditors of the central counterparty.

(7) In order to be authorised by FSA as compliance representative of a central counterparty, a natural person shall meet the following conditions:

a) he/she is employed under an individual labour contract concluded for an unlimited term and he/she is employed only with that central counterparty;

b) he/she has graduated higher education institutions in the economic or legal field, based on a licence or diploma examination and has at least 5 of experience in the capital market sector regulated by FSA;

c) he/she participated in training stages, he/she passed the examination on the knowledge of the legislation in force organised by vocational training bodies certified by FSA and he/she requested FSA to issue the professional certificate in accordance with the regulations in force;

d) he/she is not a director/member of the supervisory board/manager/member of the directorate of the central counterparty or of any other central counterparty;

e) he/she is not a shareholder, director, employee, agent for financial investment services, representative of the internal control department, as the case may be, with an intermediary, an investment management company, with another central counterparty, a central depository or a market/system operator;

f) he/she was not convicted for fraudulent management, abuse of trust, forgery and trafficking therein, fraud, embezzlement, false statements, bribery and other economic crimes;

g) he/she has good reputation, professional qualification and experience necessary to achieve the proposed objectives and to create the premises required for carrying out the counterparty's activity, in accordance with the provisions of Law No. 297/2004 and of the applicable European rules, as well as to ensure the safe, prudent and transparent management of its activity in order to protect the investors' interests;

h) he/she was not sanctioned by FSA or NBR by the interdiction to carry out activities on the markets supervised by them.

(8) In order to obtain the authorisation of the compliance representative, the central counterparty shall submit to FSA, for each person, an application accompanied by the following documents:

a) curriculum vitae, specifying their professional experience and training;

b) copy of their identity document;

c) certified copies of the degrees;

d) copy of the certificate attesting to the graduation of the course for the compliance department personnel, issued by FSA;

e) criminal record certificate, within the validity term, in original or certified copy;

f) fiscal record certificate, within the validity term, in original or certified copy;

g) original statement on own responsibility signed by hand of the person, regarding the fulfilment of the conditions referred to in Para (7) Letters d) to g);

h) proof of payment into FSA's account of the tariff for obtaining the authorisation and for the registration with the FSA Registry;

i) any other information and documents that FSA deems necessary to settle the application.

(9) The application for authorisation for the persons requesting authorisation as compliance representatives shall be accompanied by a detailed description of the responsibilities of each person within the compliance department.

(10) The authorisation of the compliance representative may be withdrawn in the following situations:

a) at the request of the undertaking;

b) as a sanction.

(11) The central counterparty has the obligation to request FSA to withdraw the authorisation of the compliance representative no later than the termination or change of the labour relationships.

(12) The withdrawal on demand shall be granted by FSA within 15 days from the submission of the application accompanied by an explanation of the reasons that led to such request, by supporting documents regarding the termination or change date of the labour relationships and by the proof of payment into FSA's account of the tariff for the withdrawal of the authorisation.

(13) After the withdrawal, in accordance with Para (10) Letter a), of the authorisation of the compliance representative, issued in the name of a central counterparty, such person may be authorised in the same capacity in the name of another central counterparty no sooner than 15 days from the withdrawal of the authorisation.

(14) The compliance representative shall carry out its activity based on written supervisory and control procedures, prepared in order to ensure the compliance, by the central counterparty and its employees, with the legislation applicable to the capital market and to the internal rules and procedures of the undertaking.

(15) In addition to the responsibilities referred to in Para (2), the compliance representative has the following duties:

a) to monitor, investigate and verify on a regular basis the implementation of the legal provisions applicable to the central counterparty's activity and of the internal procedures by the central counterparty or by its employees, to keep record of the irregularities found;

b) to ensure the information of the undertaking and its employees on the legal regime applicable to the capital market;

c) to approve the documents submitted by the central counterparty to FSA in order to obtain the authorisations/approvals provided by the FSA regulations and the applicable European rules, as well as the reports submitted to FSA;

d) to prevent and propose remedy measures of any breaches of the laws and regulations in force, applicable to the capital market, or of the internal procedures of the undertaking by the management bodies of the central counterparty or by its employees;

e) to report as soon as possible to the board of directors/supervisory board/managers/members of the directorate, depending on the organisational structure of the central counterparty and the internal organisation regulations and procedures and to the internal auditors of any breach of the legislation, of the regulations in force or of the internal procedures.

(16) In the exercise of his/her duties referred to in Para (15), the compliance representative shall keep a registry where he/she shall record the investigations carried out, the duration of such investigations, the period they refer to, their result, the written proposals submitted to the board of directors/supervisory board/managers/members of the directorate central counterparty depending on the organisational structure of the central counterparty and the internal organisation regulations and procedures, and the decisions taken by the persons competent to take settlement measures.

(17) If the compliance representative becomes aware, during the evaluation activity, of breaches of the legal regime applicable to the capital market, including of the undertaking's internal procedures, he/she has the obligation to inform the board of directors/supervisory board/managers/members of the directorate depending on the organisational structure of the central counterparty and the internal organisation regulations and procedures and the internal auditors of the central counterparty.

(18) In case of serious breaches of the legislation and regulations in force, the members of the board of directors/supervisory board/the managers/members of the directorate and the internal auditors of the central counterparty, depending on the organisational structure of the central counterparty and the internal organisation regulations and procedures, shall notify without delay FSA and other entities on the capital market involved of the situation found and the measures taken.

(19) If the members of the board of directors/of the supervisory board/the managers/the members of the directorate, depending on the organisational structure of the central counterparty and the internal organisation regulations and procedures, fail to take the required measures within maximum 15 days from the notification referred to in Para (18), the compliance representatives have the obligation to immediately notify FSA on the failure to take such measures.

(20) At the end of each year, until 31 January of the following year, the compliance representative shall submit to the board of directors/supervisory board/managers/members of the directorate of the central counterparty, depending on the organisational structure of the central counterparty and the internal organisation regulations and procedures, a report containing the analysis of all situations identified, the activities carried out, the investigations performed, the irregularities found, the proposals made and the programme/plan of the investigations proposed for the following year. The report approved by the board of directors/supervisory board/managers/directorate, as the case may be, shall be submitted to FSA each year, prior to 1 March.

SECTION 4

Shareholders of the central counterparty

Art. 14. - Any Romanian or foreign natural or legal person may hold the capacity of shareholder of a clearing house/central counterparty.

Art. 15. - (1) In order to assess the adequacy of a potential purchaser in accordance with the provisions of Art. 31 and 32 of Regulation (EU) No 648/2012, the potential purchaser has the obligation to submit to FSA the documents referred to in Annexe No. 2 to NSC Regulation No. 2/2009.

(2) The instruments of incorporation of the central counterparty shall contain provisions regarding the percentages referred to in Art. 31 Para (2) of Regulation (EU) No 648/2012, as well as clauses regarding the implementation of the procedure established in Art. 283 of Law No. 297/2004.

(3) If, during the assessment period, FSA does not oppose the proposed acquisition, the maximum term for the completion of the acquisition shall be 60 days from the expiry of the assessment period, and may be extended at the reasoned request of the potential purchaser.

SECTION 5

Administration and management of central counterparties

Art. 16. - The administration and management of central counterparties shall be carried out soundly and prudently in order to ensure the protection of the shareholders' and the investors' interests.

Art. 17. - (1) The administration of the central counterparty shall be entrusted to a board of directors or, as the case may be, to a supervisory board consisting of an odd number of natural person members, which shall not be less than 5. At least one third of them, but not less than 2, shall be independent, in accordance with the provisions of Art. 27 Para (2) of Regulation (EU) No 648/2012.

(2) The appointment of the independent directors shall be carried out in compliance with the criteria referred to in Art. 138² of Law No. 31/1990, republished, as subsequently amended and supplemented, as well as the one regarding the absence of the relationship between the directors and the legal person shareholders of the central counterparty.

(3) The effective management of the central counterparty shall be ensured by managers, in the case of the monistic administration system, or by the members of the directorate, in the case of the dualistic administration system.

(4) The members of the board of directors and the managers or, as the case may be, the members of the supervisory board and the members of the directorate of a central counterparty shall meet all of the following conditions:

a) they have good reputation, adequate qualifications and professional experience in the field of financial services, risk management and/or clearing services in order to achieve the proposed objectives and to create the premises for the continuation of the counterparty's activity, in accordance with the provisions of Law No. 297/2004 and of the applicable European rules, as well as to ensure a sound, prudent and transparent administration of its activity so as to protect the investors' interests;

b) they graduated from higher education institutions based on license examinations in one of the economic, legal or other field related to financial activities or they graduated post-university studies in one of these fields and have at least 3 years of experience in the field of financial services, risk management and/or clearing services;

c) they are not under suspension/withdrawn authorisation or temporary interdiction from carrying out activities or services, or under similar sanctions applied by FSA, NBR or other authorities supervising and regulating the economic and financial systems in Member or non-Member States;

d) they were not convicted by a final sentence for crimes in connection with the activity carried out or for corruption, money laundering, property crimes, abuse, bribery, forgery and trafficking therein, embezzlement, fiscal evasion or other deeds that may lead to the conclusion that the central counterparty is not soundly and prudently managed;

e) they were not directors of a company that was under judicial reorganisation or was declared bankrupt or was suspended or whose authorisation was withdrawn by the competent authority during the exercise of their functions;

f) they are not part of the management or directors, employees or financial auditors of, and they do not hold any participation in any other entity that carries out the functions of a central counterparty or in an intermediary that is a member of such central counterparty;

g) they do not hold any public positions.

(5) In addition to the provisions of Para (4), the independent members of the board of directors, supervisory board and directorate shall provide evidence of meeting the requirements referred to in Art. 2 Item 28 of Regulation (EU) No 648/2012.

Art. 18. - (1) In order to individually validate the members of the board of directors/supervisory board and appoint the managers/members of the directorate of the central counterparty, FSA shall assess all circumstances and information related to the activity, reputation and professional experience of each proposed person, considering the documents referred to in Letter f) of Art. 4 (2).

(2) FSA shall refuse to validate the members of the board of directors/supervisory board or to approve the appointment of the managers/members of the directorate of the central counterparty if there are serious reasons to believe they cannot ensure the safe and prudent administration and fulfilment of the operations of the central counterparty.

(3) Within maximum 30 days from the occurrence of an incompatibility, legal impediment, final impossibility to exercise the mandate or vacancy of the position of member of the board of directors/supervisory board, central counterparty shall submit to FSA's validation another appointed person, in accordance with the instruments of incorporation, for the exercise of said mandate until its expiry, who shall meet the conditions referred to in Art. 17 and Letter f) of Art. 4 (2).

(4) Any circumstance that creates an unavailability situation for a period of 90 consecutive days is deemed a final impossibility to exercise the mandate.

Art. 19. - The duties and responsibilities of the board of directors and of the managers, or of the supervisory board and of the directorate shall be established in the undertaking's instruments of incorporation, in accordance with Law No. 31/1990, republished, as subsequently amended and supplemented, in compliance with the provisions of Law No. 297/2004, of the provisions of Art. 26 and 27 of Regulation (EU) No 648/2012 and of Chapter III of Delegated Regulation (EU) No 153/2013.

Art. 20. - (1) For FSA to verify the compliance with the provisions of Art. 33 of Regulation (EU) No 648/2012, whenever necessary and at least once per year, prior to 31 March, each member of the board of directors/supervisory board has the obligation to notify the board of directors/supervisory board of the central counterparty and FSA on the nature and extent of their interest or their material relationships, if they:

a) are a party in a contract concluded with the central counterparty;

b) are a director of a legal person that is a party in a contract concluded with the central counterparty;

c) are closely linked with or have a material relationship with a person that is a party in a contract concluded with the central counterparty;

d) are in a situation that may influence the adoption of a decision in the meetings of the board of directors/supervisory board;

e) other circumstances that represent or may generate a conflict of interest as identified by the central counterparty in accordance with the procedures referred to in Letter k) of Art. 12 Para (1).

(2) The obligation referred to in Para (1) falls upon the member of the board of directors/supervisory board when he/she knew or was reasonably expected to know that a contract was concluded or is to be concluded with regard to which he/she has a material interest or if the agenda includes matters with regard to which such member is in a conflict of interest.

(3) A member of the board of directors/supervisory board is deemed to have a material interest or to be in a conflict of interest in any situation regarding his/her or his/her family's (spouse, relatives and in-laws up to the

fourth degree inclusively) property or personal interests and which is directly or indirectly related to the activity carried out by the central counterparty.

(4) The member of the board of directors/supervisory board having a material interest, a material relationship or who is in a conflict of interest shall not participate in the debates related therewith and shall abstain from voting on any matter related therewith, being considered present for the purpose of determining the quorum required to take the decision.

(5) When a member of the board of directors/supervisory board of the central counterparty fails to declare one of the situations referred to in Paras (1) to (4):

a) the central counterparty, a shareholder thereof or FSA may request the court of law to annul any contract in which such member has an undeclared material interest in accordance with the provisions of Paras (1) to (4);

b) FSA may request the central counterparty to annul the decision of the board of directors/supervisory board and to replace said member of the board of directors/supervisory board.

SECTION 6

Technical equipment and resources

Art. 21. - (1) The technical systems used by the central counterparty must meet the requirements referred to in Art. 9 of Delegated Regulation (EU) No 153/2013, they must have appropriate security and back-up systems and they must ensure at least the following functions:

a) assessment and management of the clearing risk and of the settlement risk, in the sense of mitigating such risks;

b) safekeeping of the stored data and information, of the files and databases;

c) registration of the financial instruments and of all operations therewith separately for each clearing member, for each client of the clearing member, for each non-clearing member and for each client of the non-clearing member;

d) re-evaluation, at least at the end of the working hours and whenever necessary, of all open positions and of all assets or liabilities subject to market marking, in accordance with the procedures established by the central counterparty;

e) real time communication with the clearing members of such central counterparty;

f) real time operation of the supplies in the margin accounts, of the withdrawals or establishments of guarantees and/or collaterals;

g) the possibility to intervene when required to reduce the net position for the clearing members that do not comply with the limits imposed by the central counterparty;

h) electronic transmission of the reports related to the specific operations with financial instruments for each clearing member, for each client of the clearing member, each non-clearing member and each client of the non-clearing member.

(2) The central counterparty shall have recovery and restoration capabilities in case of data loss, insure itself against natural disasters or any other extraordinary situation in accordance with Art. 34 of Regulation (EU) No 648/2012 and Chapter V of Delegated Regulation (EU) No 153/2013.

(3) The central counterparty shall guarantee the non-repudiation of the transactions.

Art. 22. - The space intended to be used as registered headquarters, as well as that intended for the secondary processing offices of the central counterparty must ensure the proper conduct of the activity of the central counterparty and shall have at least the following features:

a) it is exclusively intended for the specific activity;

b) it has a surface area that ensures the compliance with the technical rules for the installation and use of the equipment and the proper carrying out of the personnel's activity;

- c) it ensures the minimum requirements regarding technical equipment;
- d) it ensures the security of the space by anti-break-in alarm systems;
- e) it is equipped with a fire alarm system;
- f) it has main as well as back-up power sources;
- g) it ensures the security of the premises in accordance with the regulations in force.

Art. 23. - The central counterparty shall have, and shall maintain throughout its activity, the financial resources referred to in Title IV Chapter 3 of Regulation (EU) No 648/2012, those referred to in Delegated Regulation (EU) No 152/2013, and in Chapters VI and VII of Delegated Regulation (EU) No 153/2013 to cope with situations of default by the clearing members.

SECTION 7

Modifications in the organisation and operation of central counterparties

Art. 24. - **(1)** The following changes in the organisation and operation of the central counterparty shall be subject to FSA's authorisation, prior to their entry into force or registration with the trade registry office:

- a) the issuance, amendment and supplementation of the regulations and procedures issued by the central counterparty with regard to its organisation and operation, in accordance with the provisions of Art. 12;
- b) share capital increase/reduction;
- c) change of the object of activity;
- d) amendment of the shareholding structure in case of reaching or exceeding the holding thresholds referred to in Art. 31 of Regulation (EU) No 648/2012;

Letter d) was derogated from by Regulation 3/2013 on 30/08/2013.

- e) replacement of the managers or, as the case may be, of the members of the directorate;
- f) change of the registered headquarters or of the secondary processing offices;
- g) establishment/closing down of secondary offices (branches);
- h) change of name;
- i) amendment of the organisation and operation regulation;
- j) amendments to the settlement system related to the operations with financial instruments.

(2) The central counterparty shall submit to FSA validation, individually, prior to the commencement of their mandate, the members of the board of directors/supervisory board and shall submit to FSA authorisation the change of the membership of such bodies, presenting for each member, the documentation referred to in Letter f) of Art. 4 Para (2).

(3) Within maximum 5 days from the issuance of the certificate for registration of particulars by the trade registry office, but no later than 90 days from the issuance of the authorisation decision regarding the amendment of the conditions based on which the authorisation was granted or based on which the members of the board of directors/supervisory board were validated, except for the amendments referred to in Para (1) Letter d), the central counterparty has the obligation to submit to FSA the copy of the certificate for registration of particulars, or the new certificate of incorporation, if the proposed amendment requires the registration with the trade registry and, as applicable, the issuance of a new certificate.

(4) Any change of the authorisation conditions based on which the authorisation of the central counterparty was issued, other than those referred to in Para (1), shall be notified to FSA within 15 days from the change.

(5) If the opening of a branch requires the expansion of the object of activity, the central counterparty shall take the same steps it did for obtaining the initial operation authorisation in accordance with Arts. 4 and 5.

Art. 25. - **(1)** The central counterparty may also carry out its activity in a place different than that where its registered headquarters is located by establishing branches.

(2) The branch's organisational structure shall be such as to ensure the safe, prudent and transparent conduct of the central counterparty's activity and shall meet at least all of the following requirements:

a) it holds a space appropriate for carrying out the activity, which must be for the exclusive use of the central counterparty, in compliance with the conditions referred to in Art. 22;

b) it has, at said headquarters, the technical equipment necessary for the branch's activity;

c) the person managing the branch meets the conditions referred to in Art. 17;

d) it has its own organisation and operation regulation, approved by the board of directors of the central counterparty which shall include special provisions on the record-keeping and control within the branch, as well as the duties and liabilities of its personnel;

e) to legally use a technical and IT system that fulfils the functions referred to in Art. 21 (1).

(3) The centralised statement of the operations carried out within the branches shall be submitted on a daily basis to the registered headquarters/main offices of the central counterparty.

(4) All documents related to the activity carried out by the branches shall be submitted on a monthly basis, in original, for archiving purposes, to the registered headquarters/main offices of the central counterparty, based on a delivery-receipt minutes.

Art. 26. - The central counterparty has the obligation to maintain the conditions imposed upon the authorisation of the branches throughout their operation, notifying any change to FSA.

Art. 27. - FSA is entitled to request the amendment of the documents referred to in Art. 24 if they are in breach of this regulation and/or any other legal provisions in force or European rules.

Art. 28. - The individual authorisation act of the amendments to the conditions based on which the authorisation and/or the decision to validate the members of the board of directors/supervisory board was obtained shall be issued based on an application accompanied by the following documents, as applicable:

a) the decision of the statutory body of the central counterparty in accordance with the provisions of the instruments of incorporation. In case of share capital increase, the decision shall specify the amount by which the share capital is to be increased and the source/sources to be used for the requested increase. In case of reduction of the share capital, the decision shall comply with the minimum initial and permanent level of the capital referred to in Letter d) of Art. 4 (2);

b) the reasons for preparing, amending and/or supplementing the rules and procedures of the central counterparty, as well as the draft regulations subject to approval highlighting, where applicable, the amendments/supplementations made, in the case referred to in Letter a) of Art. 24 (1);

c) the prior approval of NBR for any amendment to the settlement system related to the operations with financial instruments, in accordance with Art. 404(1) of Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented;

d) the additional act to the instrument of incorporation of the central counterparty for the changes referred to in Letters b), c), f), g) and h) of Art. 24 (1) and Letter e) and Para (2), where applicable;

e) proof of payment of the share capital in case of an increase of the share capital, or the justification for the need to reduce it, documents attesting to ownership and the report of the financial auditor on the legality of the increase/reduction of the share capital, for the amendment referred to in Letter b) of Art. 24 (1);

f) the assignment contracts, the excerpts of the shareholders' registry, the new shareholding structure in observance of the provisions of Art. 30 of Regulation (EU) No 648/2012 in the case of the changes referred to in Letter d) of Art. 24 (1);

g) the documents referred to in Letter f) of Art. 4 (2), in compliance with the requirements referred to in Art. 17, for the amendments referred to in Letter e) of Art. 24 (1), as well as for the change of the membership of the board of directors and, respectively, of the supervisory board;

h) proof of legal possession over the space necessary for the operation, in certified copy, in compliance with the conditions referred to in Letter e) of Art. 4 (2), for the changes referred to in Letters f) and g) of Art. 24 (1). The authorisation by FSA of the change of the registered headquarters or of the secondary processing offices

or of the establishment of a secondary headquarters shall be granted after an inspection at the new headquarters;

i) the organisation and operation regulations of the branch, as well as the documents attesting compliance with the requirements referred to in Art. 25 (2), for the changes referred to in Letter g) of Art. 24 (1);

j) proof of payment into FSA's account, as applicable, of the tariff for the authorisation of the changes in the organisation and operation of the undertaking, the validation of the members of the board of directors/supervisory board/managers/members of the directorate, the approval of the regulations;

k) any other information that FSA may request in order to analyse the documentation.

SECTION 8

The operation of central counterparties

Art. 29. - In order to safely carry out the specific operations with financial instruments, the central counterparty shall organise and record separately its activity, separating the responsibilities of the personnel involved in operations with financial instruments, as well as of the personnel responsible for risk management, of the personnel ensuring the compliance function and of the personnel responsible for performing settlements.

Art. 30. - **(1)** The central counterparty shall organise its activity so as to ensure the compliance with the provisions related to the rules of conduct referred to in Title IV Chapter 2 of Regulation (EU) No 648/2012, of Chapter IV of Delegated Regulation (EU) No 153/2013, as well as the performance of the following operations:

a) registration, in the position accounts, in the name of the clearing members, of the traded financial instruments;

b) registration, in the margin accounts, in the name of the clearing members, of the counter value of the assets deposited by them in order to meet the obligations resulting from the registration of the financial instruments in the position accounts;

c) the record-keeping of the operations with financial instruments, of the net positions and of the open positions, by underlying assets and maturities, or series of options; the record shall be kept in compliance with the conditions on the segregation of accounts referred to in Art. 39 of Regulation (EU) No 648/2012;

d) the daily transfer of the premiums for the options contracts registered, in accordance with the rules and procedures of the settlement system related to the operations with financial instruments;

e) the daily keeping of records regarding the contributions to the default fund;

f) the adjustment, at least at the end of the working hours, of the margin accounts by recording the favourable or unfavourable differences resulting from the marking to market;

g) supervision the fulfilment of the margin requirements in accordance with the limits imposed by the central counterparty;

h) the daily issuance and submission, for each clearing member, of a report on the financial instruments registered, the net positions and the open positions registered on its name, the guarantees and/or collateral established in the margin account, the value of the excess guarantees, the profit or loss registered, the premiums paid and those collected further to the marking to market, as well as the commissions or tariffs related to the operations performed, at the end of the working hours;

i) the submission, at least at the end of the working hours, or whenever required, of the margin call to the clearing members and the supervision of the fulfilment of their obligations related to the margin call.

(2) The central counterparty shall keep the confidentiality of all documents and information related to its activity, to the activity of the clearing members, of the non-clearing members and of their clients.

(3) The central counterparty has the obligation to comply with the provisions of Art. 9 of Regulation (EU) No 648/2012 as regards the obligation to report the details regarding the derivatives contracts concluded, amended or terminated by a trade repository.

Art. 31. - (1) The registration of the financial instruments with the central counterparty shall be performed only through the clearing members, in accordance with the mechanisms established by the central counterparty's regulations.

(2) The members of the central counterparty may use the clearing services of a central counterparty by acting in one of the following capacities:

- a)** directly, as general clearing members or individual clearing members;
- b)** indirectly, as non-clearing members.

(3) A general clearing member is the member that becomes the counterparty of the central counterparty in the clearing-settlement process for the transactions concluded on its own account, on the account of its clients, on the account of non-clearing members and of their clients.

(4) An individual clearing member is the member that becomes the counterparty of the central counterparty in the clearing-settlement process for the transactions concluded on its own account and on the account of its clients.

(5) The terms general clearing member, individual clearing member, non-clearing member and client of the non-clearing member used herein shall have the following correspondence in Regulation (EU) No 648/2012 and in the rules issued for its implementation:

- a)** general/individual clearing member = clearing member;
- b)** non-clearing member = client of the clearing member;
- c)** client of the non-clearing member = indirect client.

Art. 32. - (1) The individual clearing member and the non-clearing member have the following rights:

- a)** to refuse to execute the orders of a client that did not establish the necessary margin;
- b)** to forcibly close the open positions held by the client until it covers the necessary margin, if the deficit was not covered within the term provided in the contract and the margin account does not observe the limits imposed;
- c)** to collect commissions and fees from the clients carrying out operations with financial instruments and with whom they concluded intermediation contracts;
- d)** to register with the central counterparty contracts and/or transactions with derivative financial instruments concluded bilaterally outside the trading venues, in accordance with the rules prepared by the central counterparty.

(2) The general clearing member has the rights referred to in Para (1), as well as the right to collect commissions and fees from the non-clearing members with which it concluded indirect clearing contracts in accordance with the provisions of Title II of Commission Delegated Regulation (EU) No 149/2013 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 indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP [Delegated Regulation (EU) No 149/2013].

Art. 33. - Clearing members shall have the following obligations:

- a)** to register with the central counterparty the transactions performed by such clearing member with financial instruments on the trading venues for which the central counterparty provides clearing services;
- b)** to establish and maintain the collaterals required by the central counterparty for the fulfilment of its obligations related to the activity carried out, including for the compliance with the necessary margin;
- c)** to establish, update and maintain the contributions requested by the central counterparty to the default fund, in the conditions established by it;
- d)** not to allow their own clients, non-clearing members or any other client thereof to enter new trading orders if by executing them, the limits imposed by the central counterparty would be exceeded;
- e)** to perform at least daily the marking to market for the open positions and the other assets or liabilities registered in the margin account of each client, non-clearing member, as applicable, in accordance with the regulations of the central counterparty;

f) to issue the margin call for its own clients, whenever the limits imposed by the central counterparty are exceeded;

g) to cover, using its own funds, the debts of any of its clients or of the non-clearing members with which it concluded indirect clearing agreements;

h) to follow and ensure the exercise of the options, the execution of the contracts and the closing of the positions in accordance with the specific clauses/elements of the derivative financial instruments;

i) to immediately notify the trading venue it has access to, the central counterparty and, where applicable, the non-clearing members with which it concluded indirect clearing agreements on the initiation of the insolvency proceedings;

j) to comply with and fulfil the other conditions imposed by the central counterparty during its activity as clearing member;

k) to ensure compliance with the reporting obligations to the trade repositories, in accordance with the applicable provisions of Regulation (EU) No 648/2012.

Art. 34. - General clearing members may carry out any specific operations for non-clearing members, based on an indirect clearing agreement which, in addition to the provisions of Arts. 2 to 5 of Delegated Regulation (EU) No 149/2013, shall include at least the following obligations of the clearing member to the client to which it provides indirect clearing services:

a) to honour on time all of its financial obligations;

b) to issue, on a daily basis, a report to each of the non-clearing members to which it provides indirect clearing services;

c) to ensure the establishment of the collaterals in the margin account covering all exposures registered in the name and/or on the account of the entity to which it provides indirect clearing services;

d) to keep the confidentiality of all documents and information related to the activity of the clients to which it provides indirect clearing services;

e) to update the contributions to the default fund, as applicable, in the way and on the term provided by the regulations of the central counterparty.

Art. 35. - **(1)** The non-clearing member shall conclude an indirect clearing agreement with a single general clearing member.

(2) The central counterparty shall identify, monitor and manage any significant risks arising from the indirect clearing agreements based on the provisions of Art. 3 (2) of Delegated Regulation (EU) No 149/2013.

Art. 36. - The central counterparty shall implement the provisions regarding segregation and portability in accordance with Art. 39 of Regulation (EU) No 648/2012 and shall request clearing members to hold sufficient funds and to ensure permanent operational capacity in order to meet the obligations arising from their participation in the clearing-settlement system managed by it.

Art. 37. - **(1)** The requirements regarding the admission of clearing members to the clearing-settlement system managed by the central counterparty shall be established by procedures, based on objective criteria allowing free and non-discriminating access, in accordance with the provisions of Art. 37 of Delegated Regulation (EU) No 153/2013, and shall include at least the following elements:

a) minimum capital requirements for the clearing members;

b) requirements on the professional qualification and experience conditions to be met by the personnel of the clearing members appointed in the relationship with the central counterparty;

c) requirements on the continuous monitoring of the ongoing compliance with the conditions imposed on clearing members;

d) requirements on the participation in the default fund.

(2) Clearing members shall conclude contracts with the central counterparty in order to fulfil their payment obligations and to meet the margin requirements referred to in Art. 41 of Regulation (EU) No 648/2012 and in Arts. 24 to 28 of Delegated Regulation (EU) No 153/2013 and shall establish internal rules on the risk management policies which shall be continually revised by the board of directors/supervisory board.

Art. 38. - (1) The central counterparty may suspend/withdraw clearing members' or non-clearing members' access to the clearing system at least in the following situations:

a) FSA or, as applicable, the competent authority notifies the suspension or withdrawal of the operation authorisation of the clearing member;

b) the trading venue notifies the suspension from trading of the participant acting as clearing member;

c) the regulations of the central counterparty on the margin requirements are infringed;

d) the regulations of the central counterparty on the participation in and the update of the contributions to the default fund are infringed;

e) the general clearing member requests the suspension of a non-clearing member with which it concluded an indirect clearing agreement;

f) the agreement between the general clearing member and the non-clearing member expired.

(2) If the clearing member is suspended, the central counterparty shall allow it to close the open positions in order to reduce exposure or to supplement the collaterals deposited in the margin account.

(3) The suspension performed in accordance with Para (1) Letter b) may not affect the right of the clearing member that notified the suspension or operations carried out outside a trading venue to register with the central counterparty contracts or transactions concluded in other trading venues.

(4) The central counterparty shall notify the clearing member on the decision to suspend on the same day the decision is made.

(5) The central counterparty shall notify FSA/the competent authorities and, as applicable, the trading venue in which it participates of the suspension of the clearing member within 24 hours from making the decision.

(6) The suspension shall not be revoked until the deficiencies for which it was made are remedied.

Art. 39. - (1) The indirect clearing agreement concluded between a general clearing member and a non-clearing member may include clauses regarding the suspension of the non-clearing member for a period of maximum 30 days. The suspended non-clearing member shall continue supplementing the collaterals in the margin account up to the levels requested by the general clearing member.

(2) The suspension of the non-clearing member shall be made by the central counterparty, at the request and on the exclusive liability of the general clearing member. The central counterparty shall not be required and shall not be entitled to verify the opportunity of such a request or the compliance with the contractual clauses provided in the indirect clearing agreement concluded between the general clearing member and the non-clearing member.

(3) In the case referred to in Para (2) or in case of other suspensions, the general clearing member shall be liable before the central counterparty for the fulfilment of all obligations assumed by the non-clearing member, for the answers to all margin calls and/or the debts registered as of the suspension and shall perform operations for closing the open positions only for the purpose of reducing exposure.

Art. 40. - The central counterparty shall impose, request and collect a level of the margins that complies with the requirements referred to in Art. 41 of Regulation (EU) No 648/2012, as well as the requirements referred to in Art. 24 to 28 of Delegated Regulation (EU) No 153/2013.

Art. 41. - The establishment, organisation and operation of the default fund shall be performed in accordance with Art. 42 of Regulation (EU) No 648/2012 and Art. 29 to 34 of Delegated Regulation (EU) No 153/2013.

Art. 42. - The central counterparty shall take measures to limit the settlement risk of the funds and financial instruments, in accordance with Art. 50 of Regulation (EU) No 648/2012, providing at least the following:

a) the introduction of obligations in the contracts concluded with the clearing members for opening the accounts in which the cash settlement, the financial instruments settlement or the settlement of other underlying assets of derivative financial instruments and for performing cash settlement operations and, as applicable, for the settlement of financial instruments;

b) the establishment of the time when the central counterparty shall interpose itself in transactions, and the time of entering the transfer orders in the system of the central counterparty and the time such transfer orders become irrevocable;

c) the establishment of the time when the settlement of the transactions into the accounts opened with the central counterparty is completed;

d) establishment of the obligations assumed by the central counterparty with regard to the operations with financial instruments in order to identify and manage the risks resulting therefrom, if the settlement involves deliveries of the underlying assets of the derivative financial instruments;

e) the identification and management of the credit, settlement and liquidity risks to which the central counterparty is exposed in the delivery of the underlying assets of the derivative financial instruments, if the settlement involves deliveries of the underlying assets of the derivative financial instruments;

f) the settlement of financial instruments, of the underlying assets of the derivative financial instruments and of the funds shall be performed according to the delivery versus payment principle, if the settlement involves deliveries of the underlying assets of the derivative financial instruments.

Art. 43. - (1) In order to guarantee the available funds, the underlying assets of the derivative financial instruments and the financial instruments, the central counterparty shall have facilities for:

a) the payment to the seller of the counter value of the financial instruments or of other underlying assets of the derivative financial instruments if the purchaser fails to fulfil its payment obligations;

b) the sale of the financial instruments and of other underlying assets of the derivative financial instruments taken over as collateral, if the seller or the purchaser fails to meet its delivery or payment obligations;

c) the loan or acquisition of financial instruments or of other underlying assets of the derivative financial instruments to be delivered to the purchaser if the seller fails to meet its obligation to deliver them;

d) the execution of the collaterals submitted by the purchasers or sellers who failed to fulfil their payment or, respectively, delivery obligations;

e) the clearing, further to the execution of offsetting transactions in the accounts of the persons who failed to fulfil their delivery or, respectively, payment obligations.

(2) To minimise the risks related to the settlement of financial instruments, the central counterparty shall open and maintain an account within the system ensuring the settlement of the financial instruments subject to clearing.

Art. 44. - The investment policy of the central counterparty shall be established in accordance with the provisions of Art. 47 of Regulation (EU) No 648/2012 and of Arts. 43 to 46 of Delegated Regulation (EU) No 153/2013.

Art. 45. - (1) The central counterparty shall ensure the transparency conditions referred to in Art. 38 of Regulation (EU) No 648/2013, as well as those referred to in the rules issued for the implementation of such regulation.

(2) The central counterparty has the obligation to supply to the clearing and non-clearing members, in a timely manner, sufficient information to allow them to assess the risks and costs generated by the use of the central counterparty's services.

(3) The information referred to in Para (2) shall be made public on the website of the central counterparty and shall be presented both in Romanian and in a wide circulation foreign language.

SECTION 9

The supervision of central counterparties

Art. 46. - In accordance with the provisions of Art. 165 of Law No. 297/2004, FSA shall supervise the orderly and transparent conduct of the central counterparty's activity, as well as the protection of the investors and

may request data, information and documents required for carrying out its supervision activity, and it may organise inspections at the headquarters of the central counterparty.

Art. 47. - (1) The central counterparty shall notify without delay FSA, of the following situations, without limitation:

- a)** if the rules and procedures of the central counterparty are infringed by the clearing members, specifying the measures taken;
- b)** the significant errors of the technological structures and IT systems;
- c)** the planning of the activities related to the central counterparty's objectives and the plans on the acquisition of shares;
- d)** the contracts, alliances and collaborations concluded.

(2) The infringement of the rules and procedures of the central counterparty by a clearing member seated in another state shall be notified by FSA to the competent authority of that clearing member.

(3) The central counterparty has the obligation to submit to FSA within maximum 30 days from the reporting date (the last day of each month) a statement attesting to the compliance with the capital requirements referred to in Delegated Regulation (EU) No 152/2013, as well as a statement regarding its own financial resources allocated for the purpose referred to in Art. 45 (4) of Regulation (EU) No 648/2012.

Paragraph (3) was derogated from by Regulation 3/2013 on 30/08/2013.

(4) By way of exception from the provisions of Para (3), if the share capital is reduced below the notification threshold referred to in Art. 1 (3) of Delegated Regulation (EU) No 152/2013, central counterparty has the obligation to submit to FSA, on a weekly basis, the notification referred to in Art. 1 (4) of Delegated Regulation (EU) No 152/2013.

Art. 48. - (1) The central counterparty shall submit to FSA all decisions of the general meetings and of the board of directors/supervisory board/directorate/members of the directorate regarding the clearing activity, within maximum 10 days from the dates of the meetings.

(2) At FSA's request, the central counterparty shall submit the minutes of the meetings of the general shareholders' meetings.

Art. 49. - The central counterparty has the obligation to submit to FSA, each year, within maximum 150 days from the end of the financial year, a report containing:

- a)** the annual financial statement, with all of the related annexes;
- b)** the report of the financial auditor together with its opinion;
- c)** the directors' management report;
- d)** the shareholding structure of the central counterparty, indicating, for each shareholder, the number and the type of shares held and the percentage of shares bearing voting rights held;
- e)** the list of clearing members;
- f)** the activity report of the central counterparty.

Art. 50. - (1) The central counterparty has the obligation to submit to FSA, for the first half of the year, a half-annual semester report containing the accounting balance sheet and the profit and loss account, within 45 days of the date of 30 June.

(2) The central counterparty has the obligation to submit to FSA, on a quarterly basis, a report containing the following information:

- a)** the evolution of the main economic and financial ratios, according to the structure of the annual balance sheet;
 - b)** the statement of the high liquidity financial assets;
 - c)** the causes that led to amendments as to the previous quarterly reports, where applicable;
 - d)** the status on the management of the default fund in accordance with Regulation (EU) No 648/2012.
- (3)** The quarterly reports shall be submitted to FSA no later than 45 days from the end of each quarter.

Art. 51. - (1) The activity report referred to in Art. 49 Letter f) shall be prepared and submitted considering the following organisational requirements:

a) the separation of the operation, control, compliance and risk management functions, as well as the conflicts of interest management procedure;

b) the control of the operations, specifying the duties and responsibilities particularly regarding the monitoring and correction of the irregularities;

c) the reporting procedures at various levels of the management structure, specifying the errors occurred and the measures taken to eliminate such errors.

(2) The report referred to in Para (1) shall include at least the following:

a) the organisational chart and the functional structure;

b) the delegation of duties;

c) the structure of the compliance system;

d) the measures taken to ensure the orderly operation of the clearing services, particularly with regard to the technical means and the compliance with the regulations, the maintenance of the accounts, the registration of the ownership transfers as well as the measures taken to fight money laundering;

e) the assessment of the measures taken to limit the risks, highlighting any operational problems occurred;

f) the main results of the control activity at all levels of the organisational structure.

(3) The synthetic activity report of the central counterparty shall be published on its website.

Art. 52. - (1) At least once per year, the central counterparty has the obligation to test the technological structure and the IT programmes that have a major impact, established based on the impact analyses, on the main services and activities, particularly with regard to the IT system security measures, and the recovery procedures in case of disaster. The tests shall be performed by a third party or by the specialised department, provided that the latter is different from and independent of the technological structure and IT programmes production department. The results of these tests shall be notified to FSA no later than 31 December, together with the measures taken or proposed to be taken by the central counterparty to eliminate any failures.

(2) Any significant problem with the technological structure or the computer programme shall be immediately reported to FSA. The measures taken by the central counterparty shall be communicated to FSA within maximum two business days from their adoption.

Art. 53. - In order for FSA to exercise its supervisory duties with regard to the central counterparty's activity, the financial auditors of the counterparty shall report to FSA any deed or act in connection with the activity of the central counterparty in accordance and in compliance with the terms referred to in Art. 260 of Law No. 297/2004. The information included in the financial auditor's report with regard to the clearing-settlement operations carried out by the central counterparty shall also be submitted to NBR.

Art. 54. - Any act or fact that may significantly affect transparency and the investors' protection, as well as the organisation and performance of the clearing and settlement operations shall be notified to FSA within two calendar days from its occurrence.

Art. 55. - (1) At FSA's request, the central counterparty shall submit information on the financial instruments registered and the clearing members admitted in its clearing system, as well as data and information regarding the transfer orders between the accounts.

(2) The data and information may be obtained by:

a) periodic information flows in electronic format or as hard copy, in which the data is processed in the modality established by FSA;

b) specific requests for certain information.

SECTION 10

Sanctions

Art. 56. - Failure to comply with the provisions of this regulation shall be sanctioned in accordance with the provisions of Title X of Law No. 297/2004.

Art. 57. - The sanctions applied by FSA shall be made public both in the FSA Bulletin and on its website, in accordance with the provisions of Art. 12 of Regulation (EU) No 648/2012.

CHAPTER III

Final and transitional provisions

Art. 58. - **(1)** If it intends to provide clearing services in accordance with the provisions of Regulation (EU) No 648/2012, "Casa Română de Compensație" - S.A. (*Romanian Clearing House*) and "Casa de Compensare București" - S.A. (*Bucharest Clearing House*) shall submit to FSA, no later than 15 September 2013, an application for authorisation as central counterparty in accordance with Regulation (EU) No 648/2012, accompanied by the necessary documentation in accordance with the provisions of this regulation.

(2) Until FSA adopts a decision on the authorisation of a central counterparty in accordance with the provisions of Art. 17 of Regulation (EU) No 648/2012, the provisions of NSC Regulation No. 13/2005 shall continue to be applicable to the operation and supervision of the entities referred to in Para (1).

(3) The provisions of this regulation with regard to the operation and supervision of a central counterparty shall enter into force when the provisions of NSC Regulation No. 13/2005, referred to in Para (2) are no longer applicable.

(4) FSA shall withdraw the operation authorisation of "Casa Română de Compensație" - S.A. and "Casa de Compensare București" - S.A. within maximum 9 months:

Paragraph (4) was amended by Regulation 7/2015 on 28/05/2015

a) as of the date referred to in Para (1), if the entities mentioned above do not submit the application for authorisation in accordance with Para (1);

b) as of the date FSA rejects the application for authorisation.

Letter b) was amended by Regulation 2/2014 on 21/02/2014

(5) In the situations referred to in Para (4), the board of directors/supervisory board/directorate shall only perform acts of administration to preserve the patrimony existing on the date mentioned in Para (4) Letter a) or, as applicable, Letter b) and/or in order to supervise the transfer of the open positions, of the collaterals and of the default fund to another undertaking authorised as central counterparty in accordance with the provisions of Regulation (EU) No 648/2012 and shall submit to FSA a report in this respect.

(6) The acts of administration referred to in Para (5) shall be performed within maximum 60 days from the date mentioned in Para (4) Letter a) or, as applicable, Letter b).

(7) In order to transfer the open positions, the collaterals and the default fund referred to in Para (5), the clearing members and the market/system operator managing the derivative financial instruments market have the obligation to conclude contracts with a central counterparty authorised in accordance with the provisions of Regulation (EU) No 648/2012.

(8) The provisions of Title III of NSC Regulation No. 13/2005 shall be repealed as of the entry into force of the individual act issued by FSA on the authorisation/withdrawal of the operation authorisation further to the rejection of the application for authorisation, in accordance with the provisions of Art. 17 of Regulation (EU) No 648/2012.

(9) If none of the entities referred to in Para (1) submits the application for authorisation in accordance with Para (1), the provisions of Title III of NSC Regulation No. 13/2005 shall be repealed as of the withdrawal of the operation authorisation of these entities.

(10) If the entry into force of the authorisation or of the withdrawal of the authorisation of "Casa Română de Compensație" - S.A. and of "Casa de Compensare București" - S.A. do not occur on the same day, the provisions

of Title III of NSC Regulation No. 13/2005 shall be repealed on the day immediately following the date when the individual act issued by FSA for the second of the two entities enters into force.

Art. 59. - The insolvency of the central counterparty and of its members shall be subject to the provisions of Law No. 85/2006 on the insolvency proceedings, as subsequently amended and supplemented, as well as to the special provisions of Title IX of Law No. 297/2004.

Art. 60. - Annexes Nos. 1 and 2 form an integral part of this regulation.

Art. 61. - This regulation shall enter into force upon its publication in the Official Journal of Romania, Part I.

President of the Financial Supervisory Authority,
Dan Radu Ruşanu

ANNEXE No. 1
to the regulation

STATEMENT

The undersigned, , domiciled in , holder of identity document type¹⁾, Series No. , issued by on , valid until , Personal Number Code , in my capacity as²⁾ of the central counterparty³⁾, hereby declare that I hold the following participations representing at least 10% of the share capital or voting rights:

¹⁾ To be filled in with ID for identity document, IC for identity card or PAS for passport, in the case of foreign natural persons.

²⁾ To be filled in with the position held: member of the board of directors/supervisory board/manager/member of the directorate.

³⁾ To be filled in with the name of the central counterparty.

a) Individual holdings:

No.	Name of the company in which shares are held	Residence state of the company in which shares are held	Participation in the share capital of the company/voting rights (%)

b) holdings in connection with other persons involved:

No.	Person involved	Name of the company in which shares are held	Residence state of the company in which shares are held	Participation of the involved person in the share capital of the company/voting rights (%)

c) holdings in connection with closely linked persons:

No.	Closely linked person	Name of the company in which shares are held	Residence state of the company in which shares are held	Participation of the closely linked person in the share capital of the company/voting rights (%)

Given and signed today, on my own liability, in full awareness of the fact that false statements are sanctioned according to law.

Date

Signature

ANNEXE No. 2
to the regulation

General requirements: The capital of the central counterparty (CCP)

1. Capital requirements:

A. The value of the capital requirements for the winding up or restructuring of its activity, calculated according to Art. 2 of Commission Delegated Regulation (EU) No 152/2013 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 capital requirements for central counterparties [Delegated Regulation (EU) No 152/2013], and a description of the elements taken into consideration (such as, the gross annual operating expenses, the time necessary for the winding up or restructuring etc.)

B. The value of the capital requirements of the CCP for the operational and legal risk in accordance with the provisions of Art. 3 of Delegated Regulation (EU) No 152/2013 and a description of the elements taken into consideration (such as the evaluation methods used)

C. The value of the capital requirements of the CCP for the credit risk, the counterparty risk and/or the market risk calculated in accordance with Art. 4 of Delegated Regulation (EU) No 152/2013 and a description of the elements taken into consideration (such as the value of the weighted exposures for the credit and counterparty risk, the method used to calculate the market risk that is not already covered by specific financial resources, the exposures of the central counterparty by reference to other counterparties if the conditions referred to in Arts. 52 and 53 of 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 [Regulation (EU) No 648/2012] are not met etc.).

D. The value of the capital requirements of the CCP for the trade risk calculated in accordance with Art. 5 of Delegated Regulation (EU) No 152/2013 and a description of the elements taken into consideration (such as the negative scenarios reasonably predictable, relevant for its business model etc.)

E. The value of the notification threshold

2. Capital position:

A. The value of the capital held by the CCP upon the submission of the application for authorisation/extension of the authorisation based on this regulation

B. The minimum and maximum value of the capital of the CCP over the 12 months preceding the submission of the application for authorisation/extension of the authorisation based on this regulation and a description of the stability of the capital held during such period

C. In case of extension of the authorisation, the number of times the notification threshold was infringed over the past 12 months

D. The CCP's procedures for monitoring the capital held

E. The procedures set up by the CCP to identify risks, including reputation risk, strategic risk or any other risk related to the economic or commercial environment that may affect its functions, and its income, expenses and capital level

F. Details on how the CCP's capital is invested

General requirements: Organisational requirements

A. Details on the organisational structure, of the governance system, of the risk management, internal audit and compliance functions and of the IT system

B. General provisions

a) Details on the rules in place for identifying, managing, monitoring and reporting the risks to which the CCP is or may be exposed, including:

(i) the key components of the CCP's governance system;

(ii) the adequacy of the personnel;

(iii) the responsibility and reporting lines;

(iv) the implication of the group in the CCP's own governance system;

(v) the adequacy of the risk management instruments.

b) Details on the modality to ensure the compliance by the CCP of the provisions of Regulation (EU) No 648/2012, including:

(i) its independence;

(ii) the authority, resources, experience; and

(iii) access to all relevant information.

c) Details on the manner in which the CCP ensures the adequacy and proportionality of the systems, resources and procedures

d) Details on the remuneration policy and how it is conceived to promote a sound and effective risk management

e) Details on the adequacy of the IT systems and how the security, integrity and confidentiality of the information is ensured

C. The executive management and the board of directors/supervisory board

a) Details on the experience in ensuring a sound and prudent management of the CCP

b) Details on the assessment of the independence of the members of the board of directors/supervisory board

D. The risk committee

a) Details on the independence of the risk committee

b) Details on the independence of the member of the board of directors presiding the risk committee

c) Details on the manner to ensure, in emergency situations, the consultation of the risk committee with regard to the evolutions that affect the management of the CCP's risks

d) Details on the manner in which the members of the risk committee assume the confidentiality obligation

E. The shareholders and associates holding qualified participations

- Details on the manner in which the CCP ensured the adequacy of the shareholders holding qualified participations

F. Conflict of interest

a) Details on the evaluation of the CCP with regard to a potential conflict of interest

b) Details on the evaluation of the CCP's procedures for the settlement of potential conflicts of interest and the verification of their compliance

G. Outsourcing

a) Details on outsourcing the operational functions, of the services and activities and the manner in which the requirements of Art. 35 of Regulation (EU) No 648/2012 are met

b) The manner to ensure the full liability of the CCP for the fulfilment of all of its obligations based on Regulation (EU) No 648/2012

H. Record-keeping

a) Details on the compliance with the requirements of Art. 29 of Regulation (EU) No 648/2012 and Art. 12 of 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 [Delegated Regulation (EU) No 153/2013] (particularly the accessibility, durability and granularity of the information)

b) Details on ensuring the full access to registration outside the EU

I. Participation requirements

a) Details on the admission criteria for clearing members

b) Details on the processes and procedures set up by the CCP allowing for the continuous evaluation and annual examination of the compliance with these criteria and the management of the situations in which these requirements are no longer met

J. Transparency

- Records of the availability of the governance rules and the operation rules of the CCP, including, among others:

(i) admission criteria;

(ii) the operational and technical requirements regarding the communication protocols and the format of the message;

(iii) denial of access/suspension of the clearing members;

(iv) a description of the rights and obligations of the clearing members (and of the clients if applicable), as well as of the risks associated;

(v) the prices and commissions related to the services delivered, including discounts and rebates;

(vi) the information on the price used to calculate the exposures at the end of the day;

(vii) the volume of the transactions cleared for each class of instruments on an aggregated basis;

(viii) the infringements by the clearing members of the participation criteria in accordance with Art. 38 (5) of Regulation (EU) No 648/2012;

(ix) the complaint settlement procedures.

General requirements: activity continuity

A. The activity continuity policy of the CCP and the main elements of the recovery plan in case of disaster

- The CCP's procedures to ensure the orderly and timely settlement or the transfer of the assets and positions of the clients and clearing members if the CCP's authorisation is withdrawn

B. Details on the activity continuity policy and of the recovery plan, including:

a) Details on the approval process of the activity continuity policies and the frequency and processes related to the independent revision thereof. Information on the manner in which the continuity policy is documented and updated

b) Details on the critical activity functions and systems forming the object of the policies, the criteria used for their identification and the methods used to ensure their continuity

c) Information on the connections and dependences on other outsourced systems and services, including the manner in which the CCP manages a potential trade risk that they might induce

d) Analysis of the scenarios and tests that the CCP runs, as well as the risks they cover, their frequency and the process of updating them and the manner in which the clearing members and the relevant persons are involved in these tests

e) Details on the processes, objectives and timeframes included in the recovery plan and if they comply with the limits established by Delegated Regulation (EU) No 153/2013 and allow for the fulfilment of all payment obligations in due time

- Details on the human resources available in case of recovery, including the number of employees, the skills and adequacy of the personnel, as well as the situation of the secondary offices and of other recovery procedures

f) Details on the crisis management function, its membership and the relevant processes for the settlement of a potential crisis

g) Details on the communication plan, including the manner in which the communication needs of all stakeholders of the CCP are satisfied during the crisis

Conduct rules: segregation and portability

A. Details on the segregation and portability of the CCP

B. Details on the CCP's offer for segregation and portability services, including:

a) Details on the individual segregation per client, including the protection level, the legal implications and the insolvency law applicable in the relevant jurisdictions

b) Details on the global segregation of the clients, including the protection level, the legal implications and the insolvency law applicable in the relevant jurisdictions

c) The costs related to the individual segregation per client and of the global segregation of the clients

Prudential requirements: Margins

A. The methodology adopted to calculate the initial margins, including the modality in which it was verified that the initial margins are not lower than those calculated using a confidence interval of 99% (99.5% for OTC derivatives), a time horizon for the calculation of historical volatility of one year and a time horizon for the winding up period of two business days (5 business days for OTC derivatives). If the CCP chose the option under Letter c) of Art. 28 (1) of Delegated Regulation (EU) No 153/2013 in order to avoid pro-cyclicality in the calculation of the margin, to provide details on the modality in which it was verified that the margin requirements of the CCP are not lower than those calculates using a confidence interval of 99% (99.5% for OTC derivatives) and an estimated volatility for a historical period of 10 years.

If the CCP adopts a portfolio margin, information must be provided on the structure of the portfolio by classes of assets, including the sum of the margin reductions.

B. The risk management measures taken by the CCP, in particular:

a) The criteria considered to determine the percentage applied to the calculation of the margins for each class of financial instruments, including OTC derivatives

b) The time horizon used for the calculation of historical volatility and the relative confidence interval, including the data used for the calculation thereof

c) If the historical observations are not available, information must be provided on the conservative assumptions considered

d) The winding up period chosen, specifying the criteria sought by making such choice

e) If the clearings or margin reductions requested are allowed, information on the approach taken with regard to the portfolio margin, providing statistical records of the correlation between the financial instruments

f) Details on the value of the margin reductions in the case of portfolio margin covering several instruments

g) Details on the stress testing programme carried out for the margin reductions

h) The options chosen to limit pro-cyclicality in the calculation of the initial margins

Prudential requirements: the default fund and the order of using the resources in case of failure to fulfil the payment obligations

A. The methodology adopted for the calculation of the value of the default fund, including:

a) Information on the manner in which it was verified that the default fund allows the CCP to cope, in extreme, but plausible, market conditions with a default by a clearing member to which it has the highest exposure or the second and third clearing member in the order of the extent of the exposure, if the sum of the exposures to them is higher

b) The minimum value of the default fund, below which it can under no circumstance fall

c) The criteria used to calculate the contribution of each clearing member and the record of the proportionality of the contributions by reference to the exposures of each clearing member

B. The definition provided by the CCP for extreme, but plausible, market conditions, as well as the internal policy framework defining the types of extreme, but plausible, market conditions that may generate the highest exposure to risk and the CCP framework reflecting the market evolutions

C. The current value of the margin and the contributions of the default fund kept for each clearing member and the record of the fact that the related amounts are pre-financed

D. Records of the fact that the own dedicated resources of the CCP are registered separately in the CCP's accounting books. If the CCP established more than one default funds, the separate records of the own dedicated resources of the CCP in the CCP's accounting books proportionally to each default fund

E. Records of the calculation of the value of the own dedicated resources of the CCP

F. Records of the fact that the own dedicated resources of the CCP include resources other than capital resources (including the result carried forward and the reserves of the CCP)

G. Records of the manner in which the own dedicated resources of the CCP are invested, revealing that these resources are available at any time.

H. The CCP procedure regarding the notification of the Financial Supervisory Authority (FSA) on the infringement of the requirements regarding the own dedicated resources and its plan to replenish them, presenting in particular the manner in which the CCP addresses the issue of the subsequent failure by a clearing member to fulfil its payment obligations before the CCP had the chance to replenish its own dedicated resources

I. The CCP's methodology to evaluate the soundness and to regularly revise the framework defining the extreme, but plausible, market conditions that may expose it to the highest risk

Prudential requirements: Requirements for the liquidity risk control

A. The following information:

a) Information on the necessary credit lines or other similar means to cover the liquidity needs of the CCP, with a focus on the concentration limits for each clearing member, parent undertaking or subsidiary providing such credit lines.

b) The liquidity risk management framework of the CCP including the assessment of the potential needs for liquidity in case of a wide range of potential stress test scenarios. The stress tests include the failure by the first 2 clearing members to which the CCP has the largest exposures to fulfil their payment obligations, the liquidity risk generated by the CCP's investment policy in extreme, but plausible, market conditions

Details on the potential liquidity needs deriving from the relationships between the CCP and the entities to which the CCP has a liquidity exposure

B. The following information:

a) The minutes of the meetings of the board of directors/supervisory board approving the liquidity plan, as well as the opinion of the Risk Committee on the liquidity plan

b) Details on the interdependence of the entities to which the CCP has liquidity exposures

c) An example of daily and quarterly reports prepared by the CCP with regard to its liquidity and resources needs

d) Details on the liquid resources of the CCP available at a certain date, including the value of the cash deposited in central banks and with authorised credit institutions, the value of the credit lines contracted and the repurchase agreements contracted, as well as details on the highly marketable financial instruments available to the CCP

e) A report on the manner in which the liquidity needs in various currencies are managed

f) The results of the tests on the CCP's procedures regarding the access to predetermined funding mechanisms

g) The procedures prepared by the CCP regarding the access to the liquid financial resources for the fulfilment of its payment obligations during a liquidity deficit

h) Details on the manner in which the concentration of the exposure to the liquidity risk is managed, including the exposures to the settlement banks, the payment systems, the securities settlement systems, the nostro agents, custodian banks, liquidity suppliers, interoperable CCPs, services suppliers

i) Details on the CCP's procedure in case of infringement of the concentration limits

Prudential requirements: Collateral requirements

A. The policies and procedures adopted by the CCP to assess and monitor the liquidity of the assets accepted as collateral, with a distinction between the cash collateral and the financial instruments collateral

B. Details on the manner in which the CCP manages the currency risk to which it is exposed by acquiring the collateral in the form of cash in various currencies

C. The following information:

a) Details on the manner in which the CCP made sure that the credit risk and the market risk for each type of financial instrument chosen as collateral is mitigated

b) Details on the manner in which the CCP manages the currency risk, if applicable, generated by its investments in financial instruments

c) Details on the manner in which the CCP makes sure that the financial instruments accepted as collateral comply with the requirements provided in Delegated Regulation (EU) No 153/2013

d) Details on the manner in which the CCP manages the significant wrong-way risk

e) If bank guarantees or gold are collected as collateral, information on the manner in which the CCP makes sure that the requirements provided by Delegated Regulation (EU) No 153/2013 are met

f) The procedures and policies of the CCP for monitoring credit quality, market liquidity and price volatility for each asset accepted as collateral and to ensure the marking to market of the value of such assets

g) The procedures and policies established by the CCP to determine whether the haircuts are prudent and appropriate

h) The procedures and policies of the CCP to make sure that the collaterals are sufficiently diversified and can ensure the fact that the CCP is able to liquidate the collateral without a significant impact on the market

i) Details on the manner in which the CCP evaluates the concentration risk and the manner in which it determines the related concentration limits, including the level of:

- individual issuers;

- types of issuers;

- types of assets;

- each clearing member; and

- all clearing members.

j) The criteria considered by the CCP upon establishing the concentration limits with regard to the geographical distribution, credit risk, liquidity risk and price volatility related to the financial instruments issuer

k) Details on the manner in which all conditions provided by Delegated Regulation (EU) No 153/2013 are met
Prudential requirements: Investment policy

A. The investment policy of the CCP, in particular a breakdown of the margin percentage invested in financial instruments and, respectively, in cash. In the case of the margin level invested in cash, a breakdown on unsecured and secured positions

B. The risk management measures taken by the CCP for the investment of its financial resources, with a distinction between the CCP's investments in financial instruments and cash deposits

C. The following information:

a) Details on the manner in which the CCP assesses the fact that the credit risk and the market risk for each type of financial instruments chosen for investment purposes is mitigated, as well as the manner in which the CCP makes sure that the average period until the maturity of its portfolio is kept below 2 years

b) A list of financial instruments in which the CCP invests its financial resources, specifying the type of financial instrument, the individual issuer and the type of issuer

c) Details on the manner in which the CCP manages the currency risk, where applicable, generated by its investments in financial instruments

d) Identifying the financial institutions where the instruments are deposited, as well as the methodology used by the CCP to evaluate the credit risk of the financial institution and the measures implemented by the CCP to prevent the losses caused by the financial institution's failure to fulfil its payment obligations or by its insolvency

e) Details on the manner in which the CCP makes sure that the financial instruments in which it invests remain sufficiently diversified

f) The risk mitigation measures to be applied by the CCP in case of exceeding the concentration limits

D. The following information:

a) If the CCP holds overnight deposits, the methodology used by the CCP to evaluate the credit risk of the financial institution

b) Details on the manner in which the CCP manages the currency risk, where applicable, generated by its investments in cash deposits

c) In the case of guaranteed deposits in cash, the measures taken by the CCP on guaranteeing and ensuring the fact that the financial instruments received as collateral meet the criteria established by Delegated Regulation (EU) No 153/2013

d) In the case of unsecured deposits in cash, details on the manner in which the risk deriving from exposure is managed, including the manner in which the CCP makes sure that it is not exposed to losses caused by the depositary financial institution's failure to fulfil its payment obligations or insolvency

E. The investment policy of the CCP, including the manner in which the CCP makes sure that its own regulations ensure the highest priority to the principles of capital conservation and maximisation of liquidity, as well as the manner in which the investment policy guarantees that there are no conflicts of interest with the CCP's commercial interests

F. Details on the income generated by the investments of the financial resources and their share in the total income of the CCP

Prudential requirements: Re-examination of the models, stress testing and back testing

Part I: Models and programmes

A. The following information:

a) Details on the validation of the CCP's liquidity risk management models, methodologies and framework

b) The criteria used by the CCP to assess whether its liquidity risk management models, methodologies and framework may be successfully validated, including the results of such tests

- c) The CCP's policies and procedures used to assess the relevance, accuracy, reliability and resilience of its liquidity risk management models, methodologies and framework
- d) The criteria used by the CCP to assess the independence of the third party validating the CCP's liquidity risk management models, methodologies and framework

Part II: Back testing

B. The following information:

- a) The CCP's back testing programme to determine the margin coverage (for example, by an ex-post comparison between the results obtained and the results forecasted by using the margin calculation models), the time horizon used for such testing and the criteria applied to the evaluation of the results of the back testing programme
- b) Details on the CCP's procedures regarding the back testing programme, including:
 - (i) the frequency of the back testing;
 - (ii) the actions to be taken depending on the results of the back testing;
 - (iii) the reports submitted to the risk committee following the back testing;
 - (iv) the possibility to analyze the back testing for all clearing members and clients.

Part III: Sensitivity testing and analysis

C. The following information:

- a) The sensitivity tests that the CCP adopted to assess the coverage of its margin calculation model in different market conditions, using historical data in market crisis situations that already occurred and assumptions for market crisis events that did not occur
- b) Actions to be taken depending on the results of the tests and analysis
- c) The reports supplied to the risk committee as a result of these tests

Part IV: Stress testing

D. The following information:

- a) The stress testing programme of a CCP to estimate the exposures to risk, in order to assess the adequacy of the financial resources, including stress test scenarios used by the CCP to evaluate the bankruptcy of the custodian banks, liquidity suppliers or interoperable CCPs
- b) The CCP's procedures on the stress testing programme, including:
 - (i) the frequency of the stress testing;
 - (ii) the actions to be taken depending on the results of the stress testing;
 - (iii) the reports submitted to the risk committee following the stress testing;
 - (iv) the possibility to analyze the stress testing for all clearing members and clients.
- c) Details on the stress testing programme regarding the total financial resources, including:
 - the CCP's methodology to guarantee the fact that it has a combination of margins, contributions to the default fund and other financial resources that are sufficient to cover at least the default by the 2 clearing members to which it has the highest exposures in extreme, but plausible, market conditions;
 - the CCP's methodology to guarantee the fact that the stress testing take into consideration the potential losses resulting from the default of the entities forming part of the same group as the 2 clearing members to which the CCP has the highest exposures in extreme, but plausible, market conditions;
 - the CCP's methodology to guarantee the fact that it has a combination of margins, contributions to the default fund and other financial resources that are sufficient to cover at least the default by the clearing member to which the CCP has the highest exposures or the second and third clearing member, if the sum of their exposures is higher;
 - the CCP's methodology to assess the losses at the level of the clearing members' positions including, inter alia, the impact of the liquidation of the positions on the market, as well as the effect of the default by a clearing member that issues financial instruments cleared by the CCP;

- the CCP's procedures to increase the margin, the contributions to the default fund and other financial resources if the test results reveal that the coverage they provide is not sufficient.

d) Details on the stress testing programme on the liquid financial resources, including:

- the CCP's methodology to ensure that its liquid resources are sufficient to meet the requirements provided by Delegated Regulation (EU) No 153/2013;

- rules and procedures established for the situations where the CCP has insufficient liquid financial resources;

- the CCP's methodology to identify all entities that may expose the CCP to a liquidity risk;

- the CCP's methodology to identify the potential effects of contagion and default among the clearing members;

- the CCP's procedures to increase its liquid financial resources if the test results reveal that the coverage they provide is not sufficient

Part V: Coverage and use of the test results

E. The CCP's procedures regarding:

a) the adjustment of the margin requirement calculation to reflect the changes in the market conditions

b) the assessment of the adequacy of the haircuts in the observed extreme, but plausible, market conditions

c) the consideration of the correlations/compensation between the products

d) the recalibration of the margin model if the results of the back testing indicate that the model does not identify the appropriate value of the initial margin, necessary to reach the expected confidence level

e) the determination of the additional margin that the CCP might be required to collect, including intraday

f) the assessment of the testing sources of the exceptions revealed by the bank testing and stress testing and the change of the models and recalibration of the parameters

Part VI: Reverse stress testing

F. The following information:

a) The reverse stress testing that the CCP applied to identify the market conditions in which the combination between the margins, its default fund and its other financial resources would not provide sufficient coverage for the credit exposures and for which its liquid financial resources might be insufficient

b) Details on the manner in which the CCP uses the reverse stress testing to identify the extreme, but plausible, scenarios to determine the size of its default fund

c) The reports to be submitted to the risk committee following such tests

Part VII: Procedures applicable in case of default

G. The following information:

a) The CCP's procedures applicable in case of default and the manner in which the tests and re-examination guarantee that these procedures are practical and effective

b) Details on the test exercises performed by the CCP to test the procedures applicable in case of default

Part VIII: Publication of the information

H. The CCP's procedures for making public the general principles based on which its models, methodologies and tests are established, a high level summary of the test results, any correction measures taken and key-aspects of the procedures applicable in case of default.

Prudential requirements: Settlement

- The CCP's procedures regarding settlement also including the reasons for not using the central bank funds and the delivery versus payment mechanisms, where applicable, as well as details on the CCP's obligations regarding the delivery of financial instruments, including the possibility to compensate the participants for the losses incurred during the delivery process